

RAJASTHAN HIGH COURT

Nirwan Charitable Trust

Vs.

State of Rajasthan

D.B. Civil Special Appeal (W) Nos. 599 of 2005; 618 of 2005; 621 of 2005; 622 of 2005

(S.N. Jha, CJ. and Vineet Kothari, J.)

23.01.2006

JUDGMENT

S.N. Jha, CJ.

1. The dispute in these appeals arising from the common order of the learned Single Judge in five writ petitions relates to trainee/student intake capacity in the nursing schools.
2. The appellants are nursing institutions or trust/society running nursing institutions imparting training in the General Nursing and Midwifery (GNM) course. The case of the appellants is more or less the same. Shortly stated, the institutions which are subject matter of D.B. Civil Special Appeal Nos. 599, 618 and 621 of 2005 were established in the year 1999 after obtaining necessary permission and approval of the State Government and the Rajasthan Nursing Council (hereinafter referred to as 'the State Council') for imparting three years' GNM training course with intake capacity of 100 students-50 in the case of appellant in D.B. Civil Special Appeal No. 621/2005 which was increased to 100 in the next year i.e. 2000. The institution which is subject matter of D.B. Civil Special Appeal No. 622/2005 was established in the year 2000 with similar permission and approval of the State Government and the State Council for 120 student's intake. They accordingly, admitted students for the sessions 1999-2000, 2000-01, and 2001-2002. For the session 2002-03 the number was reduced to 60. The appellants approached this Court in different writ petitions and the respondents were directed to allot 100/120 students as the case may be and accordingly admissions were taken. Same thing happened in session 2003-04 and by similar orders in different writ petitions the appellants were permitted to admit the

students as per the sanctioned intake. For the session 2004-05 the number of seats was again fixed at 60- in institutions which are subject matter of D.B. Civil Special Appeal Nos. 599/2005 and 618/2005; in 621/2005 and 622/2005 intake of 50 seats and 30 seats, respectively, only was allowed as per the prospectus and the advertisement notice. The appellants approached this Court, like before, seeking direction upon the respondents, particularly, the Medical and Health Department, Government of Rajasthan, to allot students as per their sanctioned intake of 100/120-50% through the Department and 50% through the Rajasthan Private Nursing School Federation, or in the alternative to permit them to make selections and admit students on their own.

3. As would appear from the facts stated hereinafter, the so called reduction of the seats/intake capacity was pursuant to the decision of the Indian Nursing Council (hereinafter referred to as the 'Central Council'), but it was not impleaded as party respondent in S.B. Civil Writ Petition No. 804/2005 giving rise to D.B. Civil Special Appeal No. 622/2005 and S.B. Civil Writ Petition No. 992/2005, giving rise to D.B. Civil Special Appeal No. 599/2005. Curiously, its name was typed in the array of respondents in the cause title but the same was scored out. Having regard to the binding nature of the norms fixed by the Central Council, which would be evident from the following discussion, these appeals are fit to be summarily dismissed on the ground of non-joinder of necessary party, but considering that the writ petitions were decided on merit and the stand of the Central Council is on record in D.B. Civil Special Appeal Nos. 618 and 621 of 2005 and, therefore, there is no difficulty in deciding them on merit, we do not propose to summarily dismiss said appeals i.e. D.B. Civil Special Appeal Nos. 599 and 622 of 2005.

4. The Central Council in its reply in D.B. Civil Special Appeal Nos. 618 and 622 of 2005 has stated that it is the function of the Council in terms of the Indian Nursing Council Act, 1947 to regulate nursing profession in the country and set uniform standards in the matter of nursing training. The Council has laid down norms for opening of nursing training institutions, training and teaching faculties, infrastructure, clinical and physical facilities etc. which are required to be observed by every nursing institution for being recognized by the Council. The Council has power not only to recognize the qualification but also to determine the intake capacity. Nursing institution can be established in any State without approval of the State Government and the State Council and no person can practice without registration as a nurse with the concerned State Council. Unless a nursing institution any where in India is recognized by it, persons obtaining degree/diploma from such institutions are not

entitled to register themselves with the concerned State Nursing Councils and therefore, practice in any part of the country. Such recognition is granted only after inspection by the Inspector of the Council subject to strict compliance of the recommendations of the Council as regards availability of the clinical and physical facilities in the institution.

5. Keeping in view the parameters, a policy decision was taken by the Central Council circulated by letter dated 13.5.2002, reiterated by letter dated 24.6.2005, laying down norms for obtaining permission/approval of the Council for starting and running a nursing course.

