

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19010 of 2024

1. Balaji Nursing School At Adarsh Nagar, P.O. and P.S. and Dist Samastipur, Pincode 848101 through its Director, Shri Sanjit Kumar Pandey, Male, aged about 44 years son of Shri Leela Lal Pandey, resident of At and P.O. - Chaita, P.S. Ujiarpur, Dist - Samastipur, Pincode- 848132
2. Rajkishore Nursing School, At and P.O. Suthihar, P.S. Derni, Dist - Saran (Chapra), through its Secretary, Shri Raj Kishore Prasad Yadav, Male, son of Late Jagdish Rai, resident of At and P.O. - Derani Suthihar, P.S. - Demi, District - Saran (Chapra) Pincode - 841222
3. Anju Institute of Nursing Science, At and P.O. and PS Islampur, Dist Nalanda, Pincode 801303 through its Director, Shri Amar Singh Azad, Male, son of Awadesh Prasad, resident of Vill and P.O. Bardih, P.S. Islampur, Dist - Nalanda, Pincode - 801303
4. S.K.M. Nursing School, At and P.O. - Indira Nagar (Bairiya), P.S. Wazirganj, Dist- Gaya, Pincode- 823001 through its Director, Shri Amar Kumar. Male, son of Surendra Kumar Mandal, resident of Vill - New colony, Chhotki Delha, P.O. - Rs Gaya, P.S. - Delha, Dist - Gaya, Pincode -823001
5. Satyendra Nursing Institute of ANM, At - Beladin, P.O. - Madhodin, P.S. - Harpur, Dist - Munger, Pincode- 813221 through its Director, Shri Satyendra Kumar Yadav, Male, son of Late Amichand Yadav, resident of At - Beladhi, P.O. Madhodi, P.S. Harpur, Dist Munger, Pincode 813221
6. Lakhisarai Institute of Nursing (GNM), At and P.O - Halsi, P.S. Lakhisari, Dist Lakhisarai, Pincode 811318, through its Secretary, Shri Shashi Ranjan, Male, son of Sri Vidya Nandan Singh, resident of At and P.O Jalalpur, P.S. Marachi, Dist Patna, Pincode-811302
7. Anushka A.N.M. Training school, At and P.O Ramgarh Chowk, P.S. and Dist Near Lakhisarai, Pincode 811311, through its Director, Shri Shashi Ranjan, Male, son of Sri Vidya Nandan Singh, resident of At and P.O. - Jalalpur, P.S. Marachi, Dist - Patna, Pincode-811302
8. Rajgir A.N.M. Nursing school, At and P.O.and P.S. Rajgir, Dist - Nalanda, Pincode- 803116 through its Secretary, son of Shri Sanjay Kumar, Male, son of Shri Jagdish Singh, resident of At and P.O. and P.S. Rajgir, Dist Nalanda, Pincode 803116
9. Sanjeevani Aarogya Sansthan A.N.M. Training School, At and P.O. and P.S. Fatuha, Dist Patna, Pincode - 803201 through its Secretary, Shri Ajay Kumar, Male, son of Late Jagdish Prasad, resident of At and P.O.and P.S Fatuha, Dist - Patna, Pincode - 803201
10. Sanjeevani Aarogya Sansthan G.N.M. Training School, At and P.O. and P.S. Fatuha, Dist Patna, Pincode - 803201 through its Secretary, Shri Ajay Kumar, Male, son of Late Jagdish Prasad, resident of At and P.O. and P.S. - Fatuha, Dist - Patna, Pincode - 803201
11. Om Sai Shiv Nursing College, At- Chhoti Eghu (Ward No. -45), P.O. Mohan Eghu, P.S. - Muffcil, Dist- Begusarai, Pincode-851129 through its Secretary, Shri Sujeet Kumar, Male son of Shri Shivajee Prasad Singh, resident of At - Chhoti Aghu, Ward No. 45, P.O. Mohan Aghu, P.S. - Muffcil, Dist-



