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2005 SCC OnLine Kar 249 : (2005) 4 Kant LJ 393 (DB) : 2005 AIR Kant R 1568

**In the High Court of Karnataka at Bangalore
(Division Bench)**

(BEFORE P. VISHWANATHA SHETTY AND H.G. RAMESH, JJ.)

Union of India and another

Versus

KMJ College of Nursing (Trust), Bangalore and others

Writ Appeal No. 2033 of 2004 (EDN)

Decided on April 13, 2005

Education — University — Communication issued by the University informing the Nursing college that since the inspection committee of the Indian Nursing Council on inspection, had found that it was not feasible for the college to start B.Sc. Nursing programme, the college has to obtain the permission from the Indian Nursing Council within a month and submit the same to the University with a view to enabling it to make admission for nursing course — The learned Single Judge, in the impugned order, quashed the communication — Sustainability — Writ appeal — Indian Nursing Council has the power to withdraw recognition granted — There is no obligation cast on an institution established which have secured approval and recognition under the provisions of the Karnataka Nurses Act and Rajiv Gandhi University Act to obtain recognition or approval from the Nursing Council of India — S. 45 — Rajiv Gandhi University Act — S. 23(3) — Karnataka Nurses Act

JUDGMENT

1. In this appeal the appellants have called in question the correctness of the order dated 5th February, 2004 made in Writ Petition No. 46453 of 2002 by the learned Single Judge.

2. The 1st respondent filed the writ petition, out of which this appeal arises, challenging the correctness of the communication dated 1st August, 2002, a copy of which has been produced as Annexure-E to the writ petition, issued by the 2nd respondent (hereinafter referred to as 'the University'), informing the 1st respondent that since the inspection committee of the 2nd appellant (hereinafter referred to as 'the Indian Nursing Council'), on inspection, had found that it was not feasible for the 1st respondent to start B.Sc. Nursing programme, the 1st respondent has to obtain the permission from the Indian Nursing Council within a month and submit the same to the University with a view to enabling it to make admission for nursing course for the academic year 2002-2003. The learned Single Judge, in the impugned order, quashed the communication Annexure-E while reserving liberty to the University to act in accordance with law on the basis of the report that may be submitted by the Indian Nursing Council. The learned Single Judge, in the course of the impugned order, has taken the view that in law there was no obligation on the part of the 1st respondent to obtain permission or recognition from the Indian Nursing Council to establish a nursing institution and the insistence of obtaining the permission from the Indian Nursing Council by the University was without any basis and was arbitrary. As noticed by us earlier, aggrieved by the said order, this appeal is filed. Sri K.C. Mittal, learned Counsel appearing for the appellants challenging the correctness of the impugned order strongly submitted that the conclusion of the learned Single Judge that there is no obligation to obtain permission or seek recognition from the Indian Nursing Council

to establish a nursing institution is totally erroneous in law. Elaborating this Sub-mission, the learned Counsel pointed out that the Indian Nursing Council Act, 1947 (hereinafter referred to as 'the Act') has entrusted the Indian Nursing Council the responsibility of establishing a uniform standard of training for nurses, midwives and health visitors throughout the country. He pointed out that the Indian Nursing Council has to discharge the said responsibility by (1) recognising qualifications (both basic and higher qualifications) in



