



W.P(MD)No.26209 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26209 of 2023

and

W.M.P(MD)Nos.22562 & 22563 of 2023

Joy University,
Represented by its Registrar,
Raja Nagar,
Vadakankulam,
Tirunelveli District – 629 165.

... Petitioner

Vs.

- 1.The Indian Nursing Council,
Represented by its Secretary,
8th Floor, NBCC Centre,
Plot No.2, Community Centre,
Okhla Phase – I,
New Delhi – 110 020.
- 2.The State represented by
The Secretary,
Department of Health and Welfare,
Fort St.George,
Chennai – 600 009.



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3.The Tamil Nadu Nurses and Midwives Council,
Represented by its Registrar,
Jeyaprakash Narayanan Maligai,
Santhome High Road, Mylapore,
Chennai – 600 004.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent Tamil Nadu Nurses and Midwives Council in Ref.No. 10059/NC/2023 dated 05.06.2023, quash the same, further direct the first respondent Indian Nursing Council to consider forthwith the inclusion of the petitioner University in the Schedule to the Indian Nursing Council Act, 1947, in terms of Section 10 thereof, (recognition of B.Sc., degree in Nursing offered by the petitioner University) on the basis of the petitioner's applications dated 25.05.2023 and 08.07.2023, without insisting upon the second respondent State Government's Order.

For Petitioner : Mr.Mr.Issac Mohanlal
for M/s.Isaac Chambers

For Respondents : Mr.R.Murali for R.1

Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.S.RA.Ramachandran
Additional Government Pleader for R.2



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Mr.B.Saravanan, Senior Counsel
for Mr.D.Kirubakaran for R.3

ORDER

Heard both sides.

2.Joy University is a private university established under the provisions of the Tamil Nadu Private Universities Act, 2019. G.O(Ms)No.131 Higher Education Department dated 14.07.2022 was issued in exercise of the powers conferred by Section 9 of the said Act by including the petitioner University in the Schedule. The petitioner intends to offer B.Sc Nursing course with an annual intake of 60 seats from the current academic year. The petitioner claims that they possess the requisite infrastructural and instructional facilities. The petitioner submitted online application to the Tamil Nadu Nurses and Midwives Council for starting a new nursing programme (B.Sc Nursing). The Tamil Nadu Nurses and Midwives Council informed the petitioner that Government Order is mandatory for starting B.Sc (Nursing) programme and called upon the petitioner to submit the online application along with a Government Order. Thereupon, the petitioner informed the third

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respondent that there is no special requirement to obtain permission from the State Government for starting any new programme. The third respondent reiterated their stand that obtaining permission from the Government is mandatory and if according to the petitioner, it is not necessary, it is for the petitioner to obtain a specific exemption order from the Government. Thereupon, the petitioner wrote to the Government. The Principal Secretary to Government, Health and Family Welfare Department, Government of Tamil Nadu rejected the petitioner's request for an exemption order so as to enable the petitioner to start the Course. Challenging the stand of the third respondent, this present writ petition came to be filed.

3.The learned Senior Counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition. He also drew my attention to the relevant provisions in the Tamil Nadu Nurses and Midwives Act, 1926, the Indian Nursing Council Act, 1947 and the Tamil Nadu Private Universities Act, 2019. He relied on the judgment of the Hon'ble Supreme Court reported in **(2017) 6 SCC 675 (Maharishi Markandeshwar Medical College and Hospital and**



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Others Vs State of Himachal Pradesh & Others) and the decision of the Hon'ble Division Bench of the Madras High Court made in *W.P.No.380 of 2008 etc., (J.Merula & Others Vs The Commissioner & Others)* dated 31.01.2012. He called upon this Court to grant relief as prayed for.

