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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.72 OF 2013

Private Nursing Schools and Colleges
Management Association,
A registered Society having its office
at: 3rd Floor, Soniya Chambers,
Seven Hills, Jalna Road,
Aurangabad.

Through it's President,
Dr.Balasaheb S/o Shivajirao Pawar,
Age : 45 years, Occu.: Social Worker,
R/o 20, Indraprastha Hsg. Society,
Garkheda Parisar, Aurangabad.

..Petitioner

-Versus-

- 1 The State of Maharashtra.
Through its Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai-32.
- 2 The State of Maharashtra.
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai-32.
- 3 The Maharashtra Nursing Council,
E.S.I.S. Hospital Compound,
Nurses Hostel, Second Floor,
LBS Marg, Mulund (West),
Mumbai-400080.
Through its Registrar.
- 4 The Indian Nursing Council,
Combined Councils Building,
Kotala Road, Temple Lane,
New Delhi.
(Amended as per leave granted
on 15.06.2012.)

- 5 Dr.Rahul s/o Rajkumar Jawanjal,
Age : 35 years, Occu.: Medical
Practitioner & Social Service,
R/o Akluj, Tq.Malsiras,
District : Solapur.
(Amended as per leave granted
on 03.10.2012).

..Respondents

ALONG WITH

WRIT PETITION NO.7392/2012

ADHAR EDUCATIONAL SOCIAL MEDICAL MULTIPURPOSE
CHARITABLE TRUST.

V/S

STATE OF MAHARASHTRA AND OTHERS.

WITH

WRIT PETITION NO.7436/2012

THE MAHARASHTRA EDUCATION SPORT ACADEMY.

V/S

STATE OF MAHARASHTRA AND OTHERS.

WITH

WRIT PETITION NO.7437/2012

KANASA KHORA SHIKSHAN PRASARAK MANDAL.

V/S

STATE OF MAHARASHTRA AND OTHERS.

WITH

WRIT PETITION NO.7438/2012

SHREE VENKATESHWARA SHIKSHAN PRASARAK MANDAL

V/S

STATE OF MAHARASHTRA AND OTHERS.

WITH

WRIT PETITION NO.7467/2012

MANGAON SHAIKSHANIK SAMAJIK KALA KRIDA PRATISTHAN

V/S

STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.7468/2012
INDRAYANI SHIKSHAN PRASRAK MANDAL.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.7579/2012
JYOTIRLING SHIKSHAN PRASARAK MANDAL, KADGAON
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.7580/2012
SHREEMATI GURUBAI BATKADALI EDUCATION INSTITUTE
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3330/2013
SARVODAYA BHUMIPUTRA BAHUUDDESHIYA VIKAS MANDAL
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3193/2013
PRAGATI BAHU ADIWASI GRAMIN VIKAS SANSTHA AND OTHERS.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3192/2013
AVTAR MEHERBABA SHIKSHAN SANSTHA.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3190/2013
AJAY BAHUUDDESHIYA SEVA MANDAL.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3189/2013
SAMANATA BAHU UDDESHIYA EDUCATION SOCIETY.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3061/2013
SHRI SURYAMOHAN BAHUDDHESHIYA SHIKSHAN SANSTHA.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3060/2013
GANGAI BAHU-UDDHESHIYA GRAMIN VIKAS SANSTHA
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.2843/2013
OM SAI BAHU UDDESHIYA EDUCATION SOCIETY.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.2842/2013
SANT GAJANAN MAHARAJ SHIKSHAN PRASARAK MANDAL
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3059/2013
RAVINDRANATH TAGORE SHIKSHAN PRASARAK MANDAL.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3223/2013
OM SAI BAHU-UDDESHIYA SHIKSHAN SANSTHA AND OTHER
V/S
STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO.3332/2013
SHREE GANESH GRAMIN VIKAS SHIKSHAN SANSTHA
V/S
STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO.3313/2013
ALMUGHANI EDUCATION SOCIETY.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3276/2013
MAHALAKSHMI BAHUDDSHIYA SAHIKSHANIK AND SAMAJIK
SANSTHA.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3275/2013
AYUVED UTKARSHA MANDAL
V/S
STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO.3274/2013
VARSHA BAHUDDSHIYA MAHILA PRASARAK MANDAL
V/S
STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO.3210/2013
NAVNEET BAHUDDSHIYA SANSTHA NAGPUR.
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3209/2013
SW. RUPESHKUMAR INGOLE BAHUDDSHIYA GRAMIN VIKAS
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3056/2013
ARJUNRAO RANJWAN INSTITUTE OF NURSING.
V/S
THE STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3055/2013
THE SECRETARY, SHRI. BHAGAWAN BABA SEVABHAVI SANSTHA
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3057/2013
SANDIP S/O BHIMRAJ BHISE AND ANOTHER
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.2847/2013
SHIVA TRUST, AURANGABAD
V/S
THE STATE OF MAHARASHTRA AND ORS.

WITH
WRIT PETITION NO.3054/2013
VISHWABHARTI MAHILA SEVABHAVI MANDAL
V/S
STATE OF MAHARASHTRA AND OTHERS.

WITH
WRIT PETITION NO.3052/2013
JAIKRANTI SHIKSHAN PRASARAK MANDAL.
V/S
STATE OF MAHARASHTRA AND OTHERS.

ALONG WITH
WRIT PETITION (LODGING) NO.1906 OF 2012 (ORIGINAL SIDE)
Vishnu Devidas Vande.
v/s
State of Maharashtra and others.

.....
Mr. P.M. Shah, Sr. Advocate, i/by Mr. P.B. Shirsath, for the Petitioner in Public Interest Litigation No.72 of 2013.

Mr. V.S. Deokar for the Petitioners in WP/7392/2012, WP/7436/2012, WP/7437/2012, WP/7438/2012, WP/7467/2012, WP/7468/2012, WP/7579/2012 and WP/7580/2012.

Mr.Syed Mauzam Bukhari a/w Mr.Abdul Shaikh and Mr. Bharat Kothari for the Petitioner Nos.1, 3, 4 and 5 in WP/2842/2013, for Petitioner Nos.8 and 16 in WP/2843/2013, for Petitioner Nos.1 and 2 in WP/3189/2013 and for Petitioners in WP/3193/2013.

Mr. S.S. Thombare for the Petitioner in WP/2847/2013 and, as i/by Mr. Sachin Deshmukh, for the Petitioner in WP/3052/2013.

Mr. Santosh S. Jadhav for the Petitioners in WP/3054/2013 and WP/3055/2013.

Mr. Narendra D. Sonawane for the Petitioner in WP/3056/2013.

Mr. V.R. Dhorde for the Petitioner in WP/3057/2013.

Mr. A.M. Kulkarni with Mr. Ashutosh Kulkarni for Petitioner Nos.1 to 3 in WP/3059/2013.

