



W.P.No.22423 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.22423 of 2021
and W.M.P.No.23667 of 2021

A.M.Kanniappa Mudaliar and
A.M.K.Jambulingam Mudaliar
Educational Trust
Rep. by its Chairman J.Kartheekyan,
Jambu Towers, 99, New Avadi Road,
Kilpauk, Chennai-10.
Established and Administering
Sree Sashta College of Nursing
Chennai Bangalore Highway,
Chembarambakkam,
Chennai – 600 123

...Petitioner

-Vs-

1. The State of Tamil Nadu
Rep. by its Secretary,
Department of Health and
Family Welfare,
Fort St. George,
Chennai – 600 009.
2. The Registrar,
Tamil Nadu Dr. MGR Medical University,
69, Anna Salai, Guindy,
Chennai – 600 032.



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3. The Indian Nursing Council,
Rep. by its Secretary,
8th Floor, NBCC Centre,
Plot No.2, Community Centre,
Okhla Phase – I,
New Delhi – 110 020.

4. The Tamil Nadu Nurses and
Midwives Council,
Rep by its Registrar,
Jayaprakash Narayanan Maligai,
Old No.140, New No.56,
Santhome High Road,
Mylapore, Chennai – 600 004.

5. The Director of Medical Education,
Directorate of Medical Education Campus,
Kilpauk, Chennai – 600 010.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned letter in Rc.No.Affln.VI(3)/39521/2020 dated 07.01.2021 issued by the second respondent quash the same in so far as directing the petitioner college to obtain permission from Government of Tamil Nadu for enhancement of seats in B.Sc.(N) Course and consequently direct the second respondent university and fourth respondent Tamil Nadu Nurses and Midwives Council to grant affiliation and approval for increase of intake of seats from 40 to 100 in B.Sc., Nursing Degree Course to the petitioner college from the academic year 2021-22 onwards without insisting on Essentiality Certificate/Permission order by way of government order (G.O.).



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For Petitioner : Mr.D.Prabhu Mukunth Arunkumar
For Respondents
For R1 & R5 : Mr.K.Tippu Sulthan
Government Advocate
For R2 : Mr.A.Mohamed Gouse
For R4 : No appearance

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 07.01.2021, thereby directed the petitioner to submit permission of the government of Tamil Nadu and approval of the Tamil Nadu Nurses and Midwives Council, Chennai for increase of seats from 40 to 100 seats for the academic year 2021-2022 in the course of B.Sc., Nursing.

2. The petitioner college has been imparting B.Sc., Nursing degree course from the academic year 2009-2010 with intake of 50 seats. It was duly approved by the respondents 2 to 4. The second respondent has been granting continuance of provisional affiliation to the petitioner college from the academic year 2009-10 with intake of 40 seats. However, in the year 2018-19 the recognition and affiliation was reduced to 30 seats and subsequently, restored to 40 seats. The petitioner was granted permission by an order dated 24.10.2018, vide G.O.(Rt).No.973,



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to have tie up arrangement with government Kilpauk Medical College Hospital to avail clinical training for all the 40 students of B.Sc. Nursing degree course from the academic year 2017-18 to 2020-21, by the first respondent.

3. In order to increase the intake of students, the petitioner college applied for enhancement of seats from 40 to 100 in B.Sc., Nursing course from the academic year 2020-21. The petitioner college also simultaneously applied with the respondents 3 to 5 herein. However, the second respondent returned the petitioner's application on 12.10.2020 with direction to apply a fresh for the next academic year with essentiality certificate/permission order for enhancement of seats issued by the Government of Tamil Nadu. The third respondent also returned application and directed to obtain permission from the fourth respondent. In fact, the fifth respondent made an inspection for evaluating the petitioner college infrastructural and instructional facilities. On inspection, the fifth respondent satisfied with all facilities available for conducting B.Sc., Nursing degree course with an intake of 100 seats.