Begusarai, Pincode- 851129

12. Ramakanti Nursing Training School, At Shawajpur, P.O. -Fatehpur, P.S. Takari, Dist Gaya, Pincode 824236 through its Director, Shri Manikant Kumar, Male, son of Ramashish Prasad, resident of At Shawajpur, P.O. Fatehpur, P.S.Takari, Dist- Gaya, Pincode-824236
13. Sheikhpura Institute of Nursing and Paramedical Sciences, At Sahnaura, P.O. Sanya, P.S. Aryari, Dist-Sheikhpura, Pincode 811105, through its Chairman, Shri Jitendra Kumar, Male son of Shri Suresh Prasad, resident of At- Dwarikapuri, Hanuman Nagar, P.O. Lohia Nagar, P.S. - Patrakar Nagar, Dist - Patna, Pincode - 800020
14. Matireee A.N.M. Nursing Training Institute, At Kanti factory Road, Mahatma Gandhi Nagar, P.O. - Lohia Nagar, P.S. Patrakar Nagar, Dist Patna, Pincode 800020 through its Director, Shri Ashish Kumar, Male, son of Late Manoj Kumar Ambastha, resident of At Lohia Nagar, Kankarbagh, P.S. - Patrakar Nagar, Dist - Patna, Pincode - 800020
15. Jandaha Nursing Training College, At Rasalpur, P.O. and P.S. Jandaha, Dist - Vaishali, Pincode 844505 through its Director, Nishant Kumar, Male, son of K K Tiwari, resident of At and P.O. Rasalpur, P.S. Jandaha, Dist Vaishali, Pincode - 844505
16. Modern Institute of Nursing, At and P.O.- Dahuwa, P.S.- Bounsi, Dist-Banka, Pin Code- 813104 through its Secretary, Md. Badruddin Ansari, Male, Son of Abedin Ansari, Resident of At and P.O.- Jamni Paharpur, P.S.- Godda, Dist- Godda, Pin code- 814133
17. Mirganj Nursing School and Training Institute, At Harkhauli, P.O. and P.S. Gopalganj, Dist Gopalganj, Pincode- 841438 through its Director, Shri Sanjay Kumar, Male, son of Shivjee Prasad, resident of At Harkhauli, P.O.P.S. Gopalganj, Dist Gopalganj, Pincode 841438.
18. Manav Institute of Nursing Training (ANM School), At - Patepur Road, Biskurba Lane, P.O. and P.S. Mahua, Dist - Vaishali, Pincode 844122, through its Secretary, Shri Shashi Bhushan Kumar, Male, son of Late Yogendra Singh, resident of At - Patepur Road, Biskurba Lane, P.O. and P.S. - Mahua, Dist - Vaishali, Pincode - 844122

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary. Health Department, Government of Bihar, Patna.
2. Director-in-Chief, Health Services, Government of Bihar, Patna.
3. Indian Nursing Council, 8th Floor, NBCC Center, Plot No. 2, Community Center, Okhla Phase 1, New Delhi, Delhi 110020 through its Secretary
4. Bihar Nurses Registration Council, Patna through its Registrar.
5. Director-in-Chief, Health Services, Government of Bihar, Patna-cum-Chairman, Bihar Nurses Registration Council, Patna.
6. Bihar University of Health Sciences, Patna through its Registrar.
7. Vice Chancellor, Bihar University of Health Sciences, Patna



8. The Registrar, Bihar University of Health Sciences, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Sr. Advocate Mr. Pushkar Bhardwaj, Advocate Ms. Shreyashi Raj, Advocate
For the Respondent/s	:	Mr. P. K. Shahi, Advocate General Mr. Mujtabaul Haque, GP- 12 Mr. Vasant Vikas, AC to GP- 12
For the BNRC	:	Mr. Awadhesh Kumar Pandit, Advocate
For the Resp. No. 3	:	Mr. Ansul, Sr. Advocate Ms. Sakshi Bhatnagar, Advocate
For the Health Sciences	:	Mr. Ajay, Sr. Advocate Mr. Sudhir Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 14-10-2025

Heard the parties.

2. The bunch of institutions represented through their office bearer have invoked the jurisdiction of this Court for the following reliefs:

- “(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the letter dated 28/03/2024 issued by the concerned authorities under the Health Department of the State Government, by which it has been communicated that in respect of different courses, inter alia, including Auxiliary Nursing Midwifery/General Nursing Midwifery course, affiliation and examination related work would be carried out by Bihar Health Sciences University, Patna (hereinafter referred to as "the University");*
- (ii) Issuance of a direction, order or writ, including writ in the nature of mandamus*



commanding the concerned respondent authorities under the University to refrain from carrying out the instructions contained under the important notice dated 28/10/2024 bearing memo no. 1404 in so far as same related to the nursing schools offering Auxiliary Nursing Midwifery/General Nursing Midwifery courses that have already been granted affiliation by Bihar Nurses Registration Council, Patna (hereinafter referred to as "the Council") for different academic sessions beyond 2023-24;

(iii) Issuance of a declaration holding that the petitioner institutes that have already been granted recognition/affiliation for offering Auxiliary Nursing Midwifery/General Nursing Midwifery courses for different academic sessions beyond 2023-24/2024-24 are not obliged in law to act in furtherance of the instructions contained under the important notice dated 28/10/2024 bearing memo no. 1404 and as such, they are not required to apply fresh for affiliation/extension before the University;

(iv) Issuance of a declaration holding that in view of the fact that the petitioner institutes have been granted recognition/affiliation by the Council strictly in accordance with the provisions contained under the Indian Nursing Council Act and Nurses Training (Recognition, Affiliation and Conduct of Examination of School of Nursing) Rules. 1997 (hereinafter referred to as "the 1997 Rules"), the examination of Auxiliary Nursing Midwifery/General Nursing Midwifery courses being offered by the petitioner institutes be conducted by the Council in accordance with the said 1997



Rules;

(v) Any other relief that the petitioners may be found to be entitled to in the facts and circumstances of the present case.”