Mr. Girish Kulkarni, i/by Mr. Sandeep Waghmare, for the Petitioner No.4 in WP/3059/2013, for Petitioner Nos.6 and 7 in WP/2842/2013, for Petitioner Nos.2, 10, 11, 13 and 15 in WP/2843/2013, for Petitioner Nos.1 and 2 in WP/3060/2013, for all the Petitioners in WP/3192/2013, for Petitioner No.1 in WP/3209/2013, WP/3210/2013, for Petitioner Nos.1 to 5 in WP/3223/2013, for Petitioner Nos.1 and 2 in WP/3274/2013, for Petitioner No.1 in WP/3275/2013, for Respondent No.2 in WP/3276/2013, and for Petitioner Nos.1 to 4 in WP/3330/2013.

Mr. Girish Kulkarni a/w. Mr. Jaydeep Milra, i/by Mr. Sandeep Waghmare, for Petitioner No.1 in WP/3332/2013.

Mr. K.S. Motwani for the Petitioner in WP/3061/2013.

Mr. Muzamnil Hussain for Petitioner Nos.2 and 8 in WP/2842/2013.

Mr. Anand Parchure for Petitioner in WP/3190/2013 and WP/3313/2013.

Mr. Sudhir Halli for Petitioner Nos.1 and 3 in WP/3276/2013.

Mr. A.A. Kumbhakoni, Special Counsel, a/w. Mrs. S.S. Bhende, A.G.P., for Respondent Nos.1 and 2 in PIL/72/2013, WP/7392/2012,

WP/2842/2013, WP/3059/2013, WP/3061/2013, WP/3189/2013, WP/3190/2013, WP/3193/2013, WP/3209/2013, WP/3223/2013, WP/3274/2013, WP/3275/2013, WP/3330/2013, WP/3332/2013, WP/7436/2012, WP/7437/2012, WP/7438/2012, WP/7467/2012, WP/7468/2012, WP/7579/2012 and WP/7580/2012, for Respondent Nos.1 to 3 in WP/2843/2013, for Respondent Nos.1 to 6 in WP/2847/2013, for Respondent Nos.1, 2, 4 and 6 in WP/3052/2013, for Respondent Nos.1, 2 and 5 to 7 in WP/3054/2013, for Respondent Nos.1, 2 and 4 to 6 in WP/3055/2013, for Respondent No.1 in WP/3056/2013, WP/3060/2013, WP/3192/2013, WP/3210/2013, WP/3276/2013 and WP/3313/2013, for Respondent Nos.2, 4 and 5 in WP/3057/2013.

Mr. Chandrakant A. Jadhav for Respondent No.3 in PIL/72/2013, for Respondent No.7 in WP/2847/2013, for Respondent No.3 in WP/3052/2013, WP/3054/2013, WP/3055/2013 and WP/3057/2013.

Mr. N.K. Rajpurohit, i/by Ms. Suvarna Telgote, for Respondent No.3 in WP/7392/2012, WP/2842/2013, WP/7436/2012, WP/7437/2012, WP/7438/2012, WP/7467/2012, WP/7468/2012, WP/7579/2012 and WP/7580/2012.

Ms. Aishwarya Ambika for Respondent No.4 in PIL/72/2013.

Mr. Suresh Kumar for Respondent No.4 in WP/7392/2012, WP/7436/2012, WP/7437/2012, WP/7438/2012, WP/7467/2012, WP/7468/2012, WP/7579/2012 and WP/7580/2012.

Mr. Sunil B. Jadhav for Respondent No.5 in PIL/72/2013, for Respondent No.8 in WP/2847/2013, for Respondent No.7 in WP/3052/2013, for Respondent No.8 in WP/3054/2013, WP/3055/2013 and for Respondent No.4 in WP/3056/2013.

Mr. Deepak S. Jadhav, for the Petitioner in Writ Petition (L) No.1906/2012 (original side).

Ms. Anjali Helekar, AGP, for the Respondent/State Writ Petition (L) No.1906/2012 (original side).

Mr. N.K. Rajpurohit i/by Suvarna Telgote, for the Respondent No.2 in Writ Petition (L) No.1906/2012 (original side).

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**CORAM : S.C.DHARMADHIKARI &
R.G.KETKAR, JJ.**

Reserved on : 30th April, 2013
Pronounced on : 09th July, 2013

Judgment (Per S.C.Dharmadhikari, J):

1 The Public Interest Litigation and Writ Petitions were heard together. Since common arguments were canvassed and the issues for consideration are also common, all these matters are being disposed of by this common judgment.

2 Rule.

3 The Respondents waive service. By consent, Rule made returnable forthwith.

4 The facts in the Public Interest Litigation No.72/2013 shall now be noted.

5 Before noting them, what one finds and which is distressing and disturbing to note, is that by our order dated 30th April, 2013 we had granted leave to the Intervener to file brief written submissions. That was only because of paucity of time and since the Intervener's Advocate could not be given time as sought by him for oral argument. However, we find that while filing the Written Submissions, the Intervener has also annexed documents styled as additional documents to the written submissions. The Registry has, without verification and scrutiny and particularly in the light of our specific order and direction, proceeded to accept them. This practice of introducing documents after all arguments are over, not only prejudices the opponents of such parties, but amounts to taking unfair

and undue advantage of the liberty and leave granted by this Court. Later on, if the Court refuses to consider the additional documents, then, a grievance is invariably made either in review jurisdiction or otherwise that the Court has omitted from consideration certain materials and therefore, the order is ex-facie erroneous. These attempts are nothing but trying to outsmart the opponent and trying to cash on and make gains by relying on the discretion exercised and liberty given by the Court. All this destroys the very sanctity of judicial process and such practices, therefore, need to be deprecated in strongest terms. We remind the Registry that hereafter no written submissions accompanied by documents need be taken on record unless the Registry officials seek directions from the concerned Judges/ Benches. This tendency needs to be curbed because documents and submissions are filed in matters after arguments are concluded and the orders are reserved. At that stage, no documents can be filed unless proper applications are made and prior leave of the Court is sought by the parties. The Registry could not have accepted such additional documents annexed to the written submissions and without seeking directions from the Court. Therefore, we leave aside and omit from consideration all additional documents.

6 Now turning to the main issue, according to the “**Concise Oxford English Dictionary, Indian Edition**” the word “Nurse” means “*a person trained to care for the sick or infirm.*” The other meaning is “to give medical and other attention, to treat or hold carefully or protectively.”

7 “Practitioner Nurse” or “Nurse Practitioner” means “*a nurse who is qualified to treat certain medical conditions without the direct supervision of a doctor.*”

8 This ordinary and plain meaning of the above terms is what is material and relevant for the common man. This common parlance meaning itself would indicate that anybody and everybody with little or no training and experience cannot proclaim to be trained to care of the sick or infirm. If that be so, every relation, parent, friend or near and dear one would claim to be nursing the sick or infirm. It goes without saying, therefore, that one has to be trained to be a nurse and that is precisely why Nursing Institutes are set up or allowed to be set up by the State. In terms of the directive principles of the State Policy, the State is obliged to give public assistance in certain cases. Article 41 of the Constitution of India states that within the limits of economic capacity and development, the State has to make effective provision for public assistance in cases of old age, sickness and disablement. It is with this background and introduction that we proceed to consider the issues raised in this batch of petitions and essentially the Public Interest Litigation.