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general nursing, midwifery, auxiliary nursing midwifery, health visiting or public health nursing; and (2) by withdrawing recognition of such qualifications where the Council finds that the requirements of the Council as per the regulations and instructions of the Council are not satisfied. In this connection, he referred to us Sections 10, 12, 13, 14 and 23 of the Act. According to the learned Counsel, even though a person may be holding a recognised qualification in terms of Part I of the Schedule given to the Act, however, he or she will not be entitled to be registered on the rolls of any State Nursing Council other than the State in which the particular institution is situated. In other words, it is his Sub-mission that the qualification obtained by the person undergoing training at such an institution is not treated as a recognised qualification for the purpose of the Act even though for the purpose of registration on the rolls of a particular State Council where the institution is situated, the same may be in order. It is the Sub-mission of Sri Mittal that the reading of Sections 10, 11, 12, 13 and 14 of the Act together or jointly makes it clear that securing recognition from the Nursing Council of India is a prerequisite to establish a nursing institution. He submitted that the object of the Act and also the Constitution of the Indian Nursing Council being to establish uniform standard of training for nurses, midwives, auxiliary-nurse midwives or health visitors throughout the country, to take a view that the Nursing Council has to say in the matter of establishment of an institution which imparts training for nurses, midwives, auxiliary-nurse midwives and health visitors would be to make the provisions of the Act nugatory and the Nursing Council of Indian non-functional. According to the learned Counsel, the authority referred to under sub-section (2) of Section 10 of the Act which is required to apply to the Council to have the qualification recognised by the Council must be understood as an authority which is established for the purpose of imparting training programme to the nurses, midwives, etc. It is his further Sub-mission that the power given to the Council under Section 12 of the Act to secure report from an authority from time to time and the power to inspect any institution recognised as a training institution under Section 10 through inspectors appointed by it and the power given to the Council to withdraw recognition granted under Section 14 would clearly indicate that no institution can be established and run without recognition granted by the Council to such an institution.

3. However, Sri Nanjunda Reddy, learned Counsel appearing for the 1st respondent -college (hereinafter referred to as "the college") strongly supporting the impugned order passed by the learned Single Judge pointed out that when sub-section (1) of Section 10 of the Act in unequivocal terms lays down that the qualification included in Part I and Part II of the Schedule given to the Act are recognised qualifications and recognised higher qualifications respectively and sub-section (2) of Section 10 of the Act when further provides that any authority which is recognised by the State Council in consultation with the State Government for the purpose of granting any qualification, grants a



qualification in general nursing, midwifery, auxiliary nursing midwifery not included in the Schedule could apply to the State Council to have such qualification recognised and the State Council could declare such a qualification as a recognised qualification, there is absolutely no scope to advance an argument that every institution which intends to impart any training in nursing, midwifery, auxiliary nursing midwifery *etc.*, should get itself recognised by the Nursing Council of India. He pointed out that from the scheme of the Act, it is clear that there is no power reserved to the Indian Nursing Council to grant recognition to an individual institution which is established for training in nursing, midwifery, auxiliary nursing midwifery *etc.* or to withdraw the recognition granted. It is his Sub-mission that the power reserved to the Indian Nursing Council under Section 14 of the Act for withdrawal of the recognition could be only with reference to the authority whose qualifications are recognised by the Indian Nursing Council. Therefore, he submitted that the order passed by the learned Single Judge does not call for interference by us in this appeal.

4. In the light of the divergent points of view very effectively put forward by the Councils appearing for the parties, the only question that would arise for consideration in this appeal is as to whether the conclusion reached by the learned Judge that there was no obligation on the part of the 1st respondent to obtain permission or recognition from the Indian Nursing Council to establish a nursing institution and the insistence of the said condition by the University is without any basis, arbitrary and unjustified?

5. As noticed by us earlier, the only question that would arise for consideration in this appeal is as to whether the college was required to obtain recognition from the Nursing Council of India for establishing a Nursing College and continue to impart training in nursing. The answer to this question depends upon the interpretations we are required to place on Sections 10, 11, 12, 13 and 14 of the Act read along with Part I and Part II of the Schedule given to the Act. As pointed out by Sri Mittal, the object of the Act was to establish uniform standard of training for nurses, midwives, auxiliary-nurse-midwives *etc.*, throughout the country and keeping that object in view, the Indian Nursing Council has been established. Section 2(a) of the Act states 'Council' means a Council constituted under the Act. Section 2(c) of the Act states 'State Council' means a Council by whatever name called constituted under the law of a State to regulate the registration of nurses, midwives or health visitors in the State. Section 2(d) of the Act provides 'State Register' means a register of nurse, midwives or health visitors maintained under the law of a State. Section 3 of the Act provides for Constitution of the Indian Nursing Council. Sub-section (1) of Section 10 of the Act provides that for the purpose of the Act, the qualification included in Part I and Part II of the Schedule shall be considered as recognised qualifications and recognised higher qualifications respectively. Sub-section (2) of Section 10 further provides that any authority within the State which is



recognised by the State Government in consultation with the State Council, if any, for the purpose of granting any qualification, in general nursing, midwifery, auxiliary-nurse-midwifery *etc.* not included in the Schedule could apply to the Indian Nursing Council to have such qualification recognised and on such request being made could declare such qualification as a recognised qualification for the purpose of the Act.