3. Learned Senior Advocate Mr. Abhinav Srivastava while pressing the present application highlighted the prescription of the relevant Act and Rules and submitted that the Bihar and Orissa Nurses Registration Act, 1935 laid down the provision for registration and better training of Nurses, Health Visitors, Midwives and dais in the State of Bihar; Section 3 of the said Act lays down the provision for Constitution of Bihar Nurses Registration Council. Section 10 of 1935 Act laid down the provision with respect to registration of Nurses, Health Visitors, Midwives, Trained Dais and Dais, subject to the conditions prescribed under the said provision, whereas Section 17 of the said Act provides that the State Government may, after previous publication, formulate Rules to carry out the purposes of this Act. While Bihar Nursing Registration Council had been incorporated and was in existence, the Indian Nursing Council Act, 1947 was enacted prescribing the provisions with respect to constitution of Indian Nursing Council and other matters connected there with. Section 10 of the Act 1947 laid down the provision with respect to recognized qualifications in respect of different courses including General nursing, Midwifery,



Auxiliary Nursing-Midwifery, Health Visitors were to be valid and in so far as Bihar Registration Nursing Council is concerned it had been included in the list of such recognized authorities for the purposes of awarding certificates-Diplomas or Degrees in nursing in the afore noted course.

4. Taking this Court through the afore noted prescription, learned Senior Advocate thus submitted that under Section 10 of the Indian Nursing Council Act, 1947, Bihar Nurses Registration Council alone has been authorised for awarding certificates -Diplomas or Degrees in respect of General Nursing Midwifery/Auxiliary Nursing Midwifery and Health Visitors and no other authority in the State of Bihar has been included in the schedule appended to the Indian Nursing Council Act, 1947. In furtherance of the provision contained under Section 17 of the Act, 1935, Nurses Training Recognition, Affiliation and Conduct of Examination of School of Nursing Rules, 1997 was framed by the State Government which was duly notified on 14.07.1997, laying down the provision in respect of affiliation to be granted to the institutes offering nurses training, which included Auxiliary Nursing Midwifery/General Nursing Midwifery, Ladies Health Workers, nursing education and administration course etc. It is all these



Acts and Rules under which different institutes including the petitioners' institutes were granted affiliation for offering different nursing courses in the State of Bihar under the administrative control of the Health Department of the State Government with the permission for offering different courses in nursing including Auxiliary Nursing Midwifery/General Nursing Midwifery for different academic sessions and were also granted extension of affiliation from time to time.

5. While the present petitioners' institutes have already been granted recognition/affiliation by the Bihar Nurses Registration Council, Patna for different academic sessions and were offering Auxiliary Nursing Midwifery/General Nursing Midwifery courses in accordance with law, the Bihar University of Health Sciences Act, 2021 was enacted by the legislature of the State of Bihar to establish and incorporate the University to conduct and facilitate affiliation of institutions set up by the Government and/or trust or society in the conventional as well as new frontiers of professional education in Health Sciences. Referring to the provisions of the Act 2021, learned Senior Advocate thus contended that there is no express provision mentioned for offering course in Auxiliary Nursing Midwifery/General Nursing Midwifery, all the more in terms



with the provision contained under Section 10 of the Indian Nursing Council Act, 1947, Bihar University of Health Sciences has not been included in the schedule appended to the Act, 1947 as an authority whose qualifications in General Nursing, Midwifery, Auxiliary Nursing Midwifery/General Nursing Midwifery and Health Visitors courses have been recognized.

6. In this view of the matter, the University clearly does not have any authority in terms of the Indian Nursing Council Act, 1947 for granting affiliation or conducting examination, inter alia, in respect of Auxiliary Nursing Midwifery/General Nursing Midwifery courses to be offered by the institutes within the State of Bihar that had already been granted affiliation and recognition by the Bihar Nurses Registration Council, Patna strictly in accordance with the provision contained under the Indian Nursing Council Act, 1947 and 1997 Rules. Since the Act 1935, Act, 1947 and 1997 Rules have neither been repealed nor any amendment has been brought about in the same whereby the Bihar University of Health Sciences has been conferred powers to grant recognition/affiliation to any institute offering different courses, the same is wholly bad, illegal and without jurisdiction, is the contention of the learned Senior Advocate.



