

RAJASTHAN HIGH COURT

Rajasthan Vikas Sansthan, Jodhpur

Vs.

State of Rajasthan

Civil Writ Petn. No. 2732 of 2000

(V.G. Palshikar, J.)

01.09.2000

ORDER

V.G. Palshikar, J.

1. By this petition the petitioner which runs Vyas Nursing Institute in Jodhpur city has challenged the Circular issued by the Govt. of Rajasthan on 12 -5-2000 on several grounds mentioned in the petition.
2. Facts giving rise to the present petition stated briefly are that the petitioner is a Society propagating education in Rajasthan. This establishment is a development Society for Rajasthan. The Institute called Vyas Nursing Institute was established by the petitioner Society to provide instruction to the people of Rajasthan, who desire to take up nursing as a career. This establishment of the school was in pursuance of the policy laid down by the Govt. of Rajasthan to permit establishment of Nursing Training Institutions in private sector in the State of Rajasthan . It had issued certain guidelines on 1-6-1998 which were later on modified on 9-7-1999.
3. Annexure 1 to the petition is a copy of the guidelines issued on 1-6-1998 wherein it has been stated that Nursing Training Course is governed by the provisions of the Indian Nursing Council Act, 1947 (hereinafter referred to as 'the Act of 1947') and the Rajasthan Nurses, Midwives, Health Visitors and Auxiliary Nurse Midwives Registration Act, 1964 (hereinafter referred to as 'the Act of 1964'). Under the Act of 1964, Rajasthan Nursing Council is established and it is in consultation with the Indian Nursing Council that the power to recognize Nursing Training Institute within the State of Rajasthan even to private sector is vested in the Rajasthan Nursing Council. It is then stated in this Circular that the Govt. has decided to prescribe the

following guidelines, which may be followed before recommending case to Rajasthan Nursing Council. It is then stated that these guidelines may be strictly followed for recommending cases for registration/recognition of any private institution for imparting instruction in Nursing. These were later on amended on 9-7-1999 and certain additions were made particularly in relation to grant of applications to these private institutions.

4. It was thereafter that the petitioner Society applied for No Objection Certificate for opening a new General Nursing School under the name and style 'Vyas Nursing Institute, Jodhpur'. The application for grant of No Objection was considered by the Govt. of Rajasthan and vide its order dated 6-12-1999, it was ordered that No Objection Certificate for opening new school under the name and style 'Vyas Nursing Institute' is granted subject to certain conditions mentioned therein. The first condition was that the Institution will not start a school or give admission to the prospective students till a clear permission to that effect has been issued by Rajasthan Nursing Council. There were other conditions also. The petitioner has filed as Annexure 3 to the petition a copy of this permission. It will thus be seen that when the permission was granted on 6-12-1999, it was with the stipulation that the Institution will not start the Institution or school or give admission to prospective students till clear permission is obtained from the Rajasthan Nursing Council .

5. This permission from the Rajasthan Nursing council came immediately thereafter on 8-12-1999. In this permission or recognition, it was observed as under :-

"Now in the light of the above referred NOC, permission of the State Nursing Council is hereby accorded in respect of Vyas Nursing Institute. Ist 'A' Sardarpura. Jodhpur 342 001 for opening of a school of Nursing with intake capacity of 100 (One Hundred) students, on the following terms and conditions :-"

(Emphasis supplied)

It will thus be seen that even on 8-12-1999, the school was not opened and the Institute was granted permission to open the school of Nursing on that day. The manner in which admissions shall be done was also prescribed both by the State Govt. as also by the Nursing Council.

6. In this letter of recognition of permission issued by the Rajasthan Nursing Council, it was further stated that the Institute will issue an advertisement in leading newspapers with respect to invitation of application strictly in accordance with the rules framed by the State Govt. for giving admission to three years General Nursing training course. The admissions, therefore, were to be made after publication of an advertisement in leading newspaper. Admissions, by very nature of things, could not, therefore, be confirmed till the process contemplated by these letters was undertaken and completed.

7. Thereafter, on 23-12-1999, the petitioner issued an advertisement in Rajasthan Patrika inviting admission to the Institution. In the advertisement itself, they have declared that they will give admission to Rajasthan's first 100 seats for training in Vyas Nursing Institute. Obviously, therefore, no admissions were made till 23-12-1999. Probably immediately thereafter a communication dated 20-12-1999 was received to the Society requiring it to immediately stop the process of admission.

8. Thereafter on 1-2-2000 that the matter has been carefully considered by the Govt. of Rajasthan and in accordance with the judgment of the Supreme Court of India in the matter of *Unni Krishnan, J. P. v. State of Andhra Pradesh*,¹ guidelines which were issued earlier merely reaffirmed and that submissions made in this communication dated 1-2-2000, the Institutions were permitted to make admissions. This communication it should be noted is by the Govt. of Rajasthan to the Registrar, Rajasthan Nursing Council, Jaipur. In this communication, it is then stated that all the conditions mentioned in the communication dated 17-12-1999 shall continue to be applicable and admission be made after 1-4-2000 in accordance with the guidelines prescribed by the State Govt.

