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W.A. Nos. 787, 788, 791 and 796 of 2010

K. Velayudhan Memorial Trust v. State of Kerala

2010 SCC OnLine Ker 1236 : (2010) 3 KLT 367 (FB)

(BEFORE J. CHELAMESWAR, C.J. AND K.T. SANKARAN AND P.N. RAVINDRAN, JJ.)

1. K. Velayudhan Memorial Trust Petitioner
v.

1. State of Kerala
2. University of Kerala
3. Indian Nursing Council, Kotla Road
4. Kerala Nurses & Midwives Council Respondents

For Petitioner : Sri. George Poonthottam

For Respondent : Sri. P.K. Vijaya Mohanan, SC, Matsyafed

W.A. Nos. 787, 788, 791 and 796 of 2010

Decided on June 8, 2010

JUDGMENT

J. Chelameswar, CJ.

These four appeals arise out of a common judgment dated 31.03.2010 in four writ petitions.

2. As a matter of fact, five writ petitions were heard and disposed of by the abovementioned judgment. Petitioner in W.P.(C) No. 35587 of 2009 did not choose to carry the matter any further in appeal. Hence there are only four appeals.

3. The legal issue is common to all these appeals though there are factual variations in each of these appeals. The common factual matrix of the appeals is thus, that each of the appellants established an educational institution within the State of Kerala and proposed to impart education in Nursing. In the background of the abovementioned proposal, each of the appellants made applications to the 3rd respondent in WA No. 796 of 2010, i.e., the Indian Nursing Council (hereinafter referred to as 'the National Council'), a statutory body established under the Indian Nursing Council Act, 1947 (for short 'Central Act') which is a body corporate with perpetual succession and common seal and all other incidental powers and privileges of a body corporate.

4. On receipt of the applications, the abovementioned 3rd respondent issued proceedings purporting to permit the applicant and declaring the applicant to be suitable for conducting various courses indicated in the corresponding communication addressed to each of the writ petitioners wherein it was also indicated the intake which was permitted with reference to each of the courses (five seats for each branch of the courses). To illustrate, we may extract the relevant portion of Ext.P10 communication in WA No. 796 of 2010. The relevant portion reads as follows:

"The Indian Nursing Council conducted inspection of your institution for M.Sc (N) programme on 03-04-/04/2009.

The institution is permitted/Suitable for M.Sc (N) programme with an intake of 25: CHN-5, OBG-5, Paed-5, Psy-5, MEd-surg-5 seats for 2009-10 academic year subject to the approval of State Nursing Council and University/Board.

Suitability Certificate will be issued later on."

5. According to the said communication, such a communication came to be issued after an inspection conducted by the National Council. Thereafter each of the appellants herein approached the State Nursing Council known as the Kerala Nurses & Midwives Council (hereinafter referred to as the 'State Council') established under Section 3 of the Kerala Travancore Cochin Nurses and Midwives Act, Act X of 1953 (for short 'the State Act'). The said State Council by its various communications made to each of the appellants also granted approval for commencement of various courses with a specified intake as against each of the said courses. However, the intake approved by the State Council referred to above was less than the intake purported to have been approved by the National Council. In some of these cases the State Council even disapproved the commencement of the training course in some of the branches of Nursing.

6. Aggrieved by the said decision of the State Council, one of the appellants, i.e., the appellant in WA No. 796 of 2010 carried the matter in appeal to the State Government invoking the authority of the State Government under Section 27 of Kerala Act X of 1953 and the State Government modified the orders of the State Council. The decision of the State Council, in so far as W.A. No. 796 of 2010 is concerned, is filed as Ext.P21. The relevant portion reads as follows:

"In the above circumstances, sanction is accorded to the Principal, College of Nursing, KVM Hospital, Cherthala, Alappuzha to start M.Sc. Nursing Course in the following specialities during the academic year 2009-2010.

1. Community Health Nursing - 5 seats
2. Obstetrics & Gynaecological Nursing - 5 seats

The Management should strictly follow the guidelines of the Government, the University concerned, the Indian Nursing Council and Kerala Nurses and Midwives Council for the conduct of the course. The Principal should obtain separate order from the Kerala Nurses and Midwives Council before admitting the 2nd batch of M.Sc. Nursing students."

Whereas, the appellate decision by the State Government is produced as Ext.P25. The relevant portion reads as follows:

"In the circumstances, Government are pleased to issue Letter of Permission to start M.Sc. Nursing in Paediatric Nursing, Medical Surgical Nursing and Psychiatric Nursing with 2 seats in each speciality in the appellant college in addition to the two courses already approved by the KNMC and University.