7. The letter dated 28.03.2024 impugned herein, issued by the Health Department addressed to the Registrar of the University is in blatant disregard to Act 1935 and 1997 Rules whereby it has been directed that in respect of different courses, inter alia, Auxiliary Nursing Midwifery/General Nursing Midwifery affiliation and examination related work would be carried out by the Bihar Health Sciences University, Patna. The petitioners' institutes having been recognized and affiliated with the Bihar Nurses Registration Council for different academic sessions, even beyond the academic Session 2023-24. The stipulation contained in the impugned letter dated 28.03.2024 is clearly untenable in the eyes of law. The subsequent important notice dated 28.10.2024 bearing Memo No. 1404 issued by the University by which it was communicated that the institute offering, inter alia, Auxiliary Nursing Midwifery/General Nursing Midwifery courses would be required to submit necessary fees and documents for extension/new affiliation to offer such courses during academic session 2024-25 is also bad and wholly without jurisdiction. He thus submitted, that the respondent authorities failed to consider that the Bihar University of Health Sciences, Patna has not been recognized uptill now as an authority for the purposes of granting certificate



of Diploma as per schedule appended to Indian Nursing Council Act, 1947 in terms of Sections 10 and 11 of the said Act. The action on the part of the concerned respondent authorities in authorizing the University to grant affiliation and to conduct examination at least in so far as the same relates to different nursing courses is clearly impermissible, all the more when the petitioners' institutes have already been granted recognition/affiliation by the Bihar Nurses Registration Council upon payment of requisite fees and fulfillment of other requirements in accordance with the regulation framed in this regard. Hence, in any view of the matter, the petitioners' institutes are not covered under the impugned letter dated 28.03.2024 and the important notice dated 28.10.2024.

8. Mr. Srivastava, further urged that as far as the Indian Nursing Council Act, 1947 is concerned, the same is Central Legislature whereas Bihar University of Health Sciences Act, 2021 is an Act of legislature of State of Bihar and as such in the event of conflict between the provisions contained under the said Act, the provisions of Indian Nursing Council Act, 1947 will prevail. Merely for the reason that different private institutes offering diploma courses, etc. have been granted affiliation against the approved seats by the University



does not alter the legal position as the provisions contained under the Act, 1935, 1947 and the Rules, 1997 as discussed hereinabove continue to remain in force.

9. Adverting to the aforesaid facts and highlighting the specific important prescription of the Act and the Rules, learned Senior Advocate, Mr. Srivastava further submitted that when the legislature specifically uses an expression that has to be given effect to and cannot be rendered nugatory by giving undue importance to the object of the Act and of specific provision in question. To support the aforesaid submission, reliance has been placed on a decision rendered by the Apex Court in the case of ***Bharathidasan University & Another v. All India Council for Technical Education & Others*[(2001) 8 SCC 676]**. Reliance has also been placed on a decision in the case of ***Dipak Babaria & Anr vs State Of Gujarat & Ors* [(2014) 3 SCC 502]**, to buttress his submission that where statutes provide for a thing to be done in a particular manner, then it has been done in that manner and in no other manner. Learned Senior Advocate also placed reliance upon a decision in ***State of Sikkim vs Dorjee Tshering Bhutia and others*, [(1991) 4 SCC 243]**, specially paragraph no.15 and submitted that the executive power of the State can not be exercised in the field which is already occupied



by the laws made by the legislature. Any order, instruction, direction or notification issued in exercise of the executive power of the State, which is contrary to any statutory provisions is, without jurisdiction and is a nullity.

10. Dispelling the afore noted contention, Mr. P. K. Shahi, learned Advocate General along with Mr. Ajay, learned Senior Advocate for the University submitted that the very aim and object of the Bihar and Orissa Nurses Registration Act, 1935 is to provides for registration and better training of Nurses, Health Visitors, Midwives and dais in the State of Bihar. Section 10 thereof only provide for registration of nurses, health Visitors, Midwives, trained dais and dais, who have undergone a course of training or passed an examination, if any prescribed for them and is obliged to satisfy other conditions made therein. On being satisfied that the person is eligible to be registered, the name of such nurses, health visitors, midwives, trained dais or dais entered in the prescribed register which are to be maintained under Section 11 of the Act. Section 3 of the Act, 1935 provides for constitution of Bihar Nurses Registration Council and the power of the Council to make bye-laws under Section 14(2). Section 17 of the Act lays down the power of the Government to make rules to carry out the purposes of the Act.