4.The Government of Tamil Nadu has filed counter affidavit and the learned Additional Government Pleader took me through its contents. The third respondent also filed their counter affidavit. The learned Standing Counsel appearing for the third respondent apart from reiterating the stand set out in the counter affidavit relied on the relevant provisions of the various statutes. The stand of the respondents 2 and 3 is that the impugned order deserves to be sustained. According to them, prior permission from the State Government is necessary before starting any nursing programme. The learned standing counsel for the first respondent also endorsed the stand taken by the respondents 2 and 3. The respondents in unison prayed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The petitioner is admittedly a private university



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established under the provisions of the Tamil Nadu Private Universities Act, 2019. Section 13 of the Tamil Nadu Private Universities Act, 2019 sets out the powers of a private university. Sections 12 and 13(b)(d)(k) (p) and (y) of the Act are as follows :

“12. The objects of a Private University shall be to disseminate and advance education, knowledge and skill by providing instructional, research and extension of facilities in such branches of learning as it may deem fit and the Private University shall endeavour to provide to students and teachers the necessary atmosphere and facilities for the promotion of,—

(a) innovations in education leading to restructuring of courses, new methods of teaching, training and learning including on-line learning, blended learning, continuing education and such other modes and integrated and wholesome development of personality;

(b) studies in various disciplines;

(c) inter-disciplinary studies;

(d) national integration, secularism, social equity and engineering of international understanding and ethics;

(e) educational programmes for diplomas, degrees and post-graduate courses, doctorate degrees and post-



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doctoral programmes and to maintain high standards of education;

(f) collaboration with national and global institutions, and creation of capabilities for upgrading programmes to the global standards, subject to the guidelines of the UGC and other regulatory bodies.

13. Every Private University shall have the following powers, namely:—

(a)

(b) to impart and promote the study of humanities and social sciences, science, engineering and technology, management, law, medical and allied sciences and any other professional courses through in-campus, off-campus, and satellite centres or by distance educational programmes;

(c)

(d) to grant, subject to such conditions as the Private University may determine, diplomas or certificates to, and confer degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

.....



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(k) to establish and maintain schools, centres, specialised laboratories or other units for research and instructions as are in the opinion of the Private University, necessary for the furtherance of its objects;

.....

(p) to determine standards for admission into the Private University, which may include examination, evaluation or any other method of testing;

.....

(y) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Private University ”

A reading of the aforesaid statutory provisions would lead anyone to come to the conclusion that a private University is entitled to start an academic programme. The stand of the respondents is that Clause 4(iii) and (iv) of the Indian Nursing Council (Minimum Pre-requisites for Granting Suitability to Nursing Programs) Regulations, 2020 states that obtaining Essentiality Certificate from the Government before starting B.Sc College of Nursing is necessary. It read as follows:

“4.Minimum Pre-requisites {for starting GNM and B.Sc (Nursing)}



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...

(iii) *The eligible Establishments/Organizations should obtain Essentiality Certificate/No Objection Certificate from the concerned State Government where the GNM and B.Sc. (Nursing) College of Nursing is sought to be established. The particulars of the name of the College/Nursing Institution along with the name of the Trust/Society [as mentioned in Trust Deed or Memorandum of Association] as also full address shall be mentioned in No Objection Certificate/Essentiality Certificate.*

(iv) *After receipt of the Essentiality Certificate/No Objection Certificate, the eligible institution shall get recognition from the concerned SNRC for the GNM & B.Sc. (Nursing) program for the particular Academic Year, which is a mandatory requirement.”*

No doubt, if the aforesaid Clause is applied, the impugned orders will have to be sustained. The learned Senior Counsel for the petitioner points out that regulations have been issued in exercise of the powers conferred by sub-section 1 of Section 16 of the Indian Nursing Council Act, 1947 by the Indian Nursing Council. Section 16 of the Indian



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Nursing Council Act, 1947 (48 of 1947) gives power to the Indian Nursing Council to make regulations not inconsistent with the Act generally to carry out the provisions of the Act. From this one can infer that the object of the regulations cannot travel beyond the statutory scheme. The statutory scheme is set out in Sections 10 to 14 of the said Act. Section 10 speaks about the recognition of qualifications. Section 14 talks about withdrawal of recognition. The other provisions are incidental.