4. Accordingly, the Judgment of the Honourable High Court read above is thus complied with."

7. Aggrieved by the fact that the decision of the State Council (as modified by the

appellate decision of the State in one of the appeals) is inconsistent with the alleged approval granted by the National Council in as much as the decision of the State Council did not allow each of the appellants to admit as many students as purportedly approved by the National Council, these various writ petitions came to be filed.

8. One more facet of the problem is that each one of these appellant institutions is also required to secure the affiliation of the Kerala University which is 2nd respondent in W.A. No. 796 of 2010. The 2nd respondent University while granting affiliation in some of these appeals, granted affiliation on condition that the appellants admit lesser number of students than approved by the National Council and also restrict the number of courses with reference to each of the appellants in contrast to the purported approval granted by the National Council.

9. In the background of the abovementioned facts, each of the writ petitioners contended that in view of the approval granted by the National Council, the decisions of the State Council are inconsistent with the approval granted by the National Council and therefore are illegal. They prayed that the respondents be directed not to interfere with the appellants' right to admit students as permitted by the National Council into various courses indicated in the communications sent to each of the appellants and impart training to such students.

10. By the judgment under appeal, the learned Judge disposed of these various writ petitions with certain directions. The operative portion of the judgment under appeal reads as follows:

"21. Exts.P3 and P4 in WP(c) No. 35566/2009, Ext.P3 orders in WP(c) No. 35593/2009 and WP(c) No. 36149/2009 to the extent the number of trainees and the number of specialities approved by the Indian Nursing Council are set aside. It is directed that it will be open to the State Nursing Council to take steps in accordance with regulation 78.6 of Part-XIII-B of the Nursing Council Regulations and obtain appropriate orders from the Indian Nursing Council. This process shall be completed within the time frame fixed in the judgment in WP(c) No. 315/2010. It is directed that once orders are passed by the Indian Nursing Council, it will be open to the petitioners to produce such orders before the respondent University which shall pass fresh orders on the question of affiliation of the petitioners' institution.

22. In WP(c) No. 35587/2009, the challenge is against Ext.P4, by which the University granted affiliation only for Community Health Nursing and Gynaecology, whereas the Indian Nursing Council and State Council by Exts.P1 and P3 orders, granted approval for M.Sc. courses in Gynaecology, Medical Surgical Nursing and Community Health Nursing. Further the University also reduced intake from 5 seats to 4 seats. In view of the principles laid down by the Apex Court in *State of Maharashtra v. Sant Dnyaneshwar Shikshnan Shastra Mahavidyalaya* (2006 (9) SCC 1) and this court in *Vikram Sarabhai Educational Trust & B.Ed. College v. University of Calicut* (ILR 2008 (2) Kerala 623), the order passed by the University cannot be sustained. Therefore, Ext.P4 in WP(c) No. 35587/09 to the extent affiliation is declined in so far as M.Sc. Nursing in Medical Surgical Nursing and reducing the intake to 4 seats is set aside and the University is directed to pass fresh orders of affiliation consistent with Exts.P1 and P3. This shall be done as expeditiously as possible and at any rate within 6 weeks from the date of production of a copy of the judgment."

11. Not satisfied with the decision of the learned Judge, the instant appeals came to be filed. Sri. George Poonthottam, the learned counsel for the appellants, submitted that in view of the permission granted by the National Council in favour of each of the

appellants, the subsequent orders passed by the State Council which are at variance with the permissions granted by the National Council are illegal and therefore the learned Judge erred in holding that the State Council should reconsider the issue and obtain appropriate further orders from the National Council. It is also submitted by the learned counsel that irrespective of the correctness of the abovementioned first submission, pursuant to the prior permission granted by the National Council, admissions were granted to students by each of the appellants in terms of the permission of the National Council and for any reason some of the admissions were found not feasible by the State Council or the State Government, the career of the already admitted students by the appellants will be jeopardised and therefore their admissions are required to be protected.

12. To examine the correctness of the submission made by the learned counsel for the appellants, the brief survey of the scheme of the relevant provisions of the two enactments, namely, the Indian Nursing Council Act and the Kerala Travancore Cochin Nurses and Midwives Act, Act X of 1953 along with the relevant rules and regulations made under each of the abovementioned enactments is required.