Referring to Section 17(aa) it is submitted that the Government may make rules to prescribe the course of training and examination for nurses, health visitors, midwives or trained dais and the qualifications for their registration. Further Nursing Council Act, 1947 is an Act to constitute Indian Nursing Council in order to establish a uniform standard for training for nurses/midwives and health visitors. The Council in terms with Section 10 thereof, extended recognition of qualifications and the authority. The effect of recognition has been prescribed under Section 11 which, inter alia, provides that the recognized qualification shall be sufficient qualification for enrollment in any (State) register. It is made clear that no person shall, after the date of commencement of this Act, be entitled to be enrolled in any (State) register as a nurse, midwife, auxiliary nurse-midwife, health visitor, or public health nurse unless he or she holds a recognized qualification. Schedule appended thereto prescribed recognized qualification and the name of the authorities who are empowered to grant certificates, diplomas or degrees in nursing courses.

11. Referring the prescription afore noted, Mr. P. K. Shahi, learned Senior Advocate thus contended that it is the State Government that has the power to grant recognition and



that Indian Nursing Council has no authority to grant such recognition in so far as ANM course is concerned. The issue has already been set at rest by the Hon'ble Supreme Court of India in ***Special Leave Petition (C) No. 9 of 2014 [Nutan Kumari & Anr. vs. State of Bihar & Ors.]***. The identical issue has also been brought before the Apex Court in ***Civil Appeal Nos. 12759-12761 of 2017 [The Karnataka State Association of the Management of Nursing and Allied Health Science Institutions & Ors. vs. Indian Nursing Council & Ors.]*** where the Court has affirmed the order passed by the learned Single Judge by holding that the Indian Nursing Council has no authority to grant recognition to the institutions imparting nursing courses. It is in this premise the Bihar University of Health Sciences Act, 2021 has been enacted by the State legislature to establish and incorporate a University in the name of the Bihar University of Health Sciences to conduct and facilitate the affiliation of institutions set up by the Government and/or trust or society in the frontiers of professional education in health services for the purposes of affiliating, teaching and ensuring proper and systematic instruction, training and research in Modern System of Medicine, AYUSH Systems of Medicine, Nursing Education, Pharmacy Education, Dental Education,



Education on Laboratory Technology, Physiotherapy & Occupational Therapy, Speech Therapy and Education on other Paramedical Courses and inter disciplinary areas with the objects of promoting academic freedom and scholarship for the teachers as well as for the students and to foster and develop an intellectual climate conducive to the pursuit of scholarship and excellence.

12. Taking this Court to the relevant prescriptions of the Act, 2021, especially Section 2 (xviii) to 2(xix), Sections 4 and Section 6, it is submitted that only the Bihar University of Health Sciences which has the jurisdiction over all the colleges/institutions established under the State imparting professional education in different streams of health sciences and affiliated by any other University established by law of the State Legislature, the affiliation done by other Universities shall cease to be affiliated and shall be deemed to be affiliated to the University enacted under the Act, 2021 from such date as specified in the said notification. However, this provision shall not be applicable to deemed Universities. Sub Section (3) of Section 6 empowers the University to hold examinations and grant, subject to such conditions as the University may determine, diplomas or certificates and confer degrees or other



academic distinctions on the basis of examinations, evaluations or any other method of testing. From the conjoint reading of the aims and object as well as the provisions of the Act, 2021 discussed, there is no iota of confusion that after issuance of the notification of the Act, 2021 vide Health Department notification No. 107(1) dated 17.02.2023 all the institutions/colleges related with the health science will be deemed to be affiliated under the State University. The issue regarding conduct of examination, inter alia, the court of GNM+ANM, the Health Department, Government of Bihar vide its letter No. 196(1) dated 28.03.2024 communicated to the Registrar of the Bihar University of Health Sciences, Patna and clarified that all work related to affiliation and examination of Paramedical, Nursing Education, Pharmacy Education, Dental Education, Education on Laboratory Technology, Physiotherapy and Occupational Therapy, Speech Therapy as well as GNM and ANM courses will be carried only by the Bihar University of Health Sciences, Patna as per the provisions and direction mentioned above.