9. On 2-2-2000 a communication was addressed to the petitioner Vyas Nursing Institute by the Registrar, Rajasthan Nursing Council, Jaipur, partially amending the recognition/permission granted to it vide letter dated 18-12-1999 and stated that the Institution will be able to give admission from this Academic Session .It will thus be seen that permission to give admissions as stipulated by the State Govt. was granted by the Rajasthan Nursing Council to the petitioner Institution only on 2-2-2000 in the present Academic Session.

10. It will thus be seen that clear permission to admit students to the Nursing School was granted on 2-2-2000 with a stipulation that the admission may be made in this Academic Session. Academic Session as is understood in the education circle, usually begins after the end of the summer every year. However, it may be possible that the Academic Session in the Vyas Nursing Institute commenced on completion of admissions in Feb. 2000. The Vyas Nursing Institute has admitted 100 students and I will assume that the admissions have been made in accordance with the guidelines issued by the State for the first Academic Session. This Academic Session is not over. It is not pleaded anywhere that this Academic Session is over. It is going on. Consequently, the next Academic Session could start only in Feb. 2001 and not before that.

11. It is possible, however, for an institution to start additional course of additional sections by enlarging its admission capacity and which session could not be started in July, 2000. However, the Academic Session for the 100 students already admitted to the Vyas Nursing Institute, it can be assumed to have commenced from Feb. 2000 and has not come to an end. It is in these circumstances that the Circular dated 12-5-2000 has to be seen, which is impugned in this petition. The Circular gives certain further requirement or guidelines to be followed by private Nursing School while making any future admissions. Certain requirements as availability of 150 bed hospital attached to the Institution for providing training to the students. It is then stipulated by this letter that no admission after the Circular would be made unless the feasibility report from the Indian Nursing Council is received and fresh permission is granted by the Rajasthan Nursing Council. The stipulation or condition No. 20 (4) may be considered verbatim, which runs as under :-

It is this condition, which according to the petitioner is liable to be quashed on the grounds submitted during the course of arguments as also in the petition, Mr. M.S. Singhvi, the learned counsel appearing on behalf of the petitioner has contended the following grounds :-

(i) that the Nursing Council of India has no authority to grant recognition and it is to be done by the Rajasthan Nursing Council. The learned counsel took me through the provisions of the Act of 1947 and the Act of 1964 and claimed that it is for the Indian Nursing Council to recommend qualifications necessary to become a qualified Nursing candidate and grant of recognition to an Institution for giving training in Nursing is governed by the Act of 1964 only and the

power to grant recognition is vested in the Rajasthan Nursing Council only. The requirement of getting recognition of the Indian Nursing Council as envisaged by the Circular dated 12-5-2000 is, therefore, illegal.

(ii) Even if it is so held, the guidelines of the Indian Nursing Council requiring this recognition are prospective and, therefore, cannot be applied in relation to the permission granted prior to January, 2000.

(iii) The State of Rajasthan and other respondents are estopped from denying to the petitioner to admit the students.

12. These submissions were stoutly opposed by Mr. Arun Bhansali, learned counsel appearing on behalf of the State. He submits that the petition itself is misconceived. The petitioner has not understood the import of Annex. 10 Circular dated 12-5-2000 and the State Govt. by that Circular, according to the learned counsel for the respondents, has only directed to obtain a feasibility study report from the Indian Nursing Council and not the recognition from the Indian Nursing Council. According to him, therefore, the entire basis in the writ petition is non-existent and consequently the petition is liable to be dismissed. He also relied on provisions of the Act of 1964, canvassed before me that the Rajasthan Nursing Council has also power to issue guidelines to private Institutions imparting instruction in Nursing Course. It is these rival considerations, therefore, fall for my adjudication.

13. In my considered opinion, the petition is misconceived and is liable to be dismissed on that ground. I have pointed out in extensor in the foregoing paragraphs that the process of recognition was complete only on 8-12-1999. The process of admission began on 23-12-1999 immediately after it was so started. It was stayed by the State of Rajasthan and ultimately, admissions were permitted to be given from this Academic Session and thus arise the claim of the petitioner Society that it is entitled to continue the admission even in the second session because admission of 100 students in pursuance of the advertisement dated 23-12-1999 are over. It is pertinent to note here that from the Annexures given to the petition by the petitioner themselves that everyone concerned with the commencement of Nursing Training Course always insisted that the Course began from 1-7-2000 and not earlier. The petitioner has annexed to the petition as Annex. 18 at the page 66 an advertisement dated 4-4-2000 issued by the Govt. of Rajasthan inviting applications for admission to General Nursing Training Course commencing from Sept. 2000 in various Institutions run by Secretariat, Medical, Health and Family Planning Services, Rajasthan Jaipur for that purpose. The guidelines of different Institutions, reference of which has been made