6. With respect to the Indira Education Institution, the appellant in D.B. Civil Special Appeal No. 618/2005, it has in particular been stated that the institution had approached the Council seeking recognition of the GNM course with intake capacity of 50 students which was allowed. However, the institution was inspected pursuant to direction of this Court in a public interest litigation on 23.8.2005, and on consideration of the inspection report the Executive Committee of the Council on 15.9.2005 came to the conclusion that the institution was unsuitable for imparting nursing education.

7. With respect to Public Rose Shiksha Samiti, the appellant in D.B. Civil Special Appeal No. 621/2005, it has been additionally stated that the institution was recognized with student intake of 50 and it never approached the Council for increase of the strength.

The learned single Judge upon consideration of the matter upheld the stand of the Central Council and observing that in view of the nature of the training programme in nursing institutions, the intake capacity of students cannot exceed 60, declined to grant any relief to the appellants and thus dismissed the writ petitions.

8. The thrust of submission of Sri S.C. Gupta, learned counsel for the appellants, was that the power to determine the intake capacity of students in nursing institutions vests in the State Council and the Central Council has no power in the matter. The State Government and the State Council having sanctioned the intake capacity of 100 to 120 students, the appellant institutions are entitled to admit that number of students and the respondents are obliged to provide/allot sufficient number of students to them for admission.

9. As regards competence of the Central Council to determine the intake capacity of trainee students in nursing institutions, we may mention that the Indian Nursing

Council Act, 1947 is a pre-Constitution enactment and the legislation can be traced to Entry 12 of List I of the Seventh Schedule to the Government of India Act, 1935 which refers to "institutions for professional and technical training" among other things. In terms of Section 100 of the said Act, the Federal Legislature had exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. Under the Constitution of India "institutions for professional, vocational or technical training" and "determination of standards in institutions of higher education or research and scientific and technical institutions" fall under legislative competence of the Parliament vide Entries 65 and 66 of List I, and it is in exercise of such power that amendments were made in the Indian Nursing Council Act by the Parliament after coming into force of the Constitution. Medical education finds mention in List III at Entry 25 but "subject to the provision of Entries 63, 64, 65 and 66 of List I". The power of Central Council to determine standards in nursing institutions, therefore, cannot be doubted.

10. Section 10 of the Indian Nursing Council Act provides that the qualifications included in Part I of the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognized higher qualifications, for the purposes of the Act. Under sub-section (2):

"Any authority within the States which, being recognized by the State Government in consultation with the State Council, if any, for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, auxiliary nursing-midwifery health visiting or public health nursing, not included in the Schedule, may apply to the Council to have such qualification recognized, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognized qualification for the purposes of this Act."

11. Under Section 11, notwithstanding anything contained in any other law, any recognized qualification shall be a sufficient qualification for enrolment in any State register; and 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. Under Section 13 the Executive Committee (of the Central Council) may appoint such number of inspectors as it deems necessary to inspect any institution recognized as a training institution, and to attend examinations held for the purpose of granting any recognized qualification or recognized higher qualification. Sub-section (2) thereof

provides:

"Inspectors appointed under this section shall report to the Executive Committee on the suitability of the institution for the purposes of training and on the adequacy of the training therein on the sufficiency of the examinations."

Under sub-section (3) of section 13, the Executive Committee shall forward a copy of such report to the authority or institution concerned, and shall also forward copies thereof to the Central Government, the State Government and the State council of the concerned State with remarks, if any, of the authority of the institution conferred on such report. Section 14 provides for withdrawal of recognition by the Central Council.

12. A conjoint reading of the provisions leaves no room for doubt that the Central Council is competent not only to recognize the qualification without which a person cannot be enrolled in the State register as a nurse, midwife etc. and, therefore, cannot practice as such; it has also power to make inspections of the institutions to find out the suitability of the institutions for the purposes of training and on the adequacy of the training therein or on the sufficiency of the examinations, as the case may be. The determination of standards being the domain of the Central Council tracing its competence to Entries 65 and 66 of List I, its decisions are binding on all authorities, and the State Government or the State Council cannot act contrary to them.

13. From the reply of the Central Council and documents enclosed it appears that the question as to fixing of seats/student intake in nursing institutions was under the consideration of the Council for some time. On consideration of the matter the Council in its meeting held on 22.12.2001 took a policy decision which was circulated to all Health Secretaries of the State Governments and the Registrars of the State Nursing Councils vide letter dated 13.5.2002. having regard to the controversy involved, it would be useful to quote the same verbatim as under :

"Reference to the subject given above, I am to inform you that the issue was discussed in the Council meeting held on 22.12.2001 and it was observed that some of the States are giving 100 to 120 seats for starting Nursing Courses. The training programme of Nursing involves more of skill oriented. It is, therefore, essential during the period of training there should be enough scope for the students to acquire skills. Moreover, while teaching procedure return demonstration by each student, it is essential to know that students have

acquired right type of procedure and skill.

