

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, IN 'B' GROUP THIS DAY, THROUGH VIDEO CONFERENCE/PHYSICAL HEARING, THE COURT MADE THE FOLLOWING:

RDER

The writ petition is filed seeking following reliefs:

- (a) Issue a writ of Mandamus directing the Respondent No.1 to grant necessary Approval/Recognition to the Petitioner Institutions forthwith to start fresh courses in General Nursing and Midwifery (GNM) for the academic year 2021-22, by considering the proposals forwarded by the Respondent No.2 – Karnataka State Nursing Council that is pending consideration before the High Power Committee constituted by the Respondent No.1 in terms of Communications bearing Nos.KSNC:896:2021-22 dated 08.06.2021, 09.10.2021, 12.06.2021, 12.10.2021, 10.10.2021, 08.08.2021, 10.08.2021, 15.06.2021, 08.10.2021, 16.07.2021 and 10.09.2021 vide Annexures-B1 to B-50.
- (b) Pass such other order/s as this Hon'ble court deems fit in the facts and circumstances of this case.

2. Petitioners intending to start school of nursing for fresh course of Diploma in General Nursing and Midwifery (GNM Course), had made an application in the year 2019 seeking recognition with effect from Academic Year 2019-20 to the concerned authorities. No decision was taken by the respondents regarding either for grant of approval/recognition

or refusal of the same to the petitioners. Therefore, the petitioners have come up with this writ petition seeking a direction to grant approval for their school of nursing.

3. The detailed narration of the facts leading to filing of this writ petition is not necessary in view of statement of objections filed on behalf of respondent No.2 and to some extent the statement of objections filed on behalf of respondent No.1. Annexure-R4 produced by the respondent No.2 issued by Indian Nursing Council dated 19.09.2019 shows that immediately after the applications seeking approval filed by the petitioners, a decision was taken by Indian Nursing Council to phase out GNM Course. A detailed reference to communication dated 19.09.2019 (Annexure-R4) issued by the Indian Nursing Council to all the Principal Secretaries (Health) of the State Governments is necessary. It reads as follows:

"F.No.1-5/2018-INC

Dated: 19 Sep 2019

To:

The Princiipal Secretary (Health)
All State Government.

**Sub: Single Entry Level for Nursing-Phasing out
of GNM Programme-reg.**

Dear Sir/Madam,

It is informed that Indian Nursing Council has issued the Notification for up-gradation of School of Nursing to College of Nursing vide Notification dated 28.02.2019 and 14.03.2019 as per directives received from Ministry of Health & Family Welfare through their letter No. Z28015/73/2016-N dated 5th October, 2017 to implement the National Health Policy, 2017. One of the key initiatives in the implementation framework on which action was required by Indian Nursing Council was "Single entry level for Nursing" in order to ensure the quality of Nursing Education. As a step towards the standardization of the Nursing qualification at entry level there is a need to upgrade School of Nursing to College of Nursing and have single entry level qualification as B.Sc. (N) for Nurses by redesigning the B.Sc(N) curriculum as a practical based and by phasing out the GNM program.

Keeping in view the above , the Governing Body of Indian Nursing Council has resolved in its meeting held on 02.12.2018 that the GNM Training Programme shall be phased out by 2020-21. Currently, there are approximately 3215 GNM Nursing Schools that produce 1.2 lakhs Nurses in a year which are found suitable by Indian Nursing Council as on 31.03.2018. It is therefore clarified that all the GNM Nursing Schools shall ensure that:

- Last admission year for GNM Training programme will be 2020-21 academic year.
- No admission will be made to GNM programme in 2021-22 academic years and thereafter.

- GNM students who are admitted in and prior to 2020-21 will continue their batch till they complete the programme.

In continuation to above, it is further requested that:

- The State Government/ State Nursing Council must ensure that no new GNM School of Nursing shall be approved from the academic year 2019-20.
- No Inspection of GNM School of Nursing shall be conducted for the purpose of Renewal/Restart/Enhancement of seats etc.

This issues with approval from the competent Authority.