9 In the Public Interest Litigation No.72/2013, the Petitioner is a registered society of private nursing schools and colleges. It has filed this Public Interest Litigation through its President. The Respondents to this Public Interest Litigation are the Secretary, Department of Medical Education and Drugs, Government of Maharashtra, the Secretary in the Department of Social Justice and Special Assistance, Government of Maharashtra and the Maharashtra Nursing Council established under the Maharashtra Nurses Act, 1966.

10 It is stated that the Petitioner is a registered management association for the private nursing schools and colleges in the State of

Maharashtra. Near about 400 schools and colleges are the members of the association, which are running private nursing schools and colleges in the entire State. The Respondent No.3 is empowered to grant permission to run the said nursing schools/ colleges by following due procedure of law as prescribed under the Maharashtra Nurses Act, 1966. Annexure A to the Public Interest Litigation is a copy of the registration certificate of the Petitioner association.

11 It is stated that the procedure for registration and opening of the courses namely Auxiliary Nursing Midwifery (for short "ANM") and General Nursing Midwifery (for short "GNM") by any Government or private institution is prescribed under the Maharashtra Nurses Act, 1966. In the said Act, under Chapter IV, the Respondent No.3, namely, Maharashtra Nursing Council (for short "MNC") is empowered to grant permission and recognize any institution for training of nurses in accordance with the bye-laws made by it and after inspection by its representatives and further holding such enquiry as it deem fit. It is stated that the Respondent No.3/MNC is further empowered to grant affiliation to the institutions under Section 26 of the Maharashtra Nurses Act, 1966.

12 It is claimed that in pursuance of the provisions of the Maharashtra Nurses Act, 1966, the Respondent No.3/MNC can grant permission to start nursing schools/ colleges as well as grant affiliation to such institutions which fulfill the conditions prescribed in the bye-laws of the MNC. It is submitted that the Apex Body of the MNC is situate at Delhi and is known as Indian Nursing Council (for short "INC"). Further permission from the INC has to be obtained by the Institutions within one year from commencement of the course.

13 It is stated that the INC by its letter dated 14.09.2000 issued certain directions to the Respondent No.3/MNC as regards to the grant of permission to run the nursing schools/ colleges by the institution. A copy of the letter dated 14.09.2000 of the INC is annexed as Annexure-B to the Public Interest Litigation. It is stated that the INC has provided for a Essentiality Certificate to be obtained from the State Government. The State Government has to issue this Essentiality Certificate to start new nursing school/ college.

14 It is stated that the State Government, after receipt of the letter dated 14.09.2000 from the INC, for the first time prescribed the procedure for issuance of the Essentiality Certificates to start the ANM and GNM courses by the institutions through the Government Resolution dated 21.03.2005. Annexure-C is a copy of the Government Resolution dated 21.03.2005.

15 The Petitioner, therefore, states that the procedure prescribed is that the proposals for opening new schools/colleges are to be forwarded and submitted to the Respondent No.3/MNC. The Respondent No.3/MNC scrutinizes the same and satisfies itself about feasibility of nursing school/ college to be set up. It then forwards papers to the State Government for issuance of Essentiality Certificate in terms of the directions issued by the INC vide its letter dated 14.09.2000. After issuance of the Essentiality Certificate by the State Government, the Respondent No.3/MNC has to cause an inspection through its representatives and it is also empowered to hold such inquiry as it deems fit for recognizing the institution for training nurses.

16 The Petitioner then submits that the recognized institution is required to obtain a Suitability Certificate from the INC after passing off the first batch of nurses in the said institution. This procedure which is prescribed and adopted is continuing and there is no other mode prescribed by either the State Government or the Respondent No.3/MNC. This procedure is applicable to all nursing schools/ colleges including the Government nursing schools/ colleges. By annexing the Chart at Annexure-D, the Petitioner has pointed out the cases of permissions for starting new schools along with Essentiality Certificates and thereafter, Suitability Certificates from the INC.

17 It is stated that most of the colleges in the State have already admitted students for the ANM and GNM courses in the month of June, 2011. That is on the basis of the procedure prescribed for obtaining the Essentiality Certificate from the State Government. The Respondent No.3/MNC has issued permission to start the college/ school on the basis of the certificate issued by the State Government. Thus, nursing schools/ colleges would be inspected by the INC from the month of May, 2012. Thereafter, affiliation granted in favour of the same would be continued by the Respondent No.3/MNC.

18 It is stated that the Respondent No.3/MNC for the first time on 30.01.2012 informed the schools/ colleges that compliance with the Government Resolution dated 21.03.2005 is mandatory. The insistence was to comply with condition Nos.8 and 9 mentioned in the Government Resolution dated 21.03.2005, failing which it was stated that the permission to admit students from the academic year 2012-13 would be

refused. Annexure-E is a copy of the circular issued by the Respondent No.3/MNC dated 30.01.2012 to this effect.

19 Equally, the State Government by the circular dated 21.04.2012 issued directions and stated that as per the Government Resolution dated 21.03.2005 after issuance of the Suitability Certificate by the INC, again permission from the State Government is necessary to be obtained for starting of the courses by the schools/ colleges. It directed that the students admitted in those schools/ colleges which fulfill these conditions would be eligible for getting scholarship. Annexure-F is a circular dated 21.04.2012.

20 It is in these circumstances that the Petitioner alleges that by the circulars at Annexures E and F, serious prejudice is caused to the schools/ colleges which are running these courses and which are commenced after obtaining valid permission from the Respondents. If it is only prerogative of the Respondent No.3/MNC to grant recognition and affiliation to the schools and colleges which intend to impart education in nursing courses, then, the Respondents cannot direct compliance with any further conditions and which are contrary to the Maharashtra Nurses Act, 1966. In other words, after certificates are issued by the State Government and by the INC, nothing more is required to be done. There is no provision by which the matter must go back again to the State Government and particularly for admission of students. It is urged that the communications/ circulars at Annexures E and F dated 30.01.2012 and 21.04.2012 are contrary to the Maharashtra Nurses Act, 1966. No directions contrary to the said Act can be issued by any authority. Once the Essentiality Certificate has been issued, it is as good as valid

permission. Further permission and affiliation is to be granted by the Respondent No.3/MNC subject to the condition of obtaining the Suitability Certificate from the INC. The INC by letter dated 14.09.2000 made it compulsory to obtain the Essentiality Certificate, but this letter is misconstrued and misinterpreted by the State Government and it is now compelling the Petitioner and its members to comply with condition Nos.8 and 9 of the Government Resolution dated 21.03.2005.

21 It is complained that by virtue of such insistence, the State Government has stopped releasing funds towards scholarships for the students who were already admitted by the members of Petitioner in the month of June, 2011 for the academic year 2011-2012. Before issuance of the circulars, the State Government has invited the forms for sanction and release of the scholarships for the backward class students. The said forms were directed to be filled in online by the institutions. These forms duly filled in were already forwarded to the State Government, but the scholarship has not been released which has caused serious prejudice and hardship to the deserving students of backward class.

