



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6514 OF 2023
WITH CA/14337/2023 IN WP/6514/2023

Shri Gramin Jeevan Soukhya Sanvardhan
Sanstha, Shirpur Sanchalit, Palak Nursing
Institute, Shirpur, Tq. Shirpur, Dist. Dhule,
through its Secretary.

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Medical Education and Drugs
Department, Mantralya, Mumbai
2. The Director,
Maharashtra State,
Board of Nursing and Paramedical
Education, directorate of Medical
Education and Research, 4th Floor,
Sant Gorgeous Hospital Campus
P.D'Mello Road, Fort Mumbai - 400001

... RESPONDENTS

Advocate for petitioner: Mr. D.S. Bagul
Addl. G.P. for respondent No.1 : Mr. M.M. Nerlikar
Advocate for respondent No.2 : Mr. M.D. Narwadkar

CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.

DATE : 06.12.2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is returnable forthwith. Learned AGP
and the learned advocate Mr. Narwadkar for the respondent No.2 waive
service. At the joint request of the parties, the matter is heard finally at
the stage of admission.

2. The petitioner which has been running ANM and GNM courses under the Maharashtra State Board of Nursing and Paramedical Education Act, 2013 (the Act) is putting up a challenge to the order dated 02.03.2023 passed by the respondent No.2 which is a Board of Nursing and Paramedical Education constituted under that Act, whereby, petitioner's request for increase in the seats for ANM course from 20 to 40 has been accepted, under Sections 28 and 29 of the Act, however, instead of recommending the permission with effect from the academic year 2022-2023 it has been recommended from the academic year 2023-2024.

3. Learned advocate Mr. Bagul would take us through the provisions of the Act and the correspondence. He would submit that necessary proposal was submitted by the petitioner with a requisite fees. It was also favourably considered by the Board, however, erroneously instead of making recommendation for increase in the seats from the academic year 2022-2023 the recommendation impugned is with effect from the academic year 2023-2024. He would submit that since everything was going on smoothly, the petitioner under a *bona fide* belief proceeded to admit the students but for want of requisite permission, they are unable to appear in ensuing examination which is to commence with effect from 12.12.2023.

4. Per contra, Mr. Narwadkar for the respondent No.2 would submit that Sub-Section 6 of Section 29 of the Act expressly prohibits

students being admitted to any institution without their being any affiliation permission granted by the Board. He would submit that the petitioner was seeking increase in the sanctioned strength and the matter was being actively considered, however, admittedly the impugned communication was merely a recommendation by the Board to the State. The petitioner could not have admitted the students. It is not a matter of legitimate expectation. There was a statutory bar to admit the students before grant of approval. The petitioner ought not to have run the risk of admitting the students. There are no equities working in favour of either the petitioner or even the students who were admitted by it.

5. At the outset, it is necessary to note that there is not a dispute about any of the facts. Bearing in mind such a state of affairs, it is abundantly clear that even before any decision was taken for increasing the seats, the petitioner could not have admitted the students. Chapter IV of the Act contains the provisions regarding permission, affiliation etc. Section 27 speaks about conditions of affiliation. Section 28 lays down provision in respect of procedure for grant of permission to start new nursing and paramedical institutions. Section 29 lays down the procedure for affiliation. Pertinently, by virtue of Sub-Section 5 of Section 29, the procedure referred to in Section 28 has been made applicable *mutatis mutandis* for permission to additional divisions. Sub-Section 6 of Section 29 expressly prohibits any student being admitted by the institution unless there was affiliation granted by the Board.

6. In blatant violation of such stringent provision, the petitioner had proceeded to admit the students and in all probability, has filed the petition to come out of the wriggle which is a creation of its own.

7. Pertinently, the impugned communication is merely a recommendation and the decision is still to be taken by the State Government under Section 28 (5).

8. It is equally important to note that though the petitioner will have *locus standi*, the ultimate sufferer would be the students who have been admitted by it without there being any permission for increasing the strength of students but they are not before us.

9. In view of such state of affairs, when the petitioner has admitted the students without there being any permission increasing the strength from 20 to 40, when that final decision is still to be taken by the State Government under Section 28 (5), we find no merit in the request made by the petitioner to permit the students who have been admitted over and above the strength of 20 to appear for the ensuing examination.

10. Needless to state that since the students who would suffer the consequences are not before us, it would always be open to them to resort to appropriate remedy.

11. Since the petitioner by way of the only prayer clause 'B' has been praying for a direction to the respondent No.2 to modify the order dated 02.03.2023 and to permit the increase of seats by 20 students for the NM course from academic year 2022-2023 and since we have used

the term respondent No.2 has merely forwarded the proposal to the respondent No.1 which ultimately is supposed to take appropriate decision in the light of provisions of Section 28(5), it would always be open for the petitioner to approach the respondent No.1 – Government to whom the communication dated 02.03.2023 is addressed. As has been observed herein above, when final decision is yet to be taken by the respondent No.1, no direction for modification and recommendation forwarded by the Board to the Government in Sub-Section 4 of Section 28 can be issued.

12. Reserving the right of the petitioner to challenge the final order to be passed by the respondent No.1 under Section 28(5), the petition is dismissed. Rule is discharged. The Civil Application is also rejected.

[NEERAJ P DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE