



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3532 OF 2023

1. Varsha Bahu-Udeshiya Mahila Prasarak
Mandal, Ramabai Ambedkar Ward,
Bhandara, District-Bhandara,
Through its Secretary.

2. Aromira School of Nursing,
Ramabai Ambedkar Ward,
Bhandara, Dist. Bhandara
Through its Principal.

... Petitioners

- Versus -

1. State of Maharashtra,
Through its Secretary,
Department of Medical Education &
Drugs, Mantralaya,
Mumbai-32.
2. Maharashtra State Board of Nursing
and Paramedical Education,
Through its Director,
Near C.S.T., Mumbai-400001.
3. Commissioner, Medical Education
and Research, Govt. Dental and
Medical College & Hospital, 4th Floor,
St. George Hospital Premises, Fort,
Mumbai-01.

... Respondents

Mr. N.S. Warulkar, Advocate for the petitioners.
Mr. H.D. Marathe, Assistant Government Pleader for respondent nos.1 and 3.
Mr. Tejas S. Kene, Advocate for respondent no.2.
Mr. A.S. Tiwari, Advocate for proposed intervenors.

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CORAM : BHARATI DANGRE &
ABHAY J. MANTRI, JJ.

DATE : 25th September, 2024.

ORAL JUDGMENT (PER : BHARATI DANGRE, J.) :-

Rule. Rule made returnable forthwith.

2. The petitioner no.1-Varsha Bahu-Udeshiya Mahila Prasarak Mandal along with petitioner no.2-Aromira School of Nursing, being run at Ramabai Ambedkar Ward, Bhandara has approached this court, seeking primary relief against the Maharashtra State Board of Nursing and Paramedical Education, Mumbai for updating their online portal for the students admitted in the petitioner no.2 Nursing College in General Nursing and Midwifery (for short 'GNM').

The relief is sought to consider enrolment of the students, as due to technical glitch in the portal, the online process of their registration could not be completed.

By amending the petition, challenge is also raised to the communication dated 19.01.2024 issued by the Registrar of the Board, informing the petitioners that since the extended period for enrolment on the portal has expired, the students shall not be enrolled.

3. We have heard learned counsel for the petitioners and the learned counsel representing the Board.

By consent of the parties, we have taken up the petition for final hearing at the stage of admission.

4. The petitioner no.2 is a Minority Institution being run by the petitioner no.1, a registered society and it received minority status since 15.07.2016.

The petitioner no.2 started the Nursing Course after complying with the necessary formalities, which included the inspection of the Institution through the authorised panel and on 21.02.2022, the respondent no.2 forwarded a recommendation for increasing the intake capacity of the respondent no.2, by 40 seats from the Academic Session 2022-2023 for conducting the GNM Course and thus, now it was recommended that the petitioner no.2 would be entitled to admit 20 (existing) and 40 (new) i.e. 60 students, in all.

5. This recommendation was kept pending before the State Government till 30.12.2022, when the medical education and the drugs department sanctioned the recommended intake for the petitioner no.2, for the Academic Session 2022-2023 for the GNM Course subject to certain stipulations, which included the compliance of the various statutory supervisory bodies and another stipulation to the effect that the number of students to be admitted shall not exceed the sanctioned strength.

6. For the Academic Session 2022-2023, the petitioner no.2 admitted students on 30.12.2022 and 31.12.2022.

It is also worth to note that on 31.12.2022 itself, the Director of the Board, by addressing the communication to the petitioners, conferred provisional affiliation for the GNM programme for the Academic Year 2022-2023 with intake of (20+40) 60 (Sixty) Seats

Enhancement of these seats which was again made subject to the stipulation of maintaining of uniform standards and norms as per Indian Nursing Council and the Maharashtra State Board of Nursing and Paramedical Education (MSBNPE) Act 2013 ('MSBNPE Act, 2013') and maintaining of the teachers student ratio as per prescribed norms.

Certain conditions are also stipulated in the same, but since we are not concerned with the same, we are not referring to all of them.

7. Pursuant to the increased intake capacity sanctioned by the State Government and the provisional affiliation

received, the students were admitted by the petitioner no.2 and attempt was made to enroll them on the website, and this is evident from the email communications which are placed on record at Annexure-4, right from 31.12.2022 at 3:26 PM and repeated attempt being made at 3:54 PM and 7:23 PM.

At 7:45 PM a response is received from the Director by the College to the following effect :

*“Please call now to technical Support, No is available
8976279931,
31st is last date.”.*

Another email received at 7:56 PM by the College reads to the following :

*“There is not an issue for MSBNPE Site if any problem then call now to technical team
technical team is available
8676279931
also we are contact to you but there is no response
31st dec 2022 is last date of enrollment.*

8. In the wake of the aforesaid response at the end of the respondents since a technical glitch was faced, it is the case of the petitioners that since the portal was closed on 31.12.2022 at 12.00 PM, the students who were admitted

could not be enrolled, and this included 4 students for the ANM Course and 36 students for GNM Course.

When the time came for submission of the examination forms of these students and since they were held not eligible for appearing in the first year examination, the petitioners knocked the doors of this court and on 09.06.2023, the Division Bench of this court, while issuing notice to the respondents, passed the following interim order :

“It is directed by an ad-interim order that the petitioners be permitted to submit the examination forms of 4 students pursuing A.N.M. course and 36 students pursuing G.N.M. course to enable them to appear in First Year Examination. This direction is subject to the final outcome of the Writ Petition. The said students shall not claim any equity on the basis of this ad-interim order. Their appearance in the said examination will be at the risk of the petitioners.”

9. It is in the wake of the aforesaid order, the petitioners continued to follow their curriculum, a two years course, and they have also undergone the curriculum for the second year.

On 12.04.2024, once again, the issue as cropped up before this Court, and recording that the controversy revolved around the fact, whether indeed on 31.12.2022 the students, as indicated in the order dated 09.06.2023, had secured admission, to verify the position, the petitioners were directed to submit all the necessary documents to the respondent no.2, indicating that the admission process was completed on or before 31.12.2022.

In compliance thereof, the respondent no.2 has placed on record an affidavit dated 16.04.2024, where the following statement is made :

“2. Respondent No.2 on verification of the documents submitted to it, by the Petitioners on 15/04/2024 as per directions of this Hon’ble Court, as regards admission of the students for the Academic Year 2022-23, found the following factual position.

(a) All the Admission Forms do not have/bear signatures of concerned students (i.e. 4 students to ANM Course and 34 students to GNM Course) who allegedly have been admitted to the respective Courses in Academic Year 2022-23.

(b) The Admission Forms neither have signature of any Authority from the Institution nor bears the stamp of the Institution.

(c) Some Admission Forms bear date as 30.12.2022 (i.e. before grant of affiliation by Respondent No.2 – Board) and some bear date as 31.12.2022.

(e) There appears to be some issue as regards two students one Raksha Tirpude and another Simran Jambhulkar. When petitioner's had forward the student list as per court order dated 09.06.2023 in respect of permission getting for students but subsequently they requested respondent no.02-Board to issued hall ticket not in name of Simran Jambhulkar but in name of Raksha Tripude. However, in that list name of Raksha Tripude never sent by petitioner."

10. The affidavit also include a table reflecting the name of the students and the date of admission as compiled from the documents submitted by the petitioners, to the respondent no.2-Board and this includes a list of 36 + 4 students indicating that they are admitted either on 30.12.2022 or on 31.12.2022.

Responding to the affidavit of the petitioners, the Board has also filed an affidavit through its Registrar on 19.04.2024, and it has once again reiterated upon the fact that the cut-off date of the admission was till 11.59 p.m. on 31.12.2022 and the Website/Online Portal of Respondent No.2 was fully functional and active, but they did not receive the registration forms in respect of these 40 candidates admitted by the petitioners. It is also pleaded that except for making a bold

statement about the technical glitch in the online process or some problem being faced on the website of the respondent no.2, the petitioners have not placed any material to fortify the claim.

11. On going through the pleadings in the petition as well as the additional affidavits filed by the petitioners in compliance with the directions of this court and the subsequent affidavit filed by the Board, what we take note of, is the pleading in the petition to the effect that, pursuant to the decision of the State Government dated 30.12.2022, and the provisional affiliation that was granted by the Board on 31.12.2022, since there was increased in the intake capacity of the petitioner no.2 by 40 seats, the students were admitted to the GNM programme for the Academic Year 2022-2023.

The difficulty posed was in getting the students enrolled and since along with the petition, the petitioners have placed on record the admission forms reflecting the admission date which is shown to be either 30.12.2022 or 31.12.2022 and

since these students have undergone the curriculum of two years, on the basis of the order passed by this court and on the basis of the order of this court, they were permitted to appear for the first year examination and the second year examination is scheduled in October-2024, for which permission is already granted for the students to appear for the examination, we do not find any merit in the contention raised on behalf of the Board, that they were never enrolled.

Worth it to note that there is nothing pointed out by the Board also, that there was no technical glitch and if the petitioners are repeatedly writing e-mails which are placed on record and a response received from the Board is “please contact the technical team”, this itself goes to show that there was some technical issue faced at the end of the petitioners.

12. In any case, the students having been admitted and they having undergone the first year examination of the curriculum and are ready for the second year examination of the ANM course, we see no reason to disrupt the academic advancement of the petitioners and direct the respondent no.2-

Board to declare the result of the first year examination, which the students have undertaken.

Since we find no difficulty in construing that the admission of the said 40 students was duly made after the State Government had recommended increase in the intake capacity by 40 seats and even the provisional affiliation was received by the Board, we deem it appropriate to allow the petitioners to take the second year examination which is scheduled in October-2024, by making Rule absolute with the following directions ;

(A) The students who are admitted to the GNM/ANM Course by the petitioner no.2 in the Academic Sessions 2022-2023 and 2023-2024, shall be permitted to be registered with the Board either by opening the online portal for them by way of an exceptional circumstance or permitting their registration by physical mode by submitting the necessary documents of the students.

(B) The result of the students admitted by the petitioner no.2 in the academic session 2022-2023 shall be declared by the Board i.e. respondent no.2 within a period of one week from today.

(C) The above students, on being registered with the Board, shall be permitted to appear for the second year examination and needless to state, their results shall be duly declared.

13. In view of disposal of the writ petition, all pending applications therein also stand disposed of.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)