22 It is stated that the State Government by virtue of the Government Resolution dated 24.06.2011 issued directions to the schools/ colleges, who intend to increase the capacity of students, that they will be required again to follow the entire procedure and then required to again obtain the permission from the State Government as per the conditions laid down in the Government Resolution dated 21.03.2005 vide condition Nos.8 and 9. It is thus stated that these directions are totally in contravention to the circular issued by the INC dated 19.02.2009 in which it is clearly specified that no

Essentiality/NOC/Sanction will be required from the State Government for increase in intake capacity of the students by the institutions. Annexure-H to the Public Interest Litigation are the copies of the Government Resolution dated 24.06.2001 and the Circular dated 19.02.2009.

23 It is stated that the schools and colleges, which are members of the Petitioner Association, have already been given permission to start the schools/colleges by following the procedure laid down under Sections 25 and 26 of the Maharashtra Nurses Act, 1966 by the competent authority. As there is no procedure laid down empowering the State Government to grant further sanction, all exercise which is intended to be done through the Government Resolution dated 21.03.2005 at the hands of the State Government is unwarranted, unlawful and unconstitutional. The same, therefore, requires to be struck down by holding it as bad-in-law, illegal and violative of fundamental rights. All such schools/ colleges which are already granted permission to run the institution by the competent authority be therefore required to be declared as affiliated institutions under the law.

24 It is stated that the State Government before issuance of Essentiality Certificates in favour of any schools/ colleges, has to consider the need to start ANM and GNM courses. It has to further consider the ratio of nurses as regards to the population in the State. It has to also consider that the said schools/ colleges will fulfill the norms and conditions laid down by the INC and the MNC. The said Essentiality Certificate is valid for a period of three years from the date of its issuance. On the basis of the said Essentiality Certificate, the permission to start the

course in that particular year at the particular place is issued by the MNC. If this procedure is already followed then again after issuance of the Suitability Certificate by the INC, to approach the State Government for fresh permission is not required under the law. Neither there is any such procedure prescribed in the Maharashtra Nurses Act, 1966, Rules and Bye-laws made in this behalf. The procedure now directed to be adopted through the circulars dated 30.01.2012 and 21.04.2012 is never practiced hereinbefore. There is no reason mentioned in the said circulars and the Government Resolution dated 21.03.2005 for the purpose of adopting such procedure.

25 Upon these allegations and averments, the Petitioner prays that this Court be pleased to issue a writ, order or direction under Article 226 of the Constitution of India quashing and setting aside the clauses No.8 and 9 of the Government Resolution dated 21.03.2005 and the circulars dated 30.01.2012 and 21.04.2012. The Petitioner prays for issuance of a writ of mandamus or any other appropriate writ, directing the Respondents and their authorities, not to insist on compliance with the above conditions and circulars.

26 The affidavit-in-reply has been filed by Raosaheb Udaji Rathod, Regional Deputy Commissioner, Social Welfare Department, Aurangabad on behalf of the Respondent No.2 in which it has been stated that the circulars clarify that the institutions which have been granted provisional permission subject to the Essentiality Certificate of the State Government and the Suitability Certificate of the INC for the academic year 2011-12, would have to submit the said Essentiality Certificate and evidence of submission of proposal to the INC. In cases of institutions

which have been granted provisional permission from the academic year 2005-2006, such institutions can be given permission for the academic year 2012-13 only after producing final permission given by the State Government. This has to be produced before the MNC by 30.04.2012. The affidavit-in-reply thus states that there is nothing illegal and unconstitutional about the impugned conditions and their imposition.

27 The affidavit-in-reply dated 08.08.2012 has been filed on behalf of the Respondent No.1 and that affidavit is affirmed by Mr.Kashinath Sonaji Bhopale, Dean, Government Medical College and Hospital, Aurangabad. In paragraph 3 of this affidavit, this is what is stated:-

“3. *With reference to para No.1 of the Writ Petition, I say and submit that, the Government Resolution (G.R.) dated 21.05.2005 of the Medical Education and Drugs Department, that is Respondent No.1, had been in force from the date of issue. However, the Maharashtra Nursing Council, that is Respondent No.3, did not follow this G.R. until 30.01.2012 when it issued a Circular making it mandatory for the applicant institutes to follow this G.R.*

I say that the Circular dated 21.04.2012, issued by the Social Justice and Special Assistance Department, that is Respondent No.2, lays down conditions for grant of post-matriculation scholarship to students of ANM and GNM course. Grant of scholarship is a matter of policy and the Government is well within its right to lay down appropriate conditions for the same.”

28 Reliance is placed on Sections 10, 25 and 26 of the Maharashtra Nurses Act, 1966 to justify the imposition of conditions. It is stated that in furtherance of the directions of the INC, the State Government has issued the Government Resolution dated 21.03.2005. If

the Essentiality Certificate has to be obtained from the State Government and that is the mandate flowing from the letter dated 14.09.2000 issued by the INC, then, with a view to satisfy itself that such Essentiality Certificate deserves to be granted that the State Government provided for its permission for opening nursing schools/ colleges. The policy decision of the State Government also ensures compliance with the Maharashtra Educational Institutions (Prohibition of Capitation Fees) Act, 1987. Thus, the students ought to be admitted on merit and that the Government being given responsibility to implement the provisions of the Maharashtra Nurses Act, 1966 and Rules thereunder, that the condition Nos.8 and 9 of the Government Resolution dated 21.03.2005 have been inserted. There is nothing contrary to the Maharashtra Nurses Act, 1966 therein. It is stated that the Essentiality Certificate seeks to certify that it is desirable to open nursing school/programme and that it is feasible to open nursing school/ programme. The requirement of obtaining the Essentiality Certificate cannot be equated with the State Government permission which is issued in terms of the Government Resolution.

29 It is stated that from the academic year 2006-2007 to 2011-2012, the Respondent No.3/MNC has permitted as many as 185 ANM/GNM institutes to increase in all 2480 seats. The State affidavit points out that the Respondent No.3/MNC does not have any power to increase seats of a programme in nursing. In these circumstances apart from contemplating strict action against the Respondent No.3/MNC that the State Government insisted on the Petitioner institutes to obtain the Essentiality Certificate from it before applying to the INC and thereafter, permission to admit students. Thus, this policy decision has been taken bearing in mind the academic interest and ensuring compliance with

several provisions of the Maharashtra Nurses Act, 1966 and the Maharashtra Educational Institutions (Prohibition of Capitation Fees) Act, 1987. For all these reasons, there is no merit in the Writ Petition and it be dismissed.

