

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 43428 of 2022

Between:

Archana School of Nursing

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 11.04.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 43428 of 2022**

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> Head Note:

! Counsel for the Petitioners : Mr. K. Anantha Rao

^ Counsel for Respondent Nos. 1 & 2: G.P. for Medical & Health

^ Counsel for respondent No. 3: Sri V. Srihari

? Cases Referred:

1. AIR 1978 SCC 597

2. (1998) 8 SCC 1

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 43428 of 2022****ORDER:**

Heard learned senior counsel Sri K. Ananta Rao for the Petitioner, learned Government Pleader for Medical Health and Family Welfare appearing on behalf of Respondents 1 and 2 and Sri V.Srihari, learned standing counsel for respondent No.3.

2. The main prayer sought for by the Petitioner is as follows :

"to issue a Writ, order or direction more in the nature of Writ of Mandamus by declaring the action of the 2nd and 3rd respondents in not including the petitioner school of Nursing in the list of Nursing Schools for admissions into the general nursing and midwifery training course issued in R.C.No.34792/N1/2022, dated 01.10.2022, without including the Petitioner's School even though the Petitioner has valid permission of the Government for running the School is arbitrary, illegal and untenable in law and consequently direct the 2nd and 3rd respondents to allow the school to function normally and allow the school to take admissions of students for general nursing and midwifery training course for the academic year 2022-2023 and thereby declining admissions into the Petitioner's Nursing School as being illegal and the proceedings of the 3rd Respondent bearing Letter No.TSNMC/GNM/ 5130/2022, dt. 15.09.2022 insisting for Registered Lease Deed of the premises for a period of 30 years

declaring the same to be without jurisdiction and illegal and opposed to the principles of natural justice".

3. The case of the petitioner, in brief, is as follows:

a) The petitioner institute has been established in Hyderabad after obtaining due permission by the Government of Andhra Pradesh in the year 1993 vide orders G.O.Ms.No.No.25, dated 22.01.1993.

b) The 3rd respondent had issued a notice vide LR No.TSNMC/GNM/5130/2022 dated 15.09.2022 to the petitioner asking to produce a certified copy of the notarised lease deed. Upon producing the lease deed, the 3rd respondent had been insisting that the 30-year lease deed should be a registered lease deed, which is illegal and improbable.

c) While the matter was pending with the 3rd respondent, the 2nd respondent had issued a notification vide RC No.34792/N1/2022 dated 01.10.2022, notifying the Nursing Schools in which admission could be obtained by the students seeking admission into GNM Course.

d) In the eligible list of Nursing Schools in the said notification, the name of the petitioner school had not been

mentioned and upon enquiry with the 3rd respondent, it had been orally communicated that since the petitioner school had failed to produce the registered lease deed from the owner of the school premises, the name of the petitioner's school had not been mentioned and is not eligible to take fresh batch of students for the academic year 2022-2023 in the said Notification i.e., RC No.34792/N1/2022 dated 01.10.2022.

e) The petitioner after issuance of the said notification, had made repeated representations requesting the 3rd respondent to include the name of the petitioner school in the list of eligible school's to take fresh batch of students for the academic year 2022-2023, but the same had been ignored by the 3rd respondent.

f) Neither the Government nor the Indian Nursing Council had stipulated that the schools running in the rented premises should have a registered lease deed for a period of 30 years and the action of the 3rd respondent in not including the petitioner's school for admission into the GNM course is illegal.

g) Indian Nursing Council is a body which regulates the syllabus and methodology of teaching nursing courses for the

schools established throughout the country. Indian Nursing Council does not have the authority to grant recognitions to the institutes imparting Nursing courses and the same has been held by the Karnataka High Court in a batch of cases.

h) The State Council has no authority to say that a 30 years registered lease deed is required for inclusion of a school in the list of institutions for taking admissions into GNM course and the action of the 3rd respondent is beyond the jurisdiction and illegal.

i) The G.O.Ms.No. 25, dated 22.01.1993, which had granted the petitioner school to impart education does not mention about getting prior permission from the Government. Fresh conditions could not be rubbed on the petitioner school decades later and deny the admission of students into the petitioner school. Hence the Writ Petition.

4. The case of the respondents in brief, is as follows:

a) The Writ Petition is not maintainable as there is a effective remedy available to the Writ Petitioner under Rule 9 of TSNMC Act II of 1926.

b) The Petitioner had attempted to misrepresent to statutory authorities and also to the Court and submitted a photo copy of the unregistered lease deed dt. 29.04.2021 allegedly executed by one M/s. Ind-Asia Constructions in favour of Petitioner's School and that the Government had accorded permission vide G.O.Ms.No.25, dt. 22.01.1993 to establish Petitioner's School with the following specific conditions.

