



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9709 OF 2024

RATNADEEP MEDICAL FOUNDATION AND
RESEARCH CENTRE THROUGH ITS SECRETARY
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. D.S. Bagul
AGP for Respondent Nos. 1 & 2 : Mrs. S.P. Joshi
Advocate for Respondent No. 3 : Mr. M.D. Narwadkar

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 24.09.2024

PER COURT [*Shailesh P. Brahme, J.*] :

Rule. Rule is made returnable forthwith. Heard both sides finally.

2. Petitioner – an educational institution, is challenging government resolution dated 12 August 2024, thereby withdrawing the recognition of its college and seeking direction to grant affiliation to conduct the courses with consequential prohibitory orders. The petitioner was conducting Auxiliary Nursing and Midwifery (ANM) (herein after referred to as ‘ANM’) and General Nursing Midwifery (GNM) (herein after referred to as ‘GNM’) courses in its Shree Sai Nursing College at Jamkhed, Ahmednagar. The recognition of which is at stake.

3. The petitioner was permitted to conduct ANM course with intake capacity of twenty seats by the order passed by the respondent no. 2 – Council on 17.06.2010. It was issued

essentiality certificate. Every academic year, the petitioner was given affiliation for twenty seats by conducting necessary inspection by the respondent no. 2 – Council. The yearly affiliations continued upto academic year 2023-24.

4. The petitioner was issued essentiality certificate on 15.07.2011 for conducting GNM course with an intake of sixty seats. The respondent no. 2 – Council granted affiliation from 2011-12 for thirty seats. Every year it was renewed upto the academic year 2023-24 with increase in intake capacity from initial 30 seats to 60 seats gradually. It was granted affiliation to conduct above courses from the academic year 2018-19 by the respondent no. 3 – Board.

5. For the disbursement of scholarship to the backward class students, revised modality was issued by government resolution dated 27.03.2022. It was being implemented from the year 2021-22. The amount of scholarship was being directly credited to the account of the students and they were expected to credit the fees to the college. The students of the petitioner – College took disadvantage of the revised modality. Many of them received scholarship directly to their accounts and failed to pay fees to the petitioner – College. When the college authorities proposed to take action against defaulting students, the students retaliated it by making frivolous complaints and the demands. The petitioner was called upon by Tahsildar, Jamkhed to submit the explanation to the allegations of the students. Accordingly on 06.03.2024, the explanation was submitted, followed by compliance report dated 07.03.2024.

6. The President of the petitioner is the active member of a political party. Due to local politics and the results of last assembly elections of 2019, political opponent took disadvantage of students' agitation and instigated the respondents – authorities to take coercive action against the petitioner – Institution. Even, the criminal complaint was filed against him on 08.03.2024.

7. On or about 08.03.2024, the petitioner's College, office, laboratories were sealed. The petitioner was required to approach High Court by filing Writ Petition No. 3842/2024. By order dated 27.03.2024, this Court directed Tahsildar to open the office of the petitioner – College and hand over the keys. Because of the political pressure and with oblique motive, after about four months the seal was opened and orders of the High Court were complied with on 05.08.2024. This was deliberately done to deprive the petitioner from submitting proposal for renewal of affiliation. Somehow on 21.06.2024, the proposal for renewal of affiliation was submitted for the year 2024-25.

8. It is the case of the petitioner that a Committee was constituted to conduct an enquiry into the allegations made against the petitioner vide order dated 13.03.2024. On 15.03.2024 spot inspection was conducted by the Committee. A report was submitted on 16.06.2024, recommending action against the petitioner on the ground that infrastructural facilities were lacking. Report was forwarded to the respondent no. 1 – Secretary. The respondent no. 3 – Board called upon the petitioner to submit explanation vide letter dated 05.07.2024. The petitioner submitted explanation on 09.07.2024. Ultimately, vide government resolution dated 12.08.2024, considering the report and explanation of the

petitioner recognition of the petitioner has been withdrawn which is a cause of action to file present petition.

9. Learned counsel Mr. D.S. Bagul for the petitioner submits that without following due procedure of law impugned action of withdrawal of recognition/affiliation was taken against the petitioner. No opportunity of hearing was extended to the petitioner before resorting to the drastic action. There is gross violation procedure contemplated by Section 34 of Maharashtra State Board of Nursing and Paramedical Education Act, 2013 (herein after referred to as 'Act'). It is further contended that no notice granting thirty days' time was ever issued to the petitioner. The notice dated 05.07.2024 is bad in law.

10. Learned counsel would further submit that Secretary of the respondent no. 1 had no authority to withdraw the recognition and impugned government resolution is without jurisdiction. Impugned action would amount to closure of the College. The action has been taken against the petitioner arbitrarily, mala fide and due to political pressures. Learned counsel for the petitioner relies on the judgment of *Babaji Kondaji Garad Versus Nasik Merchants Cooperative Bank LTD., Nasik and Others, (1984) 2 Supreme Court Cases 50*.

11. Learned AGP appearing for the respondent nos. 1 and 2 supports impugned government resolution. He would submit that notice dated 05.07.2024 was under Section 34 (1) of the Act. The petitioner's explanation was considered. A report was submitted on 16.03.2024 disclosing the deficiencies in the infrastructural facilities of the College. Considering the report, the

respondent no. 1 passed impugned resolution which cannot be faulted with in writ jurisdiction.