30 The Joint Secretary of the added Respondent No.4/INC has filed an affidavit in which the following stand is taken:-

- “3. *In this connection the answering Respondent submits that co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions is listed at Entry 66 of List-I Union List of the Seventh Schedule (Article 246). Likewise Entry 25 and 26 of List-III Concurrent List is relating to education, including technical education, medical education and universities subject to the provisions of entries 63, 64, 65 and 66 of List-I and legal, medical and other professions. In so far as the List-II State List is concerned the relevant entry is at Entry 6 (Public Health, sanitation, hospitals and dispensaries. Hence the Acts and Rules framed by the answering respondent i.e. a Central Statutory authority regarding syllabus, guidelines for opening of new nursing institutions etc. with a view to maintain Uniform Standards of Education all across the country is binding on all concerned. It is also submitted that subject to the above the laws enacted by the respective State Government and by the Central Government operate in their respective domains and that there is no conflict between any law enacted by the State Government and any particular law enacted by the Central Government.*
4. *That under the Constitutional Scheme for distribution of the Executive Powers of the State, no instrumentality of the Central Government can interfere in the functioning of the State Government or the functioning of institutions of the State Government. The State Governments, the State Nursing Councils and the Indian Nursing Council have totally different roles in the system and one cannot step into the jurisdiction of the other.*

5. *That the answering Respondent most respectfully submit in this context that in so far as the Indian Nursing Council is concerned, the role of the Council as prescribed in the Indian Nursing Council Act, 1947 is to regulate the nursing profession in the whole of India and to set uniform standards in the matter of nursing training.*
6. *That in order to ensure uniform standards of training for nurses, midwives and health visitors all over the country, as mandated by the 1947 Act of Parliament, the Indian Nursing Council has been given powers to recognize qualifications in these fields being awarded by various authorities. Sub-section (1) of Section 10 of the Act provides that “For the purpose of this Act, the qualifications included in Part I of the Schedule shall be recognized qualifications and the qualifications included in Part II of the Schedule shall be recognized higher qualifications”. Sub-section (2) of Section 10 provides that “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.....”. Thus, it may be seen that the Statute has clearly prescribed that even for recognizing a qualification or higher qualification being awarded by any authority in any State, it is only those authorities who have been recognized by the State Government in consultation with the State Council who can apply to the Council for recognition of such qualification or higher qualification, as the case may be. Accordingly, the Indian Nursing Council has been vested with the power to recognize or approve any particular institution or college for the awarding of qualifications recognized by the Council. In fact, approval of the facilities at individual institutions by the Indian Nursing Council is also built into the scheme of the 1947 Act. This aspect stands settled by a reading of the provisions of Sections 13 and 14 of the INC Act, 1947.”*

31 The Respondent No.4/INC submits that it is not aware as to in what circumstances the State Government inserted clauses 8 and 9, but clarifies that until and unless the State Government issues the Essentiality Certificate, the INC does not conduct an inspection nor grant approval or the Suitability Certificate to the nursing institution. It maintains that the power to recognize/ approve the nursing institution flows from the provisions of the Constitution of India and as per the Maharashtra Nurses Act, 1966, so also, regulations framed therein.

32 The Respondent No.3/MNC has filed an affidavit and in paragraphs 4 to 6, it states as under:-

4. *I say that, object and purpose of answering Respondent i.e. Maharashtra Nursing Council (hereinafter referred as MNC) is to unify and make better provision in laws relating to nurses registration and training of nurses in the State of Maharashtra & Goa. It is formulated under Section 3 of the Maharashtra Nurses Act, 1966. That the said Council has its own Rules called "Maharashtra Nursing Council Rules, 1971" (hereinafter referred as "the said Rules") and bye-laws called as "Maharashtra Nursing Council Bye-laws, 1973" (hereinafter referred as "the said Bye-laws"). Since its formation, MNC has been functioning strictly in accordance with Maharashtra Nursing Council Rules, 1971 and Maharashtra Nursing Council Bye-Laws, 1973.*
5. *I say that, the impugned circular dt.30.01.2012 is issued in view of the Government Resolution dt.21.03.2005 and Government circular dt.15.10.2011. I say that the procedure contemplated for opening a new nursing school for conducting the nursing courses is that the school has to submit proposal to that effect to the answering respondent, thereafter the answering respondent conducts the feasibility inspection of the said school. Thereafter the proposal is sent to the State Government for essentiality certificate so as to ensure that the nursing course is needed for the said area. The essentiality certificate is needed from the State*

Government as per the directions of the Indian Nursing Council. There is no need to obtain separate permission or recognition from the State Government for the ANM and GNM Nursing courses and there is no provision either in the act or the rules for getting separate permission or recognition from the State Government and the essentiality certificate is sufficient hence the condition put forth by the Maharashtra State Government in Government Resolution dt.21.03.2005, overruled the powers and functions of the answering respondents thereby making it compulsory to take final permission from the State Government by separate resolution is contrary to law and the rules and bye-laws. The said condition is irrational and without application of mind and does not flow from act or the rules and bye-laws.

6. I say that the petitioner association is also challenge circular dated 21.04.2012 of the State Government, Social Welfare Department where is also issued on the basis of G.R. dated 21.03.2005 with G.R. condition clause No.8, 9 and make compulsory at the very fag end of academic year of 2011-2012. Where the first time State Government issued scholarship sanction recognition/ affiliation procedure for ANM and GNM nursing course. Where recognition/ affiliation procedure lies only with the Maharashtra Nursing Council and its statutory body created u/sec. 3 of Maharashtra Nurses Act, 1966, and as per u/sec. 10(j), 2(o) and Sec.25, 26 and bye laws No.24 of Maharashtra Nursing Council Bye-laws, 1973, deals with recognition/ affiliation and under bye-laws of the answering Respondent thus the contention of Respondent No.1 and 2 stated in G.R. dated 21.03.2005 and circular dated 21.04.2012 is volley null and vide. hence the circular issued on 21.04.2012 and G.R. dated 21.03.2005 of State Government by name of policy decision is rational reason and is contrary to act, rules and bye-laws.”

against the Respondent No.3/MNC, what the MNC asserts is that the State Government cannot urge that the MNC does not have any power to grant any permission to open ANM/GNM schools for training nurses or conducting programmes in the nursing. The stand of the State Government is contrary to the Maharashtra Nurses Act, 1966 and Rules, so also, bye-laws of the MNC. It terms the stand of the State Government as irresponsible and contrary to the provisions of the Maharashtra Nurses Act, 1966. In paragraphs 8 and 9 of the affidavit, the role of each of these authorities, namely, the State Government, MNC and INC has been emphasized. Therefore, the MNC does not support the State Government. In short, the power of recognition/ permission to the schools/ institutions in terms of the relevant statutory provisions is reasserted and reaffirmed by the MNC.

34 The State Government was required to file an additional affidavit in reply because of certain interim orders and directions of this Court in this Public Interest Litigation. We shall refer to that aspect little later.