6. Sub-section (3) of Section 10 farther permits the Indian Nursing Council to enter into negotiations with any authority in the territory of India to which this Act does not extend of a foreign country which by the law of such territory or country is entrusted with the maintenance of a register of nurses, midwives or health visitors, for the settling of a scheme of reciprocity for the recognition of qualifications and in pursuance of any such scheme the Indian Nursing Council could declare that a qualification granted by any authority in any such territory or country, or such qualification only granted after a specified date, shall be a recognised qualification for the purpose of the Act. From the reading of Section 10 of the Act, it is not possible to take the view that an institution established in the State for the purpose of imparting training to nurses, auxiliary-nurse-midwife, health visitors *etc.*, are required to obtain recognition before establishing such an institution from the Nursing Council of India. No doubt, the word 'authority' is not defined under the Act. The authority referred to in sub-section (2) of Section 10 of the Act, in our view, cannot be treated as or equated to a college or an institution which has been established for the purpose of imparting training in nursing, midwifery *etc.* The authority referred to in sub-section (2) of Section 10 of the Act appears to us should be understood to mean as several authorities referred to in Part I and Part II of the Schedule given to the Act which are conferred with the power of issuing certificates, diplomas or degrees in nursing. This is clear from the fact that Part I of the Schedule where it is stated that certificates, diplomas, degrees issued by the several authorities referred to in the Schedule are recognised qualifications.

7. At items 27, 58 and 59 of Part I under general nursing, (1) The Board of Examiners appointed by the Government of Mysore; (2) The Board of Examiners appointed by the Government of Mysore (when granted on and after 17-11-1954 to 30-10-1973); (3) The Board of Examiners appointed by the Government of Mysore (when granted on or after 1st November, 1973), are notified as authorities whose certificates, diplomas or degrees in nursing are treated as recognised nursing qualification. As noticed by us earlier, similar is the position in respect of the certificates, diplomas, degrees *etc.*, issued by several authorities in respect of midwifery, auxiliary-nursing-midwifery *etc.* Therefore, the authorities referred to in sub-section (2) of Section 10 of the Act cannot be equated or treated as colleges or institutions established for the purpose of training nurses, midwives, auxiliary-nurse-midwives *etc.* Therefore, we do not find any merit in the Sub-mission of Sri Mittal that the authority



referred to in sub-section (2) of Section 10 should be treated as educational institutions or colleges established for the purpose of training nurses, midwives, auxiliary-nurse-midwives, *etc.* Therefore, sub-section (2) of Section 10 is of no assistance to Sri Mittal to support his Sub-mission. Therefore, once it is held that sub-section (2) of Section 10 has no application and the authority referred to in sub-section (2) of Section 10 is not the college or the institution, we find it difficult to accept the Sub-mission of the learned Counsel for the appellant that the institution established after obtaining the necessary recognition from the authorities within the State who are entrusted with the responsibility of granting such recognition should also obtain recognition from the Nursing Council of India. Similar is the position from reading of Sections 11, 12, 13 and 14 of the Act. Section 11 only provides for the effect of recognition. Clause (a) of sub-section (1) of Section 11 of the Act only provides that notwithstanding anything contained in any other law, any recognised qualification shall be a sufficient qualification for enrollment in any State Register. As noticed by us earlier, the qualifications included in Part I of the Schedule are considered as a recognised qualification and the qualifications included in Part II of the

Schedule are considered as recognised higher qualifications. For example, a person who obtains a certificate in Nursing issued by the Board of Examiners appointed by the Government of Karnataka (when granted on or after the 1st November, 1973) will be entitled to get himself registered in the State Register. Clause (b) of sub-section (1) of Section 11 only provides that no person shall after the date of commencement of the Act be entitled to be recognised or enrolled as a nurse, auxiliary-nurse-midwife *etc.*, unless he or she holds the recognised qualification. Clause (c) of sub-section (1) of Section 11 speaks about the higher qualification. Therefore, from the reading of Section 11, it is clear that a person who obtains a certificate, diploma or degree in nursing issued by the various authorities referred to in Part I of the Schedule are entitled for enrollment in the State Register. Section 12 of the Act as noticed by us earlier, only casts an obligation on every authority in the State which grants recognised qualification or a recognised higher qualification *i.e.*, the authorities set out in Part I and Part II of the Schedule, to furnish such information as the Council may from time to time require as to the courses of study, training and examination to be undergone in order to obtain such qualification and as to the ages at which such courses of study and examinations are required to be undergone and such qualifications conferred *etc.* As noticed by us earlier, since the authority referred to in the Act either under Section 10 or Section 12 cannot be equated to an institution recognised as a training institution, there is no obligation cast on the training institution to furnish any report as may be called for by the Council as the power reserved under Section 12 of the Act is only to call for report or information from the authorities in the State.