12. Learned counsel Mr. M.D. Narwadkar appearing for the respondent no. 3 adopts the submission of learned AGP. He tenders on record a compilation. Enquiry committee was appointed. A spot inspection was conducted. A report was submitted by the enquiry committee. He would refer to letter dated 03.05.2024 addressed by respondent no. 3 – Board to the respondent no. 1. Due to the lapses on the part of the petitioner, action was required to be taken for withdrawal of recognition.

13. Having considered the submissions canvassed across the bar by both the sides, it reveals that impugned government resolution dated 12.08.2024 has been issued purportedly under Section 34 of the Act withdrawing the recognition. It is a fallout of report dated 16.03.2024 submitted by the Committee, notice dated 05.07.2024 and report dated 09.07.2024. Pertinently, respondents have not filed affidavit-in-reply and merely made oral submissions, despite granting sufficient time to them.

14. The petitioner submitted proposal for renewal of affiliation to the respondent no. 3 on 21.06.2024. It is informed during the course of arguments by the respondent no. 3 that for the present academic year last date for admitting the students is extended upto 31.10.2024. In such a situation, learned counsel for the petitioner has pressed the matter so as to enable it to secure recognition and to admit the students.

15. We deem it appropriate to extract relevant provision of the Act Section 34 :

“34. (1) If an affiliated institution fails to comply with the conditions of affiliation as provided in section 27, the Board may issue a notice to the management to show cause as to why the privileges conferred on the institution should not be withdrawn in part or in whole or modified.

(2) The Board shall mention the grounds on which it proposes to take the above-mentioned action and shall send a copy of the notice to the Head of Institution or the Principal. It shall also specify in the notice the period which shall not be less than thirty days within which the management should file its written statement in reply to the notice.

(3) On receipt of such written statement or an expiry of the period specified in the notice issued under sub-section (1), the Board shall take action, if any, for withdrawal or modification of such privileges.

(4) The Board shall, having regard to the interest of students studying in the institution, recommend to the Government the action to be taken in that behalf and the Government shall, thereafter, proceed to implement the recommendations.”

16. The Board is empowered to undertake procedure for withdrawal of affiliation or recognition as per Section 34. A notice is contemplated under Section 34 (1) to be issued to the Management. A minimum period of 30 days shall be provided for filing reply to the notice as per Section 34 (2). Thereafter, it is imperative for the Board to take action as per Section 34 (3).

17. In the present matter recognition of the petitioner – College is withdrawn by the State Government and not by the respondent no. 3 – Board. Only the Board is empowered to do so under Section 34 (3) of the Act. Obviously, the respondent no. 1 – State has no authority under the Act to pass the impugned resolution. *Ex-facie*, impugned government resolution is without jurisdiction and legal sanctity.

18. The Committee was appointed by the orders of District Collector, Ahmednagar, on 13.03.2024 to enquire into the allegations levelled against the petitioner. It is not made clear as to

under which provision of law the Collector assumed the power to constitute the Committee. Thereafter, another Committee comprising of two members was constituted by the respondent no. 3 – Board. It inspected the College on 15.03.2024 and submitted report with recommendation on 16.03.2024. It was reported that the College was lacking basic facilities. This report was forwarded by Director of the respondent no. 3 to the respondent no. 1 on 20.03.2024. Respondent no. 1 had no role to play and it was clearly the domain of the respondent no. 3.

19. The respondents vehemently pressed into service the show cause notice dated 05.07.2024 which was issued to the petitioner levelling seventeen allegations. Petitioner was called upon to submit reply on 09.07.2024 i.e. within four days. It cannot be a notice under Section 34 (2) of the Act. Instead of thirty days, only four days' time was given to the petitioner to tender the explanation. The petitioner tendered explanation on 09.07.2024 and proceeded to explain that required staff and infrastructural facilities were available. The action was politically motivated.

20. There is nothing on the record to show that the explanation tendered by the petitioner was objectively scrutinized by the respondent no. 3. The respondents have not even filed affidavit-in-reply substantiating the manner in which impugned action was taken and compliance of statutory procedure. The communication dated 03.05.2024 which is pointed out by the learned counsel for the respondent no. 3 cannot be said to be objective scrutiny of the allegations levelled against the petitioner and the reply tendered to them. We have no hesitation to hold that no decision has been arrived at as per Section 34 (3) of the Act.

21. We are of the considered view that the statutory procedure contemplated by Section 34 for withdrawing the recognition has not been followed. There is gross violation of Section 34 (2) and (3) of the Act. Impugned action is against principles of natural justice.

22. Learned counsel for the petitioner rightly referred to judgment of *Babaji Kondaji Garad* (supra) to buttress the principle that when statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute.

23. For the reasons stated above, we allow the petition partly by passing following order :

ORDER

- i. Government resolution dated 12.08.2024 passed by the respondent no. 1 is quashed and set aside.
- ii. The respondent nos. 2 and 3 shall consider the proposal of renewal of affiliation submitted by the petitioner on 21.06.2024 objectively as early as possible and in any case within a period of three weeks from today.
- iii. They may resort to spot inspection or physical verification.
- iv. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]