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4. The learned counsel appearing for the petitioner submitted that the direction to obtain essentiality certificate from the first respondent for increase of intake of seats, is contrary to the affiliation of B.Sc. Nursing college statutes of the second respondent university. The similar issue has already been dealt with by this Court in ***W.P.(MD).No. 18310 of 2019*** dated ***31.03.2021*** in the case of the ***Correspondent Vs. The State of Tamil Nadu and ors.***, in which this Court held as follows:-

“22. From the above narrative, there are two issues which arise for consideration of this Court. The first legal contention of the learned Senior Counsel for the petitioner is that there was no legal requirement at all for the petitioner college to obtain No Objection Certificate or Essentiality Certificate from the Government. In this regard, the learned Senior Counsel would refer to the relevant statute of the fifth respondent university drawing this Court's attention to Statute 36 under the caption "Grant of Continuance of Provisional Affiliation Subsequent Batches of B.Sc., (Nursing) Degree Course", wherein elaborate procedure has been laid down particularly in statutes 41 to 44 which are extracted hereunder:



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"41. On receipt of the application from the applicant for increase in seats the University along with the Inspection Proforma duly filled in shall appoint an Inspection Commission to inspect the suitability of the facilities provided by the college for such increase in seats. A payment receipt for Rs.30,000/- (Rupees thirty thousand only) or such amount as may be prescribed by the Governing Council from time to time, shall be paid by the applicant towards the inspection fee.

42. The Inspection Commission referred to in statute 41 shall report to the University duly verifying the filled-in Inspection Proforma as to whether all the requirements specified in statute 40 have been provided by the applicant. The Inspection Commission shall also point out in its report the lacunae, if any, in the fulfillment of the requirement to be provided and also advise as to the capability of the applicant to rectify the lacunae within a period of 30 (thirty) days from the date of receipt of the University communication/letter. The University shall conduct re-inspection wherever necessary on production of a payment receipt for Rs.30,000/- (Rupees thirty thousand only) or such amount as may be prescribed by the Governing Council from time to time made by the applicant towards the re-inspection fee and shall receive a final report from the Inspection Commission.



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43. On receipt of the final report of the above Inspection Commission, and if the report is found satisfactory, the University shall issue/recommend to the Indian Nursing Council for an inspection and concurrence.

44. On receipt of the concurrence from the Indian Nursing Council to increase the seats in the college concerned the University shall grant permission to the college concerned to admit students in the seats so increased."

23. In consideration of the above clear statutory provisions of the university, there cannot be any two opinions about the independent power exercisable by the university for consideration of the application submitted by the petitioner college for enhancement of annual intake of students in the undergraduate courses in nursing.

24. his Court finds there is great force in the submission of the learned Senior Counsel on this aspect and it is incomprehensible that as to UD how the university could insist on the petitioner college obtaining No Objection Certificate and permission from the Government in the teeth of its own statute itself providing them the adequate power to deal with such claims. The fifth respondent university appears to have not appreciated its own power vested in it under the regulations."

Hence, he prayed to allow this writ petition.



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5. On perusal of counter filed by the fifth respondent revealed that on 20.09.2020, the inspection was conducted and it revealed that it is feasible to increase the intake of seats from 50 to 100 in the petitioner college for the academic year 2020-21. The fourth respondent filed counter and it revealed that the permission of the Government of Tamil Nadu for increasing of seats from 40 to 100 is very much required. The first respondent viz., the State of Tamil Nadu has granted permission only to commence the college. It is the duty of the petitioner to follow the law and to apply to the government for increase of seat. Only after the fulfillment of norms prescribed by the government, the petitioner would be permitted to run the college with increase of seat from 40 to 100. That apart, the petitioner has to abide by the rules framed by the government from time to time as per the procedure for commencing a college and increase of seats.

6. Heard the learned counsel appearing on either side and perused the material places before this Court.



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7. It is seen that the third respondent viz., Indian Nursing Council clarified that the power to grant recognition to nursing institutions vests with State Nursing Councils. The said clarification was issued in the light of the order passed by the Hon'ble High Court of Karnataka in W.P.Nos.25355-25357 of 2017 dated 24.07.2017. Therefore, Indian Nursing Council has no power to grant recognition to nursing institutions and in fact it is State nursing council or State government which is empowered to do so.

8. That apart, as per the Affiliation of B.Sc., Nursing Colleges Statutes from 41 to 44 of the second respondent, there is no requirement to obtain permission for increase of intake of seats. Therefore, the second and fourth respondent cannot insist the petitioner to obtain permission for increase of intake students from 42 to 100 in B.Sc., Nursing course. In view of the above discussions, the order passed by the second respondent cannot be sustained and it is liable to be quashed.

9. Accordingly, the impugned order dated 07.01.2021 passed by the second respondent in Rc.No.Affln.VI(3)/ 39521/2020, is hereby



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quashed. The second and forth respondents are directed to grant affiliation and approval for increase of intake seats from 40 to 100 in B.Sc. Nursing degree course to the petitioner college, as per the report submitted by the fifth respondent, from the academic year 2021-22 onwards, without insisting essentiality certificate/permission order.

10. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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5. The Director of Medical Education,
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G.K.ILANTHIRAIYAN. J,

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