8. May be that the authorities in the State, if the information is called for by the Council with regard to a particular institution which is



recognised as a training institution, may in turn call for the report or the information sought for by the Nursing Council of India from such training institution and may have to submit the same to the Council. This view of ours also gets support from Section 13 of the Act. Sub-section (1) of Section 13 of the Act confers power on the Executive Committee of the Indian Nursing Council to appoint Inspectors to inspect any institution recognised as a training institution, and to attend examinations held by such institutions for the purpose of granting any recognised qualification or recognised higher qualification. Sub-section (2) of Section 13 of the Act makes it obligatory on the part of the Inspectors who have inspected the recognised training institutions to report to the Executive Committee on the suitability of such institutions for the purpose of training and on the adequacy of the training or the sufficiency of the quality and the method of the examinations held. From the language employed in Section 13 of the Act that "any institution recognised as a training institution" should not be understood as an institution recognised as a training institution by the Indian Nursing Council; and the same in our view, has to be understood as an institution recognised as a training institution by the State Council which provides for recognition of a training institution in terms of any statutory provision made by the State Government or provides for recognition of such a training institution. It is well-known that throughout the country, there are Universities Act which provides for establishment and recognition of educational institutions. So far as Karnataka is concerned, Rajiv Gandhi University of Health Sciences Act, 1994 governs the establishment and recognition of educational institutions, which intend to impart medical education. The State of Karnataka has passed an Act known as the Karnataka Nurses, Midwives and

Health Visitors Act, 1961 (hereinafter referred to as 'the Nurses Act'). The object of the said Act is to provide for registration of nurses, midwives, auxiliary-nurse-midwives and health visitors in the State. Section 2(d) of the Nurses Act, provides "Council" means the Karnataka Nursing Council constituted under Section 3 of the Act; Section 2(f) of the Nurses Act provides that the "institution" includes any association which maintains or controls a nurses establishment; Section 3 of the Nurses Act provides for establishment, incorporation and constitution of the State Council; Part VI of the Act provides for training institutions. Sub-section (1) of Section 23 of the Act provides that the institutions which are approved and recognised by the State Council after inspection by its representative shall be competent to train nurse, midwives, auxiliary-nurse-midwives or health visitors and to send them for examination for the qualifying certificates of the State Council. Sub-section (2) of Section 23 of the said Act confers power on the State Council to withdraw recognition from any institution which has been approved by the State Council after its inspection by a representative of the State Council; sub-section (3) of Section 23 of the said Act provides no school, hospital or other institution which is not approved or