Yours faithfully,

Encl: As above
Sd/-
(K.S. Bharati)
Joint Secretary"

(Emphasis Supplied)

4. The most relevant aspect of the above communication for the current purpose is that a request was made by the Indian Nursing Council to the Principal Secretaries (Health) that no new GNM School of Nursing should be approved from the Academic Year 2019-20.

5. On account of above letter, application made by the petitioner seeking approval with effect from the year 2019-20 for starting GNM Course remained in the cold storage. Subsequently, by another notification dated

26.11.2020 (Annexure-R5 to the statement of objections filed by respondent No.2) the earlier communication dated 19.09.2019 (Annexure-R4) was recalled. The notification dated 26.11.2020 reads as follows:

"F.NO. 1-5/2020-INC

Dated: 26 Nov 2020

NOTIFICATION

Sub: Withdrawal of the Single Entry Level for Nursing Proposal-reg.

The Council had earlier issued Notification of even No. dated 26.02.2019, 14.03.2019 and a detailed circular on the above subject dated 19.09.2019 regarding upgradation of School of Nursing into College of Nursing and Phasing out of GNM programme by the year 2020-21, in accordance with the directions received from Ministry of Health and Family Welfare as a part of implementation of the National Health Policy 2017.

The Ministry of Health and Family Welfare vide their letter No.Z.28015/73/2016-INC dated 19/10/2020 have informed the Council that "it has not been found feasible to upgrade School of Nursing to College of Nursing at this stage"

Keeping in view of the above direction of the Ministry, the Council hereby notifies that the proposed Single Entry Level for nursing and phasing out of GNM programme stands withdrawn with immediate effect. Also notifications and circulars regarding the Single Entry Level Program referred above also stand withdrawn. Accordingly the admission of GNM programme will also continue after the academic year 2020-21.

Sd/-
Lt Col (Dr) Sarvjeet Kaur
Secretary"

6. It is submitted that sometime after the notification (Annexure-R5) was issued, a Local Inspection Committee had visited the petitioner's institution. However, no final decision on the applications filed by the petitioners has been taken by the respondents even as on date.

7. In the statement of objections filed on behalf of respondent No.2 the process of examination of applications filed seeking approval for GNM Course has been indicated with reference to the laws clearly stating the authorities who have to take decision at each stage of the decision making process. It is available at para 2 of the statement of objections dated 07.04.2022 filed by respondent No.2 and it reads as follows:

"2. It is submitted that the Karnataka State Nursing Council (KSNC) is following the procedure mentioned as below for approving and Recognition of Training Institutions:

Sl. No.	Process	Provision of Law
a	Submission of Application	Bye-Law 49(1)(a) & Schedule IV of the Bye-Laws of KSNC
b	Initial Inspection by the KSNC	Bye-Law 49(1)(d)
c	Placing the file along with the initial inspection report & recommendation of before the High-Power Committee (hpc0 by KSNC	Annexure-R3
d	Decision and Recommendation by the HPC to the Government.	Administrative Decision by the Government
e	Issuing GP by the Government	Section 10(2) of INC Act

		r/w INC Guidelines (Annexure-A & R-3)
f	On application by the Institution along with the GO, Board will issue the School Code.	Administrative Decision
g	On application by the Institution along with the School Code, KSNC will issue the affiliation after receiving the affiliation fee. Affiliation has to be renewed every year.	49(1)(c)
h	Admission of students of GNM Course by the Institute	49 (2) (a)

8. Learned counsel for the petitioners draw my attention to the communication No.HFW 212 RGU 2016 dated 14.12.2016 issued from the Office of the Principal Secretary to Government addressed to the Registrar, Rajiv Gandhi University of Health Sciences. It reads as follows:

"GOVERNMENT OF KARNATAKA

No. HFW 212 RGU 2016 Karnataka Government Secretariat,
M.S. Building,
Bangalore, dated 14.12.2016.

From:

The Principal Secretary to Government
Department of Health and Family Welfare
(Medical Education)

To:

- 1) The Registrar,
Rajiv Gandhi University of Health Sciences,
4th T Block, Jayanagar
Bangalore-560041.
- 2) The Registrar
Karnataka State Nursing Council,
71, Nightingale towers, A Street,
6th Cross, A.R. Extension,
Near Movie Land Theatre,

Gandhinagar, Bangalore-560009

Sir,

Sub: Regarding the power for grant or otherwise of recognition and approval to schools/colleges imparting education/ training for nursing and fixation of intake of the course.