"2) The permission accorded in paragraph one above, is also subject to other conditions as may be prescribed by the Govt. from time to time regarding regulation of procedure of admission and selection of candidates in the institution.....

c) The Private Training School should be made to develop its own private hospitals, operation theaters and rural public health facilities as required for training as per Indian/ Nursing Council syllabus and that no affiliation to any Government Hospital or Government Institutions or Primary Health Centers will be given to the trainees of the Private Training School and for such field and practical training. Institution with no facilities of its own will be derecognized after the stipulated date."

d) Nursing Education is governed by A.P. Nurses, Midwives, Auxiliary Nurse Midwives & Health Visitors Act, 1926 & Indian Nursing Council Act and the Rules. The 2nd respondent is the President of Telangana Nurses Midwives Auxiliary Nurse-Midwives and Health Visitor's Council as per section 3(2) of A.P. Nurses, Midwives, Auxiliary Nurse Midwives & Health Visitors Act, 1926.

e) As per rule 38 of G.O.Ms.No.252, Health Department dated 27.02.1969, the Nursing Council is empowered to accord permissions to Nursing Schools and under Rule 39, the State Nursing Council is empowered to inspect the institutions by deputing the inspectors for according to recognition and renewal of Recognition.

f) The petitioner school has violated the conditions laid down in Rule 8 of G.O.Ms.No.313 dated 16.08.1997 and rules, resolutions, regulations and notifications issued by Indian Nursing Council dated 29.10.2014, 20.04.2018 and 09.09.2020 and 12.03.2021 respectively. Vide F.No.1-5/2014-INC, the institutions should have their own building.

g) Indian Nursing Council vide F.No.1-6/2018-INC dated 20.04.2018 intimated that a school of Nursing can be in a rented/leased building in an institutional area or else, a penalty for Rs.50,000/ has to be paid for every year for 3 years.

h) During the penalty period, if the institute is not to construct own building then the permission will be withdrawn and that every school should maintain the following physical infrastructure:

i) Teaching Block – 20,000 sft

ii) Hostel Block - 17,500 sft

i) The Petitioner school has been a consistent defaulter and had committed several violations in the past. The petitioner in the past too had approached this court through Writ Petition 25598 of 2019 along with batch of 12 schools before High Court and obtained favourable orders, praying to consider the school for admission of students for the academic years 2019-2020 and 2020-2021.

j) The unregistered lease deed dated 29.04.2021 is not as per rules and the Petitioner tried to mislead the authorities

k) Due to several other violations of the norms of Government Order and also the norms of Indian Nursing Council (INC) by the petitioner's school, the petitioner's school had not been notified for admissions for the present academic year 2022-2023 and blaming respondents as such is not correct. Hence the Writ Petition is liable to be dismissed.

PERUSED THE RECORD :

5) **The counter affidavit filed by Respondent No.3, paras 8, 14, 15 and 19 read as under :**

8. With reference to the allegations made in Para No. 2 of affidavit, it is submitted that it is true the Govt. has initially accorded permission vide GO Ms. No 579 dated 13-12-2004 to establish Petitioner School, with the following conditions, amongst others:

"2) The permission accorded in paragraph one above, is also subject to other conditions as may be prescribed by the Govt. from time to time regarding regulation of procedure of admission and selection of candidates in the institution.....

8) The Private Training School should be made to develop its own private hospitals, operation theaters and rural public health facilities as required for training as per Indian/ Nursing Council syllabus and that no affiliation to any Government

Hospital or Government Institutions or Primary Health Centres will be given to the trainees of the Private Training School and for such field and practical training. Institution with no facilities of its own will be derecognized after the stipulated date."

14. With reference to the allegations made in Para No.4 of affidavit, it is submitted, Petitioner's School has violated several conditions laid down in Ex.P3 G. O. Ms. No. 579, Rule 8 of G. O. Ms. No. 313, Resolutions, Guidelines and Notifications issued by the INC from time to time, dated: 29-10-2014, 20-04-2018 and 09-09-2020 respectively and hence Petitioner's School was not notified for admissions for the present academic year 2022-23 and blaming the Respondents is not correct. It is submitted that Petitioner's School invoke the jurisdiction of this Hon'ble Court without challenging the notices issued by the Respondents and Resolutions, Guidelines and Notifications issued by the INC from time to time is untenable in the eye of Law.