13. It may not be out of place to mention that the legislative field of education subsequent to the introduction of 42nd amendment is to be found in Entry 25 of List III of Seventh Schedule of the Constitution. Whatever be the legal position prior to the 42nd amendment *visa viz* the various laws made by the various States and the Parliament after the 42nd amendment of the laws regulating the field of education, are referable only to the legislative authority conferred upon the abovementioned list III of the Seventh Schedule. The said Entry reads as follows:

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

14. The Indian Nursing Council Act, 1947, a pre-constitutional law is made for the establishment of a uniform standard of training for nurses, midwives, health visitors, etc. Section 3 of the Act contemplates establishment of a Council, the composition of which is specified in the said Section. Section 4 declares that the Council shall be a body corporate with a common seal and perpetual succession with power to acquire property both movable and immovable. The following Sections upto Section 9 deal with the various aspects of the management of the said Council, details of which may not be necessary for the present purpose. Section 10 deals with the recognition of the qualifications. Sub-section (1) thereof specifies that the qualifications included in Part I of the Schedule to the Act shall be recognised ‘qualifications’, and the qualifications included in part II shall be recognised as ‘higher qualifications’. Sub-section (2) thereof prescribes that any recognised authority by the State grants the qualification in general nursing, midwifery, etc., which is not already recognised by the National Council may apply to the National Council to have such qualification recognised and the Council on appropriate consideration may grant such recognition as prayed for or subject to such conditions. Sub-sections (1) and (2) of Section 10 reads as follows:

“10. Recognition of qualifications.

(1) For the purposes of this Act, 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 recognised higher qualifications.

(2) Any authority within the States which, being recognised 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 recognised, 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."

15. Section 11 declares that any recognised qualification (obviously recognised within the meaning of Section 10) shall be a sufficient qualification for enrollment in any State register. Sub-section (1) of Section 13 of the Act authorises the National Council to inspect any institution which is recognised as a training institution, (obviously by some local representative as the Central Act does not contemplate any such recognition of any institute by the National Council). Sub-section (2) of Section 13 contemplates a report of the inspection to the Executive Committee of the National Council regarding the suitability of the institution for the purposes of training and adequacy of the training therein or on the sufficiency of the examinations conducted by such institutions. Section 14 authorises the National Council to withdraw recognition of the qualifications granted or impose restrictions on such qualifications after following procedures specified in Section 14. Section 16 of the Act authorises the Council to make regulations generally to carry out the provisions of the Act.

16. The Kerala Travancore Cochin Nurses and Midwives Act, 1953 (which extends the entire State of Kerala) also contemplates the establishment of a Council under Section 3 of the said Act with a composition specified therein. Various subsequent provisions upto Section 19 are the house keeping provisions of the State Council. Sections 20 to 25 deal with the maintenance of registers containing the names of the persons who are qualified/undergone appropriate training or passed appropriate examinations in various courses, like nurses midwives, health visitors etc. Section 26 of the Act deals with the recognition or withdrawal of the recognition of the institution by the said State Council and it reads as follows:

"26. Institution for training and midwives.-

(1) The institutions which are approved and recognised by the Council after inspection by its representative shall be competent to train nurses and midwives auxiliary nurse midwives and health visitors and send them for examination for the qualifying certificates recognised by the Council.

(2) The Council may withdraw recognition from any such institution after its inspection by a representative of the Council.

The order of such withdrawal shall be in writing and shall be served in the manner prescribed by rules."

The other provisions may not be relevant for the present purpose.

17. In the purported exercise of the powers under Sub-section (1) of Section 16 of the Indian Nursing Council Act, 1947, the National Council made certain regulations calling the Indian Nursing Council Regulations, 2007 which were published in the Gazette of India dated 20.04.2007. Section 78 (Part XIII) of the said regulations purports to deal with the procedure for establishing a School or College of Nursing Education and Training. The relevant Clauses for the purpose of the present case are Clauses (2) and (6) of Regulation 78 which read as follows:

"78. Procedure for establishing a School or College of Nursing Education and Training:

xxx xxx

2. The Indian Nursing Council on receipt of the proposal from the Institution to start a School/College of Nursing, will undertake the first inspection of the proposed Institute to assess its suitability with regard to physical infrastructure, clinical facility and teaching faculty.

xxx xxx

6. The decision of INC as regards the suitability of the Institution and the number of seats for each programme shall be final. The SNRC and Examination Boards shall approach INC first before making any departure from the approval granted by INC."

18. In substance, the above two Clauses purport to authorise the National Council to decide upon the suitability of an institution to start School or College of Nursing and also the number of seats that can be filled up by such institutions. Clause (2) authorises the National Council to receive proposals from institutions for the establishment of Schools or Colleges of Nursing. It is in the purported obedience of the powers under the abovementioned Regulation 78(2) read with Regulation 78(6), each of the appellants herein sought the permission of the National Council and it is in the purported exercise of the powers referred to above, the National Council issued the proceedings to each of these appellants permitting them to commence various courses in Nursing with a specified intake of students.