35 This Public Interest Litigation was filed before the Aurangabad Bench of this Court and after hearing the counsel appearing for the Petitioner, the Division Bench on 08.05.2012 initially denied any ad-interim relief, but granted liberty to the Petitioner to move the Court again. Thereafter, on 15.06.2012 this Public Interest Litigation was placed before the Division Bench and it granted leave to the Petitioner to add the INC as a party Respondent and issued notice to the added Respondent/INC. Thereafter, this Public Interest Litigation and connected Writ Petitions were heard extensively by the Division Bench of this Court

at Aurangabad and at that stage, it had before it even the request for intervention in the Public Interest Litigation. The Intervener brought to the notice of the Court several acts of omission and commission on the part of the Respondent No.3/MNC and its officers including the President and Secretary. After hearing the parties at length, this Court passed the following order on 03.10.2012:-

“16. *To sum up the issues involved in the petitions are of larger public interest affecting the career of the nursing students in the State; the express violation of order dated 18.04.2011 of this Court, and the discipline and standard of education. We, therefore, expect the State Government to file a comprehensive affidavit on the various aspects highlighted by us.*

ORDER

(a) Registrar (Judicial) is directed to place Writ Petition No.4094/2012 filed by Private Nursing Schools and Colleges Management Association, Aurangabad and Civil Application No.7068/2012 in WP No.4094/2012 filed by the Intervenor, before the Hon'ble the Chief Justice of Bombay High Court for considering this Writ Petition and Civil Application No.7068/2012 as Public Interest Litigation (PIL);

(b) We issue injunction against the State Government as well as Maharashtra Nursing Council restraining them from issuing any 'Essentiality Certificate' and 'Provisional permissions' respectively, until further orders.

(c) Additional Chief Secretary (Administration), Home Department, Government of Maharashtra, Mumbai to take possession of all the relevant records and proceedings of the Maharashtra Nursing Council, Mumbai and also from the President Shri Mali and Registrar of the Council in relation to grant of permission to the Nursing Colleges for the academic year 2011-2012 and report compliance thereof by the next date to this Court. Further order will be passed in the next hearing.

(d) We direct the State of Maharashtra to file additional affidavit in reply, stating therein the steps to

be taken against the Respondent No.3-Council and its Office bearers and Registrar and such of the colleges which are not granted 'Essentiality Certificates' by the State; and the Nursing colleges which are granted 'Provisional permissions' in the State of Maharashtra in violation of order dated 18.04.2011 in Writ Petition No.723/2011.

(e) For the present, we decline the prayer for grant of interim relief in favour of the Petitioners in the Writ Petitions.

(f) Copy of this order be sent by Fax to the Chief Secretary, Additional Chief Secretary (Administration), Home Department, Mantralaya, Mumbai.

S.O. to 18th October, 2012 at 2:30 p.m..”

36 It is in terms of this order and direction, the matter was placed on 18.10.2012 and once again after hearing the parties, this Court directed as under:-

1. Heard.
2. Affidavit in reply is filed by Respondent No.1 by Mr.Ashok Maroti Atram, Deputy Secretary, Medical Education & Drugs Department, Mumbai.
3. The State has come out with a perspective plan, for the first time, in the State of Maharashtra under Government Resolution dated 6th October, 2012. According to the Govt. Pleader, under the said Government Resolution, the State has approved permissions to be granted to RANM course for 376 institutes/ nursing colleges and RGNM course for 154 colleges/ institutes. The basic infrastructural requirements/ facilities required for starting these colleges/ institutes are also mentioned in the Government Resolution.
4. Surprisingly enough, the State did not prepare such perspective plan earlier.
5. The Government Pleader, on instructions, submits that public notice has been issued to said colleges/ institutes, copies of which are placed on record and

marked "X".

6. *During the course of hearing, the issue was raised in respect of grant of 'suitability certificate' by Indian Nursing Council, New Delhi.*
7. *Learned counsel Shri Jadhavar submits that inspection of few of the institutes/ colleges has been conducted and the Indian Nursing Council is seized of the matter.*
8. *In fact, that this Court is examining the issue and a detail order has already been passed on 3rd October, 2012, against which, an SLP was preferred by Maharashtra Nursing Council, which came to be dismissed by the Apex Court on 9th October, 2012.*
9. *We direct the Indian Nursing Council, not to issue any 'suitability certificate' until further orders to the colleges/ institutes, which have received 'provisional permission' from the Maharashtra Nursing Council.*
10. *The Government Pleader shall take instructions in respect of as to whether the State Government carried out physical inspection of the respective nursing colleges/ institutes for granting 'essentiality certificate'. The AGP to take instructions on the aforesaid points also.*

S.O. to 31st October, 2012 at 2:30 p.m..

Authenticated copy of this order be provided to learned Government Pleader and Mr.Alok Sharma."

37 When the matter appeared before this Court on 31.10.2012, this Court noted as to how the Essentiality Certificate has been granted and admission of students for the academic years 2011-12 and 2012-13. This Court directed further replies to be filed. That is how further affidavits came to be filed and thereafter the State Government's Special Counsel stated that a request would be made to consolidate the matters before the Aurangabad Bench including the Public Interest Litigation with pending petitions at the Nagpur Bench and at the Principal Seat, by making appropriate application to the Honourable the Chief Justice. This

was to ensure that all matters are heard by one Bench and in order to avoid conflicting orders and decisions. That is how this Public Interest Litigation and connected Writ Petitions were consolidated and directed to be heard by the Division Bench at Principal Seat of this Court. Accordingly, we have heard the learned counsel appearing for the respective parties.

38 Mr.P.M.Shah, learned Senior Counsel appearing on behalf of the Petitioner in Public Interest Litigation, submitted that the Petitioner does not dispute that the Essentiality Certificate and the Suitability Certificate are required from the competent authorities before the school/college can be set up, established and courses can be commenced. He submits that the power of the State Government insisting on the Essentiality Certificate being obtained, is derived from the guidelines issued by the INC dated 14.09.2000. Mr.Shah submits that any condition which is consistent with the guidelines issued by the Central/Apex Body, namely, INC only can be imposed by the State Government. In other words, any condition inconsistent with the Central guidelines cannot be imposed. Mr.Shah submits that the impugned circular is issued by the Medical Education and Drugs Department of the State of Maharashtra dated 21.04.2012. Even with regard to that circular, what is objectionable is imposition of condition Nos.8 and 9. Mr.Shah submits that condition No.8 stipulates that after the State Government has issued the Essentiality Certificate, the concerned Institution must approach the INC and submit a proposal. That proposal must be accompanied by the Essentiality Certificate and the Project Report regarding the relevant academic courses. However, after the INC approves the said proposal, once again the matter cannot come back to the State Government. Mr.Shah submits

that the condition No.8 to the extent it requires the Institution to approach the State Government after issuance of the Essentiality Certificate and the Suitability Certificate, is clearly arbitrary, illegal and unconstitutional. There cannot be any further permission or approval required for commencement of the course. The State Government cannot insist on the Institution approaching it once again. Once the Institution is armed with the Essentiality Certificate of the State Government and the Suitability Certificate of the INC, nothing more is required to commence the course. No further permission or approval is contemplated in the scheme of the Act of 1966 or any of the regulations or bye-laws framed thereunder. The State Government has imposed this additional requirement or condition in terms of the Government Resolution dated 21.03.2005 and which is impermissible in law. The law does not require any further approval or permission from the State Government and particularly to commence the academic course. Therefore, condition No.8 to this extent is bad in law.