15. With reference to the allegations made in Para No.5 of affidavit, it is incorrect that no rule or regulation has stipulated either by the Government or the Indian Nursing Council that schools running in rented premises should have a registered lease deed for a period of 30 years is incorrect. It is incorrect to alleged that the action of the 3rd respondent

in not allowing petitioner's School in the list of admissions into the GNM Course illegal is in anyway not correct and against the spirit of Rules and Regulations.

19. With reference to the allegations made in Para No.9 of affidavit, petitioner's School having violated not only the conditions laid down in Government orders but also failed to follow the norms fixed by the Indian Nursing Council as stated supra with regard to physical infrastructure of their school, has no manner of right to seek to be included in the list of eligible college for admissions of students.

6. A bare perusal of G.O.Ms.No.25, dt. 22.01.1993 reads as under :

"In the circumstances reported by Director of Medical Education in reference read above, the Government hereby accord permission to the A.P. Nurses, Midwives, ANMS and Health Visitors Council, Hyderabad to permit the opening of Archana School of Nursing at Banjara Hills, Hyderabad, under Rule 38 of the Rules made U/s.11 (2)(b) of Andhra Pradesh Nursing and Midwives (Extension and Amendment) Act. 1964, subject to the condition, instructions and guidelines laid down in G.O.Ms.No.430, HM & FW Department, dt. 04.07.1989 and detailed in the Annexure to this order.

2. The permission accorded in paragraph 1 above is also subject to other conditions as may be prescribed by the Government from time to time regarding regulation of the procedure of admission and education of candidates in the institution.

DISCUSSION AND CONCLUSION :

7. The main grievance of the petitioner is that though the Petitioner Institution had been functioning continuously for the last more than a decade after obtaining permission in favour of the petitioner herein i.e., Archana School of Nursing, 81-A-MLA Colony, Road No.12, Banjara Hills, Hyderabad, having been accorded permission by the Government vide G.O.Ms.No.25, dated 22.01.1993, yet the petitioner Nursing School was not included in the list of Nursing Schools for admissions into the general nursing and midwifery training course issued in Rc.No.34792/N1/2022, dated 01.10.2022.

8. It is borne on record and also admitted in the counter affidavit filed by Respondent No.3 in particular at para 10, that the Petitioner's Institution functioned till

the academic year 2020 – 2021. A bare perusal of the contents of the counter affidavit filed by the Respondent No.3 herein and in particular para 19, clearly indicates that the Respondent Authority had several grievances against the Petitioner Institution, but however did not state in detail the actual violation of the conditions laid down in Government orders by the Petitioner's school and also the details of the norms fixed by the Indian Nursing Council which have been violated by the petitioner's school in relation to physical infrastructure of the school.

9. In view of the fact as borne on record in the present case that the counter affidavit filed by the respondent No.3 does not refer to any specific notice having been issued to the Petitioner herein putting the Petitioner's Institution on notice making the Petitioner liable for consequences of the recognition being cancelled or any personal hearing having been afforded to the Petitioner herein prior to excluding the Petitioner's school for admissions for the present academic year 2022-23 and not notifying the petitioner's

school for admissions for the present academic year 2022-23, fact being any order or proceeding not having been passed/issued informing the Petitioner's school of the decision or reason for the said exclusion, this Court opines that the impugned action of the Respondent authorities in not notifying the Petitioner's School for admissions for the present academic year 2022-23 is clearly in violation of principles of natural justice and also the law laid down by the Apex Court in the case of Menaka Gandhi vs. Union of India reported in AIR 1978 SCC 597 which clearly observed as follows :

“..... although there are no positive words in the statute requiring that the party shall be heard, yet-the justice of the common law will supply the omission of the legislature”,

.....Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action.

.... The inquiry must, therefore, always be does fairness in action demand that an opportunity to be heard should be given to the person affected?

..... The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.”

10. This Court, therefore, is of the firm opinion that one another aspect of principles of natural justice is also giving an opportunity of hearing to the person who is stated or whose actions are stated to be in contravention of existing rules, before action proposed against such person is taken. Admittedly, as borne on record the same had not been adhered to or followed in the present case.

11. Though the material documents filed by the Respondent No.3 along with the counter affidavit enclosed copies of show cause notices dated 30.12.2020, 16.04.2021, 19.08.2021, 29.09.2021, 15.09.2022 and Petitioner's reply dated 12.01.2021 to the notice dt. 30.12.2020 issued to the Petitioner by the President, TSNMC & DME, TS Hyderabad, no final orders admittedly have been passed against the Petitioner as on date nor

there is any consideration of the explanation dt. 12.01.2021 submitted by the Petitioner to the said show cause notice dt. 30.12.2020 issued to the Petitioner as on date. The counter affidavit also curiously is silent on this aspect.