19. The core question to our mind is whether the above extracted sub-regulations (2) and (6) of Regulation 78 are within the competence of the National Council. In other words, whether the said regulations are intra vires the authority of the National Council having regard to the scheme and tenor of the Indian Nursing Council Act, 1947.

20. In our view, the question was earlier considered by a learned Judge of this Court in *National Medical Educational Charitable Trust v. Kerala Nursing and Midwifery Council* [2006 (2) KLT 612]. At paragraph 10 of the said judgment the learned Judge categorically held that the 1947 Act does not empower the National Council to deal with the aspects of recognition or approval to institutions imparting education and Nursing. Paragraph 10 reads as follows:

"10. Going by the above mentioned provisions of the Act, I feel that the Act does not empower the Central Council to deal with recognition or approval of institutions, imparting education in Nursing. The function of the Central Council, is mainly concerned with the recognition of qualifications, for the purpose of enrollment in the State Register. It also enables the Central Council, to de-recognise any recognised qualification awarded by any authority in view of the provisions contained in clause (a) of sub-s.(1) of S.14 read with clause (a) of sub-section (3) thereof. In the case of institutions, like the institution of the petitioner, the power of the Central Council in the light of clause (b) of sub-s.(1) of S.14 read with clause (b) of sub-s.(3) thereof, is limited to de-recognising the qualification obtained from such institutions in other States. Even after the disapproval of the Central Council, the said qualification remains valid for the parent State. Recognition or de-recognition of institutions, like that of the petitioner, imparting training in nursing, does not come under the purview of the Indian Nursing Council Act, 1947. But, the power to recognise the qualifications, may confer incidental or ancillary power to prescribe the minimum facilities to be provided for, in the Nursing institutions. So, by virtue of the regulation making power contained

in S.16(1) of the above said Act, the Central Council may prescribe the physical and clinical facilities that may be provided in an institution. The same is only for the purpose of deciding whether the training imparted in that institution, is upto the mark to enjoy the recognition for the qualification awarded pursuant to the training. Recognition or approval of institutions is essentially the function of the State Nursing Council. S.14(1)(b) of the Act also recognises the said position.”

21. The learned Judge took into consideration the functions of the Council formed under the Kerala Act, 1953 and came to the conclusion that both the enactments deal with different facets of the matter. On an examination of the scheme of both the enactments we do not see any reason to take a view different than the one taken in the abovementioned judgment.

22. We are of the opinion that having regard to the scheme of both the abovementioned enactments, the authority of the National Council is limited to the establishment of standards of education which includes prescribing the appropriate syllabus, norms of training, prescription of appropriate infrastructure for conducting the courses etc. whereas whether a particular institution which proposes to impart education in Nursing etc. is to be recognised having regard to the norms and standards prescribed by the National Council and also having regard to the availability of the infrastructure etc. of a particular institution is a matter to be decided by the Council established under the Kerala Act X of 1953. If that is the legal position emerging from the examination of the two enactments referred to earlier, we are of the opinion that Clauses (2) and (6) of Regulation 78 in so far as they purport to obligate the institutions proposing to impart training in Nursing and allied courses to seek prior approval of the National Council are ultra vires the authority of the National Council. That being the case the various communications issued by the National Council, purporting to permit each of the appellants herein to commence various courses in Nursing with an intake of students specified as against each of those courses, in our opinion, are without any basis in law. The appropriate authority to consider such applications is the State Council established under Act X of 1953 of the State of Kerala though there is a statutory appeal against such authority provided under Section 27 of the Act X of 1953 of the State of Kerala. No doubt, the State Council while granting or declining permission/approval for commencement of any training course in Nursing or allied courses covered under the abovementioned two enactments is bound by the norms and standards stipulated by the National Council.

23. In the circumstances, we are of the opinion that the judgment under appeal is required to be modified directing the State Council to consider afresh the case of each one of these appellants for conducting the various courses which are the subject matter of dispute in these appeals in the light of the judgment and in accordance with the norms and standards prescribed by the National Council apart from any of the prescriptions made by the Kerala State or the State Council and take expeditious decision with reference to each of the appellants preferably within a period of two weeks from the date of receipt of a copy of this judgment.

24. While taking any such decision, the State Council shall also have due regard to the fact that students who have already been admitted by the appellant in WA No. 796 of 2010 pursuant to the purported permission granted by the National Council shall not be affected.

25. Further the University of Kerala is also directed to give affiliation to each of these appellants in terms of the decision to be taken by the State Council as indicated, if necessary. We also make it clear that the reconsideration as directed above is confined

either to the denial of recognition of a particular course or denial of certain requisite number of seats as sought by the appellants. The approval already granted either for the course or seats may not be withdrawn pursuant to this judgment.

These appeals are accordingly disposed of. No costs.

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