39 Mr.Shah then assails imposition of condition No.9 vide Government Resolution dated 21.03.2005 by submitting that this condition requires that after approval or recognition from the State Government alone, the students can be admitted to the concerned courses. Mr.Shah submits that only power conferred on the State Government is to issue the Essentiality Certificate. If that is the only power and once that is exercised inasmuch as the Essentiality Certificate is issued, then, the Institution need not once again approach the State Government. It is not required to approach the State Government to seek its final approval to commence the courses. Once such further approval or permission is not required, then, the condition No.9 cannot be sustained.

There is no further requirement of seeking permission or approval for admission of students. Both such conditions are, therefore, contrary to the provisions of the Act, wholly illegal and unconstitutional. Mr.Shah submits that the said conditions have been imposed de-hors any statutory powers. The conditions are ultra-vires the powers of the State Government conferred by the Maharashtra Nurses Act, 1966. For all these reasons, Mr.Shah submits that the impugned conditions and communications insisting on compliance therewith be quashed and set aside.

40 Alternatively, Mr.Shah submits that such conditions could not have been imposed by issuance of Government Resolution. In other words, such conditions cannot be imposed in exercise of executive power. A law will have to be made empowering the State Government to impose such conditions. Once there is no law in the field enabling the State Government to impose such conditions, then, the executive fiat or any administrative circular cannot be sustained. Therefore, on this ground as well the petition deserves to succeed.

41 Mr.Shah submits that in terms of the Central guidelines dated 14.09.2000, the State Government did not deem it fit to insist on any further permissions and approvals. All that it insisted earlier was obtaining of Essentiality Certificate from it. None of the member institutions of the Petitioner and the Petitioner as well dispute requirement of obtaining such Essentiality Certificate. However, the State Government cannot thereafter insist on any clearance or approvals from its end.

42 Mr.Shah then submits that the State cannot in terms of the communication, copy of which is at Annexure-F, insist on compliance with the impugned conditions. If the scholarships meant for backward class students have to be released after compliance with certain terms and conditions, then, any non compliance therewith at the best would result in withdrawal of scholarship or denial thereof. However, that will not enable the State Government to insist on compliance with conditions 8 and 9 of the Government Resolution dated 21.03.2005 nor will it justify imposition of additional conditions. Therefore, looked at from any angle, the Petitioner is not required to comply with the conditions 8 and 9 of the Government Resolution dated 21.03.2005.

43 Mr.Shah has taken us through the affidavits filed by the State Government and the INC. He has also drawn our attention to Sections 2(o), 10, 25 and 39 of the Maharashtra Nurses Act, 1966. He has also relied upon the following decisions in support of his above submissions:-

- (1) *AIR 1939 Calcutta 628. (G.P.Stewart v/s Brojendra Kishore Roy Chaudhury);*
- (2) *AIR 1956 SC 676 (Ch.Tika Ramji and others v/s The State of U.P. and others);*
- (3) *AIR 1959 SC 648 (Deep Chand & others v/s The State of U.P. and others);*
- (4) *(1995) 4 SCC 104 (State of T.N. & another v/s Adhiyaman Educational & Research Institute and others);*
- (5) *(2006) 9 SCC 1 (State of Maharashtra v/s Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & others);*
- (6) *2008(5) Mh.L.J. 913 (Mahatma Gandhi Missions Institute, Aurangabad v/s State of Maharashtra and others);*
- (7) *2011(5) Mh.L.J. 267 (GHR Education Foundation Society & another v/s State of Maharashtra and others);*

- (8) *Writ Petition No.3888/2011 (Shri Shivaji Education Society & another v/s Maharashtra University of Health Sciences);*
- (9) *2002(1) Mh.L.J. 854 (Vijaykumar Kachrual Abad v/s Hon'ble Minister, Revenue and Forest Department);*
- (10) *(2012) 4 SCC 407 (Ravi Yashwant Bhoir v/s District Collector, Raigad);*
- (11) *(2000) 5 SCC 231 (Jaya Gokul Educational Trust v/s Commissioner & Secretary to Government, Higher Education Department);*
- (12) *(2009) 16 SCC 309 (Mata Gujri Memorial Medical College v/s State of Bihar and others); and*
- (13) *(1996) 3 SCC 15 (Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v/s State of Tamil Nadu and others).*

44 On the other hand, Mr.Kumbhakoni, learned Special Counsel appearing on behalf of the Respondent Nos.1 and 2, submits that the anxiety of the State Government in insisting upon compliance with conditions 8 and 9 must be understood in the backdrop of the requirement of issuance of Essentiality Certificate by it. The Essentiality Certificate is insisted because it is the State alone which can understand and appreciate the need of setting up such institutions and commencing courses in midwifery and training of nurses. It understands the requirement of nursing courses in a particular region and area. The State prepares a plan by identifying the areas wherein there is requirement of setting up such institutions/ schools and commencement of nursing courses therein. If the institutions/ schools are essential, then, the certificate termed as Essentiality Certificate is issued. The State has power to monitor compliance with the terms and conditions of the Essentiality Certificate. It can ensure fulfillment thereof. With a view to ensure such

fulfillment that it has imposed conditions 8 and 9 in the Government Resolution dated 21.03.2005. Thus, this is a step ensuring complete compliance with terms and conditions of the Essentiality Certificate. The State Government cannot be denuded of or denied such power. If that is how this controversy is understood, then, there is nothing illegal or unconstitutional about conditions 8 and 9. The State Government, therefore, must be held to be empowered to oversee the implementation of the terms and conditions based on which the Essentiality Certificate is issued. Secondly, the State Government pays scholarship to deserving backward class students from public funds. Before such scholarships are released in monetary terms, the State has duty to ensure that the funds are released in favour of those backward class students who are undertaking study and training in recognized and approved institutions which have all basic amenities and facilities. Thus, this is a step for protection of the interest of all students and conditions 8 and 9 are imposed in larger public interest. Mr.Kumbhakoni, therefore, submits that the power to issue the circular containing impugned conditions flows from the power to issue the Essentiality Certificate. Thus, it is an incidental and ancillary power. It is necessary and essential for enforcing the terms and conditions based on which the Essentiality Certificate is issued. Mr.Kumbhakoni submits that there is not a single instance in which the State has not given final clearance or approval particularly to commence the course and admit students. Such clearances and approvals are given promptly or without any unreasonable and unexplained delay. In these circumstances and when there is no attempt to override the authority of the INC or the MNC, then, all the more the Public Interest Litigation need not be entertained and it be dismissed.

45 Mr.Kumbhakoni has brought to our notice the instances where the courses have been commenced and students are admitted based on provisional and adhoc permissions. In this behalf, he relies upon the affidavit filed by Mr.Ashok Maroti Atram, Deputy Secretary, Medical Education and Drugs Department, Government of Maharashtra, Mumbai. Mr.Kumbhakoni, therefore, submits that to curb such unlawful tendencies and prohibit continuance of courses in institutions which lack basic amenities and facilities that the impugned conditions have been inserted and imposed. Such a step in larger public interest be upheld and the Public Interest Litigation be dismissed.