6.As rightly pointed out by the learned Senior Counsel for the petitioner starting an educational institution for imparting academic programme is one thing and recognition of qualification granted by such an institution is another. My attention is drawn to the order dated 31.01.2012 passed by the Hon'ble Division Bench in W.P.No.380 of 2008 etc. The Hon'ble Division Bench was concerned with the Rule issued by the Government of Tamil Nadu under Section 11(2)(c) of the Tamil Nadu Nurses and Midwives Council Act, 1926 which stipulated that only with the approval of the Government, the State Council can authorise institutions to offer certain academic courses. The Hon'ble

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Division Bench held that introducing such a Rule was beyond the rule making power under Section 11(2)(c) of the Tamil Nadu Nurses and Midwives Act, 1926. The only difference between Rule 37 introduced by the Government and the present regulation introduced by the Central Council is that while the former was made under the ruling making power of the State enactment, the present regulations have been made under the power to make regulations under the Central enactment. What must be seen is whether the Rule or Regulation is consistent with the statutory object. If the statutory object does not provide for something, it cannot be introduced in the guise of making a Rule or Regulation. I am inclined to adopt the very same approach. I am satisfied that the Indian Nursing Council Act, 1947 has nothing to do with granting permission to start an educational institution. It is concerned only with recognising the qualifications granted by such institutions. Therefore, I hold that the Regulation 4 relied on by the learned Senior Counsel appearing for the third respondent cannot come in the way of granting relief to the petitioner. Of course, the validity or applicability of 2020 Regulations to the petitioner have not been impugned. In fact no declaration has been sought in respect of the 2020 Regulation by the petitioner. The Hon'ble



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Supreme Court in the decision reported in **(2001) 8 SCCV 676**

(Bharathidasan University & Another Vs All India Council for Technical Education and Others) had held as follows:

“14. The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations are confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack.....”

It is well settled that even though there may not be a formal challenge to the regulation or provision, if the Court comes to the conclusion that it is inapplicable to the case on hand, the writ Court can very well grant relief.



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7.The learned Additional Government Pleader appearing for the respondents would submit that in view of G.O(Ms)No.219 Health and Family Welfare Department dated 06.06.2018, prior approval from the Government is necessary. I went through the contents of the said Government Order. It states that private managements / educational trusts / agencies which proposed to open Self Financing to Nursing Schools / Colleges shall obtain prior permission from the State Government before applying to Indian Nursing Council / Tamil Nadu Nurses and Midwives Council / Tamil Nadu Dr.M.G.R.University for approval. My attention has not been drawn to any specific statutory provision under which this Government Order has been issued. It is obvious that it has been issued under the executive power under Article 162 of Constitution of India. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, such an executive order will have to give way to a statutory provision enacted by the legislature. He relied on the decision of the Hon'ble Supreme Court of India in ***Ispat Industries Ltd vs. Commissioner of Customs, Mumbai (2006) 12 SCC 583***. It was held that when there is hierarchy of laws, the one at the higher level will prevail over the one at the lower level. The Tamil Nadu Private



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Universities Act, 2019 gives power to a private University to start an educational institution or offer an academic program. Therefore, this power conferred by a State Legislation cannot be whittled down by the Government Order issued under executive power of the state. It is true that there are provisions under the Universities Act which mandate that the University will have to pay due regard to the regulations issued by the other regulatory bodies such as UGC. The Indian Nursing Council and the Tamil Nadu Nurses and Midwives Council are obviously such regulatory bodies. But then, the word “regulation” will have to be understood as regulations that are in conformity with law. A regulation that has been issued beyond the scope of the statutory scheme cannot be said to fall within the restrictive sweep of the provisions set out in the Tamil Nadu Private Universities Act, 2019. I therefore have no hesitation to set aside the impugned communication issued by the third respondent as well as the one issued by the second respondent which stipulate that the State Government's clearance is required for starting the academic program in question.



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8.I cannot however stop with this. This is because as rightly pointed out by the learned Standing Counsel for the first respondent as well as the learned Senior Counsel appearing for the third respondent the writ prayer is in two parts. The first part of the prayer assails the communication issued by the third respondent. The second part of the prayer is for including the petitioner University in the schedule to the Indian Nursing Council Act, 1947. Section 10 of the Indian Nursing Council Act, 1947 is as follows:

“10. Recognition of qualifications.—(1) For the purposes of this Act, the qualifications included in I [Part I of] the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

*(2) Any authority within the 2 [States] 3 *** which, being recognised by the 4 [State] Government 1 [in consultation with the State Council, if any,] for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, 1 [auxiliary nursing-midwifery] health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such*



qualification only when granted after a specified date shall be a recognised qualification for the purposes of this Act.

