



W.P(MD)No.13527 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13527 of 2024

and

W.M.P(MD)Nos.11925 & 11926 of 2024

The Managing Trustee,
Immanuel Arasar International Institute
of Science and Technology Educational
And Charitable Trust,
S.G.Hospital Campus,
Old Theatre Junction,
Pammam,
Marthandam,
Kanyakumari 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.

4.The Director of Medical Education,
Kilpauk, Chennai – 600 010.

5.The Tamil Nadu Dr.M.G.R.Medical University,
Represented by its Registrar,
No.69/40, Anna Salai,
Guindy, Chennai – 600 032.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, 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.4343/NC/2024 dated 11.01.2024 quash the same and further direct the third respondent to give approval forthwith to the petitioner Trust to run Immanuel Arasar College of Nursing, Nattalam, Kanyakumari District for offering B.Sc., Nursing Course from the academic year 2024-2025.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for Mr.K.Ragatheesh Kumar

For Respondents : Mr.M.Sarangan
Additional Government Pleader
for R.1, R.2, R.4 & R.5

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



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ORDER

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Heard both sides.

2.The writ petitioner is a minority educational institution. They are running a nursing College in the name and style of “Global College of Nursing” at Kuttaikadu, Nattalam, Kanyakumari District. The petitioner wants to establish one more nursing College in the same Nattalam Village. The petitioner has already obtained Essentiality Certificate from the State Government. The petitioner has also obtained a Certificate of Registration from the Tamil Nadu Dr.M.G.R.Medical University. The petitioner is required to obtain approval from the Tamil Nadu Nurses and Midwives Council. The petitioner's application was rejected vide communication dated 11.01.2024 for the sole reason that the petitioner cannot open a second institution of nursing in the same town. Challenging the same, the present writ petition has been filed.

3.The learned Senior Counsel appearing for the petitioner reiterated all the contentions setout in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned communication and grant relief as prayed for.



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4.The third respondent filed a detailed counter affidavit and the learned Senior Counsel appearing for them took me through its contents.

The prime argument of the learned Senior Counsel is that the Nursing Council Regulations, 2020 clearly stipulate that a Trust can open only one nursing institution in one city / town. The regulations have not been questioned. The third respondent cannot act beyond the terms of the regulations. Hence, the impugned order cannot be faulted. My attention is also drawn to a note which states that the distance between two nursing Colleges should be more than 10 kms. The learned Senior Counsel appearing for the third respondent called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record.

6.As regards the contention that there is no challenge to the nursing regulations, the answer is found in the decision of the Hon'ble Supreme Court reported in **(2001) 8 SCC 676 (Bharathidasan University & Another Vs All-India Council for Technical Education & Others)**. It was held therein that if a rule or regulation is shown to be ultra vires or illegal, there is no need to specifically challenge the same.



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The writ Court can proceed in the matter as if such a rule or regulation is non-existent. I had followed the said decision vide order dated 29.11.2023 made in ***WP(MD)No.26209 of 2023 (Joy University Vs The Indian Nursing Council & Others)***. I shall therefore examine the legality of the regulation that comes in the way even though it has not been formally questioned.

7.The petitioner is a religious minority institution. Article 30 of the Constitution of India states that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The question that calls for consideration is whether this fundamental right can be curtailed by the regulations framed under Section 16(1) of the Indian Nursing Council Act, 1947. Clause 6(iii) of Indian Nursing Council (Minimum Pre-Requisites for Granting Suitability to Nursing Programs) Regulations, 2020 is as follows :

“As per law Trust/Society can open number of institutions, but it will be considered as one institution under the ambit of one Trust. It is therefore, a Trust can open only one nursing institution in one city/town.”

The above regulation being a piece of subordinate legislation can be questioned on the ground that it is manifestly arbitrary. The Hon'ble



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Supreme Court held that manifest arbitrariness is something that is capricious, irrational and/or without adequate determining principle (*Shayara Bano v. UOI [(2017) 9 SCC 1]*). A provision can be struck down as manifestly arbitrary if the determining principle of it is not in consonance with constitutional values and if it lacks logical consistency [(2024) 5 SCC 1 Electoral bonds case]. Let me apply the aforesaid principle to the instant regulation. Even as per the Nursing Council regulations, there can be more than one nursing College in a city or town run by different institutions. If that be so, there is no justification or rationale in holding that one Trust cannot run more than one nursing College under it. I fail to understand the logic or reasonableness behind the incorporation of such regulation. Since Clause 6(iii) of the aforesaid regulations on the face of it falls foul of Article 30 and also there is no logic behind it, I hold that the impugned order based on it is illegal and liable to be quashed.

8. There is also considerable force in the contention of the learned Senior Counsel for the petitioner that it may not be open to the Nursing Council to stipulate such restrictive condition for establishing Nursing Colleges. The statutory scheme underlying the Indian Nursing Council Act is that the Nursing Council can prescribe standards for examination



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and curricula and eligibility for admission of students. The Hon'ble Supreme Court in ***Karnataka State Association of the Management of Nursing and Allied Health Science Institution and ors v. Indian Nursing Council and ors in Civil Appeal Nos.12759-12761 of 2017 dated 11.09.2017***, held that the Indian Nursing Council has no power to grant recognition to the institutions imparting nursing courses. This was followed by a learned Judge of this Court in ***R.Usha Rani v. The Secretary to the Government of India (WP No.7857 of 2019 dated 11.04.2022)***. When the Council lacks the jurisdiction to grant recognition, the corollary is that it cannot prescribe conditions that have a bearing on establishment of nursing colleges. The regulation thus travels beyond the scope of the parent statute. The impugned communication is bad on this ground also.

9.The learned Senior Counsel for the third respondent Nursing Council points out that Indian Nursing Council (Revised Regulations and Curriculum For B.SC (Nursing) Program), Regulations, 2020 contains the following note :

“The distance between two nursing colleges shall be more than 10 kilometres”.



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The above prescription also suffers from the very same vice of manifest arbitrariness. It is true that the new College is proposed to be located within a distance of 1 ½ km from the existing College run by the petitioner-Trust. There is no logic in the prescription that the distance between two nursing Colleges will have to be more than 10 kms. Madurai Bench of Madras High Court is situated in Othakadai and I take judicial notice of the fact that within a radius of 3 kms, there are at least 5 nursing Colleges. There is no justification in having such a restrictive condition. Any condition must serve a purpose. It should serve some object. The distance rule incorporated in the above note does not serve any purpose. Looked at from any angle the impugned communication cannot be sustained.

10.The learned Senior Counsel appearing for the third respondent submitted that the petitioner's application has been rejected at the threshold itself and that the merits of the matter have not been considered. I therefore remand the matter to the file of the third respondent for fresh consideration even while setting aside the impugned communication. I express the hope that the petitioner's application will be speedily disposed of.



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11.This writ petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.07.2024

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

Note: Issue order copy on 10.07.2024.

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 Director of Medical Education,
Kilpauk, Chennai – 600 010.
- 4.The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69/40, Anna Salai, Guindy, Chennai – 600 032.



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G.R.SWAMINATHAN,J.

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