recognised under Section 23 shall issue to any person a certificate or enter the name of any person in any document purporting to show that such person is qualified by reason of his having passed any examination or undergone any course of training to practice as a nurse, midwife, auxiliary-nurse-midwife or health visitor, unless his name is registered or entered in the list under this Act; sub-section (4) of Section 23 makes contravention of sub-section (3) punishable. Section 24 of the Nurses Act provides for appeal against the decision of the State Council refusing to approve any institution as competent to train nurses, midwives, auxiliary-nurse-midwives or health visitors. Section 29 of the Act provides for the power of the State Government to make Rules to carry out all or any of the objects of the Act. Section 30 of the Nurses Act provides for power of the State Government to make bye-laws. From the provisions referred to above in the Nurses Act, it is clear that the State Council is conferred with the power of approving and recognising any institution as a training institution. Sub-section (1) of Section 45 of the Rajiv Gandhi University Act provides that the colleges within the University area may on satisfying the conditions specified in Section 45 of the said Act be affiliated to the University as affiliated colleges by the University on the recommendation made by the State Government. Sub-section (2) of Section 45 of the Act refers to various matters which are required to be kept in mind by the University and its authorities and the State Government while considering such applications. Section 47 of the Rajiv Gandhi University Act further provides for the power of the University to call for report from the affiliated colleges and also get the affiliated colleges inspected by the competent persons appointed by the Syndicate of the University. Therefore, the "institution" referred to as a 'training institution' referred to in Section 13 of the Act, in our view must be considered as an institution recognised as a training institution under the Karnataka Nurses Act as well as under the Rajiv Gandhi University Act. Further, it is also necessary to notice that sub-section (3) of Section 13 of the Act requires the Executive Committee to forward a copy of the report of the Inspectors who had inspected the training institution to the authority and the concerned training institution and also forward the said report with the remarks if any, of the authority or such training institution to the Indian Nursing Council and to the State Council of the State in which the authority or institution is situated. No doubt, Section 14 of the Act confers power on the Indian Nursing Council to withdraw the recognition granted. The said provision in our view, cannot be understood as

conferring power on the Indian Nursing Council to withdraw the recognition granted to a training institution under the provisions of Karnataka Nurses Act or Rajiv Gandhi University Act. Further, from the reading of the provisions contained in Section 45 of the Rajiv Gandhi University Act and sub-section (3) of Section 23 of the Karnataka Nurses Act, we are of the view that there is no obligation cast on an institution established which have secured approval and recognition under the provisions of the Karnataka Nurses



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Act and Rajiv Gandhi University Act to obtain recognition or approval from the Nursing Council of India.

9. Sub-section (1) of Section 14 provides that upon report by the Executive Committee, if it appears to the Council — (a) that the courses of study and training and the examinations to be gone through in order to obtain a recognised qualification from any authority in any State or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or (b) that an institution recognised by a State Council for the training of nurses, midwives, auxiliary-nurse-midwives or health visitors does not satisfy the requirements of the Council; the Council may send to the Government of the State in which the authority or the institution as the case may be situated, the statement of such fact and the State Council shall forward it along with the said remarks as it may deem fit to the authority or the institution concerned, and in a case where the report shows that the institution recognised by the State Council for the training of nurses, midwives, auxiliary-nurse-midwives *etc.*, such a report should be sent to the State Council with an intimation of the period within which the authority or the institution should submit its explanation to the State Government. Further, sub-section (2) of Section 14 provides that on the receipt of the explanation, it is open to the concerned State Council to make its recommendation to the Indian Nursing Council. Sub-section (3) of Section 14 further provides that the Council after such further enquiry if required and in case where the report with regard to the deficiencies in standards by an institution recognised by the State Council which imparts training of nurses *etc.*, after considering reports of the State Council could declare that with effect from the date specified in the declaration any person holding a recognised qualification whose period of training and study preparatory to the grant to him of the qualification was passed at the institution concerned shall be entitled to be registered only in the State in which the institution is situated. In other words, the person who secures such a recognised qualification from a training institution which does not confirm to the requirements of the Act would not be entitled to register himself or herself either as a nurse, midwife, auxiliary-nurse-midwife *etc.*, in a State other than the State where the institution is located. Therefore, we are of the view that the learned Single Judge was fully justified in taking the view that it is not obligatory to obtain recognised or approval from the Nursing Council of India and quashing the communication-Annexure-E. Therefore, when the law does not require the institutions to seek recognition or approval from the Nursing Council of India, even if the respondent-College has made an application seeking recognition from the Nursing Council of India, it will not affect its right to continue to exist as a nurses training institution so long as the recognition granted by the State Council under the provisions of the Nurses Act and also by the Rajiv Gandhi University Act is not withdrawn. There is no dispute in this case that



the college has secured the approval and recognition under the Karnataka Nurses Act as well as under the provisions of Rajiv Gandhi University Act. The learned Judge in the impugned order has reserved liberty to the Rajiv Gandhi University to act in accordance with law and on the basis of the report submitted by the Council. We do not find any infirmity in the conclusion reached by the learned Single Judge in the impugned order. Therefore, this writ appeal is liable to be dismissed as one devoid of any merits. Accordingly, it is dismissed. However, no order is made as to costs.

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