*(3) The Council may enter into negotiations with any authority 5 [in any 6 [territory of India to which this Act does not extend] or foreign country] 3 [***] which by the law of 7 [such territory] or country is entrusted with the maintenance of a register of nurses midwives or health visitors; for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any 1 [such territory] or country, or such qualification, only when granted after a specified date, shall be a recognised qualification for the purposes of this Act:*

*Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice 2 [of the foreign country] in which the qualification is granted persons domiciled or originating 3 [in India] 4 *** and holding qualifications recognised under this Act are permitted to enter and practice the nursing profession 5 [in that country]:*



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Provided further that— (i) any reciprocal arrangements subsisting at the date of the commencement of this Act between a 6 [State] Council and any authority outside India for the recognition of qualifications shall, unless the Council decides otherwise, continue in force, and 7

[(ii) any qualification granted by an authority in a territory of India to which this Act did not extend at the date of its commencement and recognised on the said date by the State Council of a State to which this Act then extended, shall continue to be a recognised qualification for the purpose of registration in that State.]

(4) The provisions of sub-sections (2) and (3) and of sections 14 and 15 shall apply mutatis mutandis to the declaration by the Council of a qualification granted in respect of post-certificate nursing training as a recognised higher qualification.”

Unless the petitioner is included in the schedule, the qualification granted by the petitioner will not be a recognized qualification.

9.A careful reading of Section 10(2) clearly reveals that the authority granting the qualification has to apply to the first respondent



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for recognition of their qualifications. Before submitting such application, the authority will have to be recognized by the State Government. The State Government will confer recognition on the said authority only in consultation with the State Council. I am more than satisfied that prior recognition by the State Government in consultation with State Council is required for the authority to apply to the Central Council for including their name in the schedule. While I uphold the arguments of the learned Senior Counsel appearing for the petitioner that a private University can start an academic program without any Essentiality Certificate or Clearance from the State Government or even the State Council, for including their name in the schedule 2, the Indian Nursing Council Act, the requirements set out in the Section 10(2) are mandatory.

10.The stand of the petitioner is that since they are a statutorily recognised private university, they are very much an authority within the meaning of the term found in Section 10(2) of the Indian Nursing Council Act, 1947. The learned Senior Counsel appearing for the petitioner therefore contends that the formal process envisaged in Section



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10(2) of the Act must be deemed to have already been undergone. His contention is that once the State Government permitted the petitioner to be set up under the provisions of the Tamil Nadu Private Universities Act, 2019, it is certainly exempted from seeking recognition once again from the State Government for applying to the first respondent for recognition of the qualification granted by them.

11.I am not able to agree with this contention. The Indian Nursing Council Act, 1947 is a central enactment. The Tamil Nadu Private Universities Act, 2019 is a State legislation. The Indian Nursing Council Act, 1947 is a special legislation. It is presently occupying the field. The Hon'ble Supreme Court in the decision reported in **(1992) 1 SCC 558 (St.Stephen's College v. University of Delhi)** observed as follows :

“The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated.”



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The Tamil Nadu Private Universities Act, 2019 should be considered as a general legislation whereas the Indian Nursing Council Act, 1947 should be considered as a special legislation. Therefore, while applying the provisions of the general legislation, the procedure set out in the special legislation cannot be by-passed. If I agree with the contentions advanced by the learned Senior Counsel appearing for the petitioner, that would definitely result in conferring predominance in favour of a private body set up under the State legislation enabling it to by-pass the statutory procedure set out in a central enactment. In ***I.T.C. Ltd. v. State of Karnataka [1985 Supp SCC 476]***, the Hon'ble Supreme Court observed as under :

“18. Thus, in my opinion, the five principles have to be read and construed together and not in isolation-where however, the Central and the State legislation cover the same field then the Central legislation would prevail. It is also well settled that where two Acts, one passed by Parliament and the other by a State Legislature, collide and there is no question of harmonising them, then the Central legislation must prevail.”

12. When Section 10(2) of the Indian Nursing Council Act, 1947 has prescribed certain procedure, it has to be adhered to. I, therefore,

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allow the first part of the prayer alone. This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

Note: Issue order copy on 07.12.2023.

To

- 1.The Secretary, Indian Nursing Council,
8th Floor, NBCC Centre, Plot No.2, Community Centre,
Okhla Phase – I, New Delhi – 110 020.
- 2.The Secretary, Department of Health and Welfare,
Fort St.George, Chennai – 600 009.
- 3.The Registrar, Tamil Nadu Nurses and Midwives Council,
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