13. Mr. Shahi, learned Senior Advocate further urged that in the light of the provisions of the Act, 2021 and the departmental notification dated 17.02.2023, almost 479 diploma



institutes (145 Government institutes and 334 private institutes) have already been affiliated with approved seats for academic session 2023-24. Out of the present petitioners, altogether 13 out of 18 institutes have also been affiliated by different notifications. The recognition and affiliation for the academic session 2024-25 and onwards is nothing rather these are merely extension of granting recognition of syllabus/course of study, hence it cannot be said that there shall be retrospective application of the Act and the consequential letters. The Nursing Council is not authorized to conduct examination and it is only the University established under the Act, 2021. Whenever there is a conflict between the prescriptions of the Act, 2021 and the Rules, 1997, primacy must be received by the Act. So far the decisions over which reliance has been placed by the learned Senior Advocate for the petitioners are concerned, the same would not be applicable in the facts of the present case. The aim and object of the Act, 2021 cannot apply in narrow prospective and uniform criteria is to be maintained to conduct examination of all the courses by one authority i.e., the Bihar University of Health Sciences.

14. Reliance has also been placed on the decision of the Apex Court in the case of *Union of India & Anr. vs. G. M.*



Kokil & Ors. [(1984) suppl. SCC 196]. Taking this Court through the afore noted decision, it is submitted that Section 4(3) of the Act, 2021 starts from non obstante clause, thus having overriding effect to the provisions over certain contrary provisions that may be found either in the same enactment or other enactment.

15. After having bestowed the patience hearing and on consideration of the materials available on record, now the question for consideration before this Court is as to whether the Bihar University of Health Science, Patna established under the Act, 2021 is competent under law to grant affiliation and take steps with respect to examination in respect of Auxiliary Nursing Midwifery/General Nursing Midwifery courses by the institutes situated within the State of Bihar?

16. On careful consideration of the prescriptions of the Bihar and Orissa Nurses Registration Act, 1935, it is manifest that the Act is enacted only for restoration and better training of Nurses, Health Visitors, Midwives and Dais in the State of Bihar. Section 3 thereof lays down for Constitution of Bihar Nurses Registration Council consisting of the following members mentioned therein. Section 14(2) prescribed power of the Council to make bye-laws, inter alia, to prescribe conditions



of, and registration on, the entry of the names of persons in the registers and to regulate the maintenance thereof. It is the State Government who has been authorized under Section 17 to make rules to carry out the purposes of the Act. After careful reading of Section 17(aa) of the Act, 1935, this Court is of the opinion that the State Government may make rules to prescribe the course of training and examination for nurses, health visitors, midwives or trained dais and the qualifications for their registration. Under the Act, 1935, the Council has not been the authority to conduct the examination rather to prescribe the course for training and examination.

17. Now coming to the Nurses Training (Recognition, Affiliation and Conduct of Examination of School of Nursing) Rules, 1997 which came into effect on 01.01.1996, it is evident that no person or institution without prior permission recognition and affiliation can establish the institute and impart nurses training. The permission to any institution shall be extended for conducting courses as prescribed to the Indian Nursing Council only after fulfillment of the terms and conditions as prescribed under the Rules. All the institutions are mandatorily to get approval from the State. After getting approval and recognition, the Institute has to get affiliation from



the Council or the concerned University. Rule-7 of the Rules, 1997 empowers the Bihar Nurses Registration Council to conduct examination of the GNM/ANM and Ladies Health Visitors/Workers in terms with the prescription and the prescribed standard of course by the Indian Nursing Council. Rule-8(gha) further authorizes the Council to conduct final examination of diploma courses whereas the final examination of Graduate Science Degree and supplementary examination shall be conducted by the concerned University.

18. Before proceeding further, it would be relevant to take notice of the decision rendered in the case of ***Nutan Kumari*** (supra) where the Apex Court in no uncertain terms clarified that the Indian Nursing Council has no authority to grant such recognition insofar as Auxiliary Nurse and Midwife Course (ANM course) is concerned. It is the accepted position that it is the State Government that has power to grant recognition. It would be worth benefiting to quote the relevant paragraphs of the decision rendered in ***The Karnataka State Association of the Management of Nursing and Allied Health Science Institutions*** (supra):

“2. The learned Single Judge allowed the writ appeal in the following terms:

“16. In the circumstances, I am of the



clear view that the petitions (W.P.Nos. 25355-57/2017) are entitled to succeed. In the result, these petitions (W.P.Nos. 25355-57/2017) are allowed. It is declared that the Indian Nursing Council, Respondent No.2 herein, has no authority to grant recognition to the Institutions imparting Nursing courses. The Respondent No.2 is further restrained from publishing on its website, materials indicating that the institutions imparting Nursing courses have to obtain recognition from Respondent No.2 and all such materials from which it could infer recognition is to be obtained from Indian Nursing Council stand withdrawn from its website forthwith. W.P. Nos.28383-28385/2017 which is also for the similar relief accordingly disposed of. Rule issued and made absolute accordingly."

3. Against the aforesaid Single Judge's judgment a writ appeal was preferred to the Division Bench of the Karnataka High Court which admitted the appeal and stayed the second part of the learned Single Judge's order.

