

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 43582 of 2022

Between:

Noble 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. 43582 of 2022****% 11.04.2023****Between:**

Noble School of Nursing

..... Petitioner

And

\$ The State of Telangana and others

..... Respondents

< Gist:

> Head Note:

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

^ Counsel for the Respondent No.1: G.P. for Medical & Health

? Cases Referred:

1. (1998) 8 SCC 1

2. AIR 1978 SCC 597

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 43582 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 premises in which the Petitioner's School is being run is not a rented premises and therefore, the 3rd Respondent cannot insist upon the Petitioner's School to produce a Registered Lease Deed of the School premises especially when the Petitioner's School 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 by allowing the School to take admissions of students for general nursing and midwifery training course for the academic year 2022-2023 by declaring the action of the 3rd Respondent in not including the Petitioner's School as being 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 school was established by Sravanthi Educational Society in Hyderabad after due permission obtained from the Government in the year 2005.
- b) Originally the school of nursing was started for imparting education in General Nursing and Midwifery course in the year 2005.
- c) The 2nd respondent has issued a notification for admission of students in various nursing schools by his proceedings R.C.No.34792/N1/2022, dated 01.10.2022.
- d) 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, on the said ground.

e) 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.

f) 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.

g) 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 a Notarised Lease Deed dated 08.07.2021 allegedly executed by one Mr. Mohammed Yousuf, S/o. Mohammed Moulana in favour of Petitioner's Society and that the Government had accorded permission vide G.O.Ms.No.No.589, Health Medical and Family Welfare (K2) Department dated 13.12.2004 to establish Petitioner's School on certain specific conditions.

c) As per rule 38 of G.O.Ms.No.252, Health Department dated 27.02.1969, the State 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.

d) 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, 09.09.2020 and 12.03.2021 Vide proceedings F.No.1-5/2014-INC, the institutions should have their own building, had been incorporated by the Indian Nursing Council.

f) 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.

g) During the penalty period, if the institute does not to construct its 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

h) 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 20668 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 for the academic year 2020-2021, they again filed W.P.No.24592 of 2020 along with batch of 12 schools.

i) The notarized lease deed dated 08.07.2021 is not as per rules and the Petitioner tried to mislead the authorities

j) Due to several other violations of the norms of Government Orders 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, in particular, 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 589 dated 13-12-2004 to establish Petitioner

School, with certain specific conditions as enlisted in the said G.O:

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 and 6 of affidavit, it is incorrect that no rule or regulation as 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 allege 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.10 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.589dated 13.12.2004, in particular, Para 2 reads as under :

"After careful consideration of the matter and in exercise of the powers conferred under Rule 38 under Section 11 (2)(b) of Andhra Pradesh Nursing and Midwives (Extension and Amendment) Act, 1964 and sub rule (iii) of rule 12 of Andhra Pradesh General Nurse Training Institutions (Admissions into General Nurse Training and Grant of permission to private Schools of Nursing) Rules, 1997 made under Section 99 of Andhra Pradesh Education Act, 1982 (Act 1 of 1982), Government hereby accord permission to the following Educational Society to establish the Institution in the name indicated below and to start General Nurse Training course of three years duration with intake capacity of forty five (45) and clinical attachment specified below from the academic year 2005-06, subject to obtaining affiliation to A.P. Nurses

and Midwives Council, Hyderabad and Indian Nursing Council, New Delhi.

Name of the Educational Society and address, whose name Institution is sanctioned	Name of the Nursing School and its address	Name of the Course Sanctioned	Intake capacity sanctioned by Govt.	Clinical attachment for training of the students of the Institution
(1)	(2)	(3)	(4)	(5)
Sravanthi Educational Society, Nampally, Hyderabad	Noble School of Nursing, Plot No.194&195, Kamalanagar, Vanasthalipuram, Ranga Reddy District	G.N.M	Forty five (45)	1.Govt. Area Hospital, Vanasthalipuram, Ranga Reddy District. 2. Sri Sai Nursing Home Borabanda, Hyderabad.

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., Noble School of Nursing, Kharmanghat, Hyderabad,

having been accorded permission by the Government vide G.O.Ms.No.589, dated 13.12.2004 issued by the Health Medical and Family Welfare (K2) Department, however, the 2nd and 3rd respondents did not include the petitioner Nursing School in the list of schools for getting fresh admissions for the academic year 2022-23.

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. A bare perusal of the contents of the counter affidavit filed by 3rd Respondent, does not clearly indicate specific violation of Government Orders and norms fixed by the Indian Nursing School by the Petitioner herein. 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 dt. 30.12.2020, 16.04.2021, 19.08.2021, 29.09.2021 and notice dated 15.09.2022 for personal appearance and hearing on 30.09.2022 at 04.00 PM at the office of the TSNMC, Hyderabad and Petitioner's reply dt. 18.09.2022 to the notice dated 15.09.2022 issued to the Petitioner by the Registrar, TSNMC, Hyderabad, no final orders admittedly have been passed against the Petitioner as on date nor there is any consideration of the explanation dated 18.09.2022 submitted by the Petitioner to the said notice dated 15.09.2022 issued to the Petitioner by the Registrar, TSNMC, Hyderabad 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 2004 by virtue of the recognition accorded to it by the Government vide G.O.Ms.No.589, dt. 13.12.2004, 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 2004 i.e., 13.12.2004, 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 Sub-rule (iii) of Rule 12 of Andhra Pradesh General Nurse Training Institutions (Admissions into General Nurse

Training and Grant of permission to private schools of Nursing) Rules, 1997 made under Section 99 of Andhra Pradesh Education Act, 1982 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 13.12.2004, 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 13.12.2004, 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.589, dated 13.12.2004, 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, dated 01.10.2022 by extending the time stipulated for admissions issued in R.C.No.34792/N1/2022, dated 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., Noble School of Nursing, Hyderabad, within a period of two 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

b/o

kvrn