earlier, are applicable with equal force and vigour to the Govt. Institutions also. The Govt. has issued an advertisement inviting applications for the course of Sept. 2000. The last date was 15-5-2000 and so far as the Govt. Institutions are concerned, therefore, the process is still going on. The process is liable to be going on in the Course of the petitioner Society also. Assuming that the admission process in so far as the petitioner Society is concerned was complete in Feb. 2000 itself. The Academic Session could start in the petitioner Society from Dec. 2000 for which they have already completed admission. They cannot start second session or second Academic Session and give admission there to within four months to the first course going on. Without adjudicating on the issue as to whether that can be done or not, under the present guidelines, it is obvious that if they desire to do so they will have to make compliance of requirements of the Circular dated 12-5-1000. The Circular is obviously prospective in nature. It does not in any manner affect the right of the Institution to go on with the Course in relation to students already admitted by it. It only requires that fresh admissions, if any, are to be undertaken by the petitioner Institution, it should be so after following the Circular dated 12-5-2000. In this view of the matter, there is no question of estoppel working against the respondents No step has been taken by the petitioner Society on the basis of the promise made by the respondents looking to which the principle of estoppel would be made applicable. Permission to establish an institution was granted. Permission to admit students to the extent of 100 was granted and admission of 100 students has been made. What has been pointed out by the Circular dated 12-5-2000 is that future admission to be made by the Institution for the second Academic Session or additional Academic Session, as the case may be, has to be made after following the conditions mentioned in the Circular. The question of such estoppel promissory or otherwise does not arise. Thus, the contention raised by the learned counsel for the petitioner, is ill founded.

14. In my view, therefore, the entire petition is misconceived. The Circular dated 12-5-2000 being prospective in nature and it requires only obtaining of a feasibility report from the Nursing Council of India for making future admissions. The petitioner Institution cannot undertake future admissions within four months of the first admission being made unless it satisfies the respondents that it fulfils all the requirements of the Circular dated 12-5-2000 as also earlier guidelines issued by the Rajasthan Nursing Council and the Govt. of Rajasthan. The Institution will have to obtain a feasibility study report from the Indian Nursing Council. The requirement for that purpose by the Circular dated 12-5-2000 is not only legal and proper but also

necessary for imparting proper instruction and education to the persons who in future would become qualified Nursing staff. Such an Institution must have teaching staff, physical facilities, clinical facilities i.e. hospital field practices area and admission criteria and process. It is, therefore, required that any Institution applying for recognition should have a hospital of 150 beds. It goes without saying that it should have adequate teaching staff, it should have well trained staff and whether they have all this or not, is something for the Nursing Council to decide. There is nothing unreasonable in this Circular dated 12-5-2000 as I have already held and I repeat that the Circular dated 12-5-2000 is prospective in nature. There is no illegality in the issuance thereof. The petition must, therefore, fail.

15. I emphasize at this stage that the admission to the Vyas Nursing Institute have been completed for fresh students only in Feb. 2000. Entries for that Academic Session in the Vyas Nursing Institute are, therefore, already over. Students admitted prior to issue of the Circular dated 12-5-2000 will not be affected by the said Circular. All that is required is that in future, when they make admission, feasibility report should be there. The Vyas Nursing Institute in a given situation may want additional session for more students than those to which admissions have been made in Feb. 2000. If it so desires to do, it must obey all the guidelines issued from time to time by the Govt. of Rajasthan and the Rajasthan Nursing Council. If it wants to open an additional sessions, it can do so only after establishing that they have 150 bed hospital attached to it, that they have adequate number of staff to teach, they should obtain a feasibility report. Obtaining of feasibility report is, therefore, necessary in all the circumstances. It will be seen by scrutiny of the entire petition that it is nowhere stated either by the petitioner that the Vyas Nursing Institute has started imparting instruction to the candidates admitted in Feb. 2000. I will assume that it has so started still no right is created in claiming additional admissions than the number (100) fixed by the communication dated 8-12-1999. The entire petition is, therefore, misconceived and deserves to be dismissed.

16. It is the misconception on the part of the petitioner that the admissions offered by them in Feb. 2000 are for the Academic Session 1999-2000. It is factually impossible in these cases. Such admissions may be possible in an institution already existing and functioning e.g. admissions to Medical Colleges which are established in Rajasthan could be made for the Academic year of 1999-2000 in the year 2000 as those institutions are already existing and catering to the needs of the Society for last several

years. They have the equipments and measures to start the course. Whether such situation exists or not is something, which has to be seen and for which, a feasibility report is necessary. In the absence of any clear cut averment in the petition that the admissions were made for the Academic Session 1999-2000, the factual situation clearly demonstrates that the admissions were for the year 2000-2001 only and consequently obtaining of feasibility report for admission for the year 2001-2002 is easily possible.

17. In the result, the petition is dismissed with costs, which is quantified at Rs. 750/- (seven hundred fifty). Interim orders, if any, are vacated forthwith.

Petition dismissed.

Cases Referred.

1. (1993 (1) SCC 645: AIR 1993 SC 2178