4. We are of the view that the two parts of the learned Single Judge's order are inextricably inter connected. Once it is declared that the Indian Nursing Council, Respondent No.2 has no authority to grant recognition to the Institutions imparting Nursing Course it must follow that the Respondent No.2 is, therefore, restrained from publishing on its website, the material that are indicated. We are, therefore, of the view that the interim order passed by the Division Bench must be set aside and the order of the learned Single Judge restored."



19. Now coming to the Bihar University of Health Sciences Act, 2021, Section 4 thereof prescribed the jurisdiction of the University which shall extend to the whole of the State of Bihar and brought within the ambit all the colleges and institutions established by the Government and affiliated to the existing Universities of the State or to be established in future imparting professional education in different streams of Health Sciences except the deemed Universities. The aim and object of the Act, 2021 speaks loud enough that the Bihar University of Health Sciences is established to conduct and facilitate affiliation of institutions set up by the Government and/or trust or society in the conventional as well as new frontiers of professional education in Health Sciences for the purposes of affiliating, teaching and ensuring proper and systematic instruction, training and research in Modern System of Medicine, AYUSH systems of Medicine, Nursing Education, Pharmacy Education, Dental Education, Education on Laboratory Technology, Physiotherapy & Occupational Therapy, Speech Therapy and Education on other Paramedical Courses and inter disciplinary areas such as Health Economics, Health Administration etc.

20. The term 'Modern System of Medicine' as defined



under the Act means all branches of modern medicine dealing with pre-clinical, clinical, para-medical and para-dental disciplines at diploma and degree level or above and such other disciplines as may be prescribed. The Institution has been defined as an academic institution or a college admitted to the privileges of the University. The University shall have the powers and functions as prescribed under Section 6 thereof; to hold examinations and grant, subject to such conditions as the University may determine, diplomas or certificates and confer degrees or other academic distinctions on the basis of examinations, evaluations or any other method of testing and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause.

21. Sub-sections (13) and (14) of Section 6 of the Act, 2021, empowers the University to regulate examination fees and other associated charges to be levied on the students of self-financing colleges and institutions affiliated to the University and further to determine standards of admissions, examination, evaluation or any other method of testing unless determined by the respective Apex professional regulatory body. Sub-section (3) of Section 45 of the Act, 2021 talks about the transitional provisions that any student of a college or institution affiliated



to other University, who immediately, before the date of affiliation to the University, was studying or was eligible for any examination of the other Universities shall be permitted to complete this course in preparation thereof and the University shall provide for such period and in such manner as may be prescribed for the instruction, teaching, training and examination of such students in accordance with the course of studies of the other University. Even the transitional provision referred hereinabove made it clear that no prejudice shall be caused to the students who have been studying in the institutions/colleges which are duly affiliated with other Universities, they shall be allowed to complete their courses and their interest shall not be put to peril. It would be worth notice that taking note of the transitional provision, the State and the University have taken a decision that the University shall conduct examination with respect to all the courses as prescribed under the Act for the academic session 2023-24 and onwards. The examination of academic session 2022-23 falls outside the domain of the Bihar University of Health Sciences.

22. It is the golden principle of interpretation that intention of the legislature is primarily to be gathered from language used which means that attention should be paid to



what has been said as also to what has not been said. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. A statute is to be construed according to the intent of them that made it and the duty of the judicature is to act upon true intention of the legislature and the *mens or sententia legis*. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of the legislature. The correct interpretation is one that best harmonizes the words with the object of the statute.

23. In the case of ***Raja Bhagwan Bakhsh Singh vs Secretary of State [AIR 1940 Privy Council 82]*** the Court observed through Lord Porter that a right construction of the Act can only be attained if the whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration.

24. The Courts strongly lean against a construction which reduces the statute to a futility or enacting provision therein must be so construed has to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat* [*vide: M. Pentiah & Ors. v. Muddala Veeramallapa & Ors., AIR 1961 SC 1107* and *Commissioner of*



Income Tax, Delhi vs. S. Teja Singh, AIR 1959 SC 352].

25. In the light of the principle of interpretation, now coming to the Act, 2021 and its aims and object. The jurisdiction of the University stretches upon colleges and institutions established by the Government and affiliated to the existing University of the State or to be established in future imparting professional education in different streams of Health Sciences. The very objective of the University is to create centre of institutes of excellence and to establish uniformity in the standards of education in all faculties of Health Sciences with a view to augmenting and enhancing the quality of such education and consistently aiming, at modernizing, improving and achieving highest standards of academic excellence at all levels. The Act, 2021 empowers the Bihar University of Health Sciences to regulate and conduct examination uniformly with respect to all institutions/colleges duly affiliated with the University, who are imparting professional education which needs special training or skills.