It is, therefore, if the students strength is more than 60 in a batch it will be difficult to ensure skill based training. The Council resolved to inform the State Governments and State Nursing Council that sanction for more than 60 students be not given to any institution.

In pursuance of the resolution, you are requested that while sanctioning seats to any nursing institution, sanction be accorded for not more than 60 seats."

By letter dated 19.9.2002 it was clarified that the decision not to give sanction for more than 60 seats was to be implemented from prospective effect for the new schools. The General Body of the Central Council in its meeting held on 30.4.2005 again considered the matter and took decisions relating to infrastructure, nursing institutions, admission criteria, teaching faculties, clinical faculties, number of seats, up gradation of nursing school as nursing College and additional qualification. The decision as regards number of seats, i.e., the intake capacity was as follows :

"Number of seats

(a) Maximum number of 100 seats can be sanctioned to those institutions which are having 500 bedded Parent Hospital/Parent Medical College, provided that they have physical and Teaching facilities as per Indian Nursing Council norms.

(b) Maximum number of 60 seats can be sanctioned to those institutions which are having less than 500 bedded parent/affiliated hospital provided that they are having physical and teaching facilities as per Indian Nursing Council norms."

14. It is apparent that it was in the light of the policy decision communicated by letter dated 13.5.2005 (supra) that the appellant institutions were prevented from taking admission beyond 60 seats for the session 2002-03 onwards, as seen above. It is a different matter that pursuant to interim orders they were permitted to admit 100 to 120 students as the case may be, but in the absence of any adjudication, the appellants cannot claim any right to admit students beyond the sanctioned intake capacity as mentioned in the said policy decision. It is relevant to mention that the policy decision has not been challenged by the appellants, and therefore, on this ground alone, the relief could not be granted to them.

15. The Central Council in its reply has referred to a judgment of this Court dated 6.8.2001 in D.B. Civil Special Appeal Nos. 882, 883, 884 and 885 of 2000. In Appeal Nos. 883, 884 and 885 the appellants were Indira Educational Institution, Public Rose Shiksha Samiti and Nirwan Charitable Trust, appellants in three out of four appeals herein. In its judgment dated 6.8.2001 the Court observed that "there is no dispute

between the parties and in my opinion rightly so that if any institute is recognized by the State Nursing Council, it ensures for its efficacy within the State concerned, but it may not be so recognized at all India basis to confer any right on that basis in other States unless the course is recognized by the Indian Nursing Council...."

16. In the above premises the case of the appellants that the Central Council has no role to play in the matter of fixing the standards of intake capacity in nursing institutions is totally misconceived.

17. On behalf of the appellants it was submitted that from the list of the recognized nursing institutions in different States circulated by the Central Council for the academic session 2004-05, brought on record as Schedule C in D.B. Civil Special Appeal No. 622/05, it will appear that more than 60 intake capacity has been allowed in many institutions by the Central Council itself and therefore, the so-called policy decision of the Council dated 13.5.2002 does not lay down any hard and fast rule not to admit students beyond 60 in number.

18. We have perused the list from which it appears that 9 institutions out of 954 institutions have been allowed intake of students between 75 and 100. In the decision circulated by letter dated 24.6.2005 (supra) it has been stated that maximum number of 100 seats can be sanctioned to those institutions which are having 500 bedded parent hospital/parent medical college provided they have physical and teaching facilities as per Central Council norms. Such institutions thus have been treated as a separate class. In the absence of pleadings, and the institutions concerned not being respondents in these cases, it is not possible, nor necessary, to consider the circumstances in which those 9 institutions were allowed higher intake of students. Presumably this was on account of their having or being attached with 500 bedded parent hospital or medical college having physical and training facilities as per the Central Council norms.

19. Having concluded that the norms laid down by the Central Council in the matter of determination of the intake capacity in nursing institutions are binding, and found that the limitation/restriction on the number of seats to 60 in the case of appellant institutions was pursuant to the norms/policy decision of the Central Council, we find no merit in the case of the appellants. The learned Single Judge, therefore, did not commit any error in dismissing the writ petitions.

In the result, the appeals stand dismissed but without any order as to costs.

Appeals dismissed.