12. The learned Government pleader's plea on the availability of alternative remedy of Appeal as specifically averred at para 3 of the counter affidavit filed by Respondent No.3 is liable to be rejected in view of the simple fact that refusing to exercise discretion conferred under Article 226 of the Constitution of India where a statute provides for effective and efficacious remedy of Appeal is a self imposed restriction by the Courts, which however would not apply atleast in 3 contingencies (1) where writ petitioner seeks enforcement of fundamental rights, (2) where the order or proceedings impugned or action of the authorities is in violation of principles of natural justice and (3) where the order or proceedings are wholly without jurisdiction or the virus of an Act is challenged as laid down by the Apex Court in the case of Whirlpool Corporation v.

Registrar of Trade Marks, Mumbai & Others reported in (1998) 8 SCC 1. In view of the fact that admittedly as borne on record no order has been passed by the Respondent which the Petitioner herein could impugn by filing appeal before the Government, the exclusion of the Petitioner Institution from the list of Notified Schools permitted to admit the students during the present academic year 2022-2023 unilaterally, irrationally being in violation of principles of natural justice, this Court is of the firm opinion that the Petitioner's School is entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

13. It is true that this Court is conscious of the fact that the schedule pertaining to the admissions and the procedure there under strictly needs to be adhered to, but the present case is an exception in view of the simple fact that the petitioner's institution in the year 1993 by virtue of the recognition accorded to it by the Government vide G.O.Ms.No.25, dt. 22.01.1993, had been functioning regularly since then and had continuous renewals till 2021 and though the Indian

Nursing Council (Minimum Pre-requisites for Granting Suitability to Nursing Programmes) Regulations 2020 came into force with effect from 2020, making it mandatory that the Institution shall have its own building within 2 years from the date of its establishment and further a clause which stipulates that the lease cannot be terminated for a period of 30 years, the Petitioner's Institution admittedly had a renewal of recognition in its favour even in the year 2021. Admittedly as borne on record the petitioner's institution since the year 1993 i.e., 22.01.1993, the petitioner institution had renewal of recognition periodically till the year 2021, and the latest renewal was in process but however when the Petitioner's Institution was declined admissions unilaterally into General Nursing and Midwifery Training Course for the academic year 2022-2023, the Petitioner herein is constrained to approach this Court by filing Writ Petition in November, 2022.

14. This Court opines that the case of the Petitioner is a case of renewal of permission/recognition and not a case of grant of permission. The permission accorded to

the Petitioner in exercise of the powers conferred under Rule 38 U/s.11 (2)(b) of Andhra Pradesh Nursing and Midwives (Extension & Amendment) Act, 1964 and subject to the conditions, instructions and guidelines laid down in G.O.Ms.No.430, HM & FW Department, dt. 04.07.1989, had not been revoked as on date and further no steps having been initiated in this regard are evident on record.

15. This Court opines when admittedly as borne on record the petitioner's Institution had been functioning continuously since 22.01.1993, at this stage the Respondents cannot decline admissions into General Nursing and Midwifery Training Course for the academic year 2022-2023 to the petitioner herein unilaterally, illegally and irrationally. This Court is of the firm opinion that without issuing any notice to the Petitioner Institution for withdrawal of permission granted on 22.01.1993, there cannot be any unilateral denial of renewal in the year 2022 and the said exercise of power by the Respondents herein in the present case is

manifestly arbitrary and opposed to the principles of natural justice.

16. Taking into consideration of all the above referred facts and circumstances and the law laid down by the Apex Court in *Menaka Gandhi v. Union of India* reported in AIR 1978 SCC 597 and the law laid down by the Apex Court in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Others* reported in (1998) 8 SCC 1 (referred to and extracted above) and also G.O.Ms.No.25, dated 22.01.1993, issued in favour of the petitioner, which clearly permitted the petitioner herein to start General Nurse Training Course from the academic year 1993, and the same being in force as on date and not being revoked as on date, the writ petition is allowed as prayed for and the Respondents are directed to permit admissions into the General Nursing and Midwifery Training Course issued in R.C. No.34792/N1/2022, dt. 01.10.2022 by extending the time stipulated for admissions issued in R.C.No.34792/N1/2022, dt. 01.10.2022 in the online portal and in the event the same is not technically feasible the Petitioner

School shall be permitted to admit the students through spot admission under the supervision of the concerned Authority and complete the process of registration for admissions for the academic year 2022-2023 into the General Nursing and Midwifery Training Course to the Petitioner Institute i.e., Archana School of Nursing, Hyderabad within a period of 2 weeks from the date of receipt of the copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions if any, pending shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Dated : 11 .04.2023

Note : L.R. copy to be marked

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