Ref: Letter of the Registrar, RGUHS No.RGY/AFF/MISS-01/2016-17, dated 07.09.2016.

With reference to the above subject, I am directed to inform that Government has obtained the legal opinion of the Hon'ble Advocate General, Karnataka and the opinion is as follows.

"In terms of the various provisions of law, under several enactments and the Judgments of the Hon'ble High Court of Karnataka, including the Judgment of the Division Bench, the Judgments which have reached finality and the legal principle enunciated therein, it is opined that the grant of 'recognition of qualifications' and prescription of syllabus are to be regulated by the India Nursing Council, while, insofar as the grant of recognition of approval for Colleges, imparting training and education for nursing are concerned in terms of the Judgement of the Hon'ble High Court of Karnataka in the case of UOI vs. KMJ College of Nursing (2005) AIR KAR HCR 1568 and the full bench judgment of the High Court of Kerala in 2010 SCC Online Ker 1236 will be regulated by the State Enactments and by the State Authorities.

According, the power for grant or otherwise of recognition and approval to colleges for imparting training for nursing and fixation of intake of the course will vest with the State Government, along with the Karnataka State Nursing Council and the Rajiv Gandhi University of Health Sciences and not in the Indian Nursing Council. "

Therefore, the Government of Karnataka had decided to withdraw the earlier letter of the Government bearing No. HFW 453 RGU 2015, dated 16.02.2016.

Henceforth, it is directed to consider the recognition and approval to the schools & colleges for imparting education/training for nursing and fixation of intake of the course as per the State Government orders based on the recommendations of the

Karnataka State Nursing Council and Rajiv Gandhi
University of Health Sciences.

This is for kind information and for further needful
action.

Yours faithfully,

Sd/-
(M.B. Dhotre)
Under Secretary to the Government
Department of Health and Family Welfare
(Medical Education)"

9. Based on the above communication, Sri.Reuben Jacob, learned Senior Counsel for the petitioners submitted that insofar as recognition and approval to the School of Nursing is concerned, there is no need for the University to obtain no objection from the Indian Nursing Council and he particularly draws my attention to the reference in the above communication to the decision of Division Bench of this Court in ***UNION OF INDIA & ANOTHER vs. KMJ COLLEGE OF NURSING [2005 (4) KLJ 393]*** and also the decision of Full Bench of High Court of Kerala in ***K. VELAYUDHAN MEMORIAL TRUST vs. STATE OF KERALA AND OTHERS [2010 SCC Online Kerala 1236]*** and submitted that the above decisions are also to the effect that no objection from the Indian Nursing Council

is not required for the purpose of University granting recognition or approval for the GNM Course.

10. Now, it is necessary to make a reference to the stages of examination of applications indicated in the statement of objections filed on behalf of respondent No.2. Insofar as stage (a) is concerned, it is only the submission of application under bye-law 49(1)(a) and Schedule IV and IX of the bye-law of Karnataka State Nursing Council and the application has already been submitted during the year 2019.

11. With regard to the stages (b) to (g) of consideration of applications is concerned, the concerned respondents shall accomplish each of the stages in the process of consideration of the applications within a period of not more than a week. Thus, pending applications of the petitioners is required to be considered and processed by the respondents within a total period of eight weeks and communicate the decision to the petitioners immediately thereafter. An order of this nature is required to be passed in view of the peculiar facts of this case namely, that applications were filed by the petitioners in 2019 itself and

applications have remained without being considered on account of communication at Annexure-R4 (filed with the statement of objections) and subsequent withdrawal of the same as per Annexure-R5. Accordingly, the following:

ORDER

- (1) Writ petition is disposed of with a direction to respondents to consider the applications of petitioners which were filed in the year 2019 as if it is filed for the Academic Year 2021-22 and take a final decision on the same in the manner indicated hereinabove within an outer limit of eight weeks from today and communicate the decision to the petitioners immediately thereafter.
- (2) Needless to say, the order shall contain sufficient reasons for taking the decision either to grant the approval or refuse the approval.

**Sd/-
JUDGE**

DR