26. It would be pertinent to note that under the (Seventh Schedule) of the Constitution of India, entry 25, list III deals with “Education including technical education, medical education and universities, subject to the provisions of entries



63, 64, 65 and 66 of the list I; vocational and technical training of labour”, only in a situation where the provision of a law made by the legislature of a State is repugnant to any provisions of law made by Parliament or to any provision of existing law with respect to one of the matters, the law made by the Parliament, whether passed before or after the law made by the State shall to the extent of such repugnancy, be void. The Act, 1935 enacted only for restoration and better training of Nurses, Health Visitors, Midwives and Dais. It is the State Government, who has been authorized to make rules to carry out the purpose of the Act, including rules to prescribe the course of training and examination for Nurses, Health Visitors, etc. Similarly, the Act, 1947 enacted to establish a uniform standard of training for nurses/midwives and health visitors, besides prescribing recognition of qualification and authority. There is no challenge to any of the prescription of Act, 2021 claimed to be repugnant to any of the afore noted Acts or ultra vires the Constitution.

27. The apprehension of the petitioners that since the Bihar University of Health Sciences does not find place in the schedule of the Indian Nursing Council Act, 1947, in the opinion of this Court, will cause no impact as it is the State, who has the power to grant recognition as has been held in the case



of *Nutan Kumari & The Karnataka State Association of the Management of Nursing and Allied Health Science Institutions* (supra). All the more during the course of argument, learned Advocate General for the State has also submitted at the Bar that the State is contemplating and taking sincere efforts to get the name of the Bihar University of Health Sciences also registered under the Schedule of the Indian Nursing Council Act, 1947 in order to avoid any further complications.

28. The Bihar and Orissa Nurses Registration Act, 1935 and the Indian Nursing Council Act, 1947 are only regulatory in nature prescribing procedure for registration and the standard to be maintained by the institutions for imparting courses which are prescribing recognized courses under the Act. It would be pertinent to observe that in the case of a conflict between the Act and the Rules, occupying the same subject matter, the Act always prevails. This co-principle of statutory interpretation based upon legal hierarchy in which primary legislature holds the superior position to subordinate legislature. If the rule cannot reconcile with the prescription of the Act on a specific point, the rule has to give a way to the prescription of the Act. After coming into force of the Act, 2021, in the opinion of this Court, even though the Bihar Nurses Registration



Council was allowed to conduct examination of GNM/ANM, under Rule, 1997, the same has to give way to the prescription of the Act, 2021, which authorises the University to conduct the examination of the same along with other professional courses as prescribed under the Act.

29. So far the decision in the case of ***Bharathidasan University*** (supra) is concerned, this Court finds that the very intent of the statute is reflected through its aim and object. Mere definition clause would not govern the applicability of the statute unless the necessary prescriptions are to be read conjointly to give the meaning of the purpose of the Act. None of the prescription of the Act, 2021 has been rendered nugatory by giving due importance to the object of the Act, 2021. Hence, with utmost regard, the aforesaid decision is not applicable in the present case. In the case of ***Dipak Babaria***(supra), the Hon'ble Supreme Court has reinforced that where the statutes provide for a thing to be done in a particular manner, then it has to be done in that manner. Further, in the case of ***Dorjee Tshering Bhutia***(supra), the Hon'ble Supreme Court has succinctly held that executive power of the State can not be exercised in the field which is already occupied by the laws made by the legislature. The decision, in the opinion of this



Court, would support the action of the respondent State, who has enacted the Act, 2021 and, as such, any conflict on account of the previous rules and/or executive instruction would certainly, if found to be contrary to the statutory provisions of the Act, 2021 shall be a nullity.

30. In view of the discussions made hereinabove and the prescriptions of the Act, 2021, this Court does not find any merit in the writ petition. Accordingly, to answer the issue framed in the present case, this Court holds that the University of Health Sciences established under Act, 2021 has competent jurisdiction to grant affiliation and hold the examination of General Nursing Midwifery /Auxiliary Nursing Midwifery of the petitioners' institutes in question.

31. Before parting with this case, it must be clarified that on account of pendency of the writ petition, in no circumstances, any students of the institution shall be subjected to disqualification for appearing in due course and/or examination, after proper affiliation of their institution with the University. The authorities are also directed to adhere and maintain the time schedule of the examination of the courses and its result in terms with the Act and Statute.

32. The writ petition *sans* any merit, stands dismissed



with the aforesaid observation.

33. There shall be no order as to costs.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	21.08.2025
Uploading Date	17.10.2025
Transmission Date	