46 There is an affidavit of one Dr.Rahul Rajkumar Jawanjil who was later on permitted to intervene in this Public Interest Litigation. Mr.Jadhav, learned counsel appearing on his behalf was heard by us and equally permitted to tender the Written Submissions. He has highlighted the irregularities and illegalities committed by the MNC while granting recognition to the ANM and GNM courses. He has also pointed out as to how the MNC has acted contrary to the orders and directions of this Court. Paragraphs 5, 6, 7 and 8 of the Written Submissions of the Intervenor read thus:-

“5. *The MNC without seeking leave of the Hon'ble High Court had taken policy decision and thereby granted provisional permissions to 261 ANM and 161 GNM schools by conveying the General Body Meeting, extra ordinary executive committee meeting and executive meeting dated 14.07.2011 and 11.11.2011. Here it is to be noted that the academic year of the course is to start from 16th of August of each year and the MNC has granted the permission in the month of September and November when the half of the academic year had already over. This fact has been noted and dealt in detail by the Hon'ble High Court, Bench at*

Aurangabad in para No.15 of the order dated 03.10.2012 internal page No.17. Moreover, it is not possible to conduct inspection of more than 400 institutions by the State Government in such a short span of time of two months period.

6. The Institutions should not have admitted the students unless and until they have been issued Suitability Certificate from the Indian Nursing Council (INC).
7. The INC had issued a letter to the Secretary, Health Department, Government of Maharashtra in the year 2005 for non-issuance of EC for GNM schools from the year 2006-07 onwards. In spite of this, the State Government and the MNC had issued EC and the Provisional Permissions.
8. The MNC had advertised in the news paper dated 01.06.2010 inviting the proposals to start the course of ANM. (The said advertisement is challenged in W.P. No.3057/2013 (A'bad W.P. No.9455/2010) wherein the Hon'ble High Court by an order dated 08.10.2010 had directed the Petitioner to deposit an amount of Rs.30,000/- to test the bonafide of petitioner being PIL). Pursuant to the said advertisement, approximately 1500 proposals were received by the MNC till 31st of July, 2012 and out of those proposals only 425 proposals were forwarded to the State Government for issuance of EC. However, no reason whatsoever for rejecting the other proposals is conveyed to any of the applicant-institutions.
This action and in-action of forwarding the proposals of the favourable institutions only shows the pick and choose policy adopted by the MNC in arbitrary manner for otherwise illegal extraneous consideration moreover without identifying the need and requirement of the State and without preparing the perspective plans.”

47 Thus, the argument is that the order passed by this Court at Principal Seat dated 18.04.2011 has been flouted and violated and without any power and authority the MNC has approved and permitted

the institutions to commence the above courses and admit the students for the academic year 2012-13. Further, in paragraphs 11 and 12 of the Written Submissions of the Intervener, this is what is stated:-

“11. *The present respondent/intervener had in fact issued paper publication in daily news paper in September, 2011 itself i.e. after the order of the Hon'ble High Court dated 18.04.2011, thereby alarming the institutions, students, parents and public at large regarding illegalities and pending litigation before this Court. Also representations were submitted to the Indian Nursing Council, Secretary, Medical Department, Mantralaya, Mumbai.*

It is to be noted that the statement made by the State Government on affidavit dated 17.10.2012 at page No.184 that the State Government have also taken the decision to prosecute Mr.Mali and the Registrar, Mrs.Anchan and accordingly, the Director of Medical Education and Research, M.S. has been directed to lodge an FIR with police, is not yet being complied with.

It appears that what is stated at paragraph 13, page 187 regarding to issue the show cause notices to the Nursing School running without permission of the INC and the State Government are not issued accordingly at all.

Further, it appears that what is stated at paragraph 23 page 194, regarding the release of Press Note on 15.09.2012 is in fact a document tendered to this Hon'ble Court only for the sake of record of the Court and no such paper publication has appeared in any of daily papers till this date.

12. *It is to be noted that what is expected by the Hon'ble High Court in pursuance of orders dated 03.10.2012, 18.10.2012 and 31.10.2012, it appears that same has not been complied till date in its true letter and spirit and conveniently avoided the same.*

In fact, the State and INC committed the contempt of the order dated 03.10.2012 and 18.10.2012 by issuing the EC as it can be seen from 6 page 311 and also the INC has issued Suitability Certificates in the month of

January-February, 2013. The MNC giving references of Council GBM dated 09.04.2012, E.O. Executive Committee dated 13.08.2012 granted permission for A.Y. 2012-13 vide letter dated 13.08.2012, in spite of the order dated 18.04.2011, which amounts to lower down the status and image of the order passed by the Hon'ble High Court, as if the order of High Court is ignorable and not concerned with them."

48 There are Written Submissions in reply given by the Petitioners to the above. There are counter replies and submissions including by the MNC.

49 This sums up the controversy in the Public Interest Litigation and the Intervention Application.

50 The individual Writ Petitions are either by the Members of the Maharashtra Nursing Council, persons interested in establishing and setting up the nursing schools and colleges and commencing the academic courses of ANM and GNM, but it is conceded that the controversy therein is identical, namely, challenge to the condition Nos.8 and 9 in the Government Resolution dated 21.03.2005. Based on this agreed position that the learned counsel appearing for the parties in these Writ Petitions have been heard by us. They have adopted the argument of Mr.P.M.Shah, learned Senior Counsel appearing on behalf of the Petitioner in the Public Interest Litigation.

51 There are some Writ Petitions, namely, Writ Petition No.3052/2013, 3054/2013 and 3055/2013 in which the relief prayed is for grant of scholarship to backward class students who have undergone

the study in the courses for the academic year 2011-2012 and release the sums accordingly. That is a relief primarily based on the same controversy. The State has taken a stand that with a view to ensure that these scholarships are availed of by the needy and deserving students that it has insisted on further clearances and permissions even after grant of the Essentiality Certificate in favour of the nursing schools/ colleges. Therefore, this stand of the State is being scrutinized by us. In the event, we are of the opinion that there is no legal basis for this stand of the State Government and the conditions which are impugned and challenged in that behalf cannot be sustained, then, necessarily the directions will have to be issued to consider the request of the students and the respective Managements for release of scholarships and we will then pass appropriate orders and directions. Therefore, the controversy even in these petitions cannot be said to be distinct or different than the others.

52 The Maharashtra Nurses Act, 1966 is an Act to unify and make better provision in the law relating to nurses in the State of Maharashtra. Section 1 of the Act states that it extends to the whole of the State of Maharashtra. Section 2 contains definitions. The term “affiliated institution” has been defined in Section 2(a) to mean an institution for the nursing of the sick, maternity or child welfare, which is or which is deemed to be affiliated to the Council in accordance with this Act and the bye-laws. Section 2(k) defines the term “nurse” to include male nurse, auxiliary nurse, public health nurse, midwife, auxiliary nurse-midwife and health visitor. Thus, this definition is in accord with the meaning of the terms “nurse” and “nursing” as referred by us hereinabove.

53 Chapter-II of the Act provides for constitution, functions and

powers of the Council. Thereunder what is relevant for our purpose is Section 10 which reads thus:-

“Section 10: Powers, duties and functions of the Council.

Subject to such conditions as may be prescribed by or under the provisions of this Act, the powers, duties and functions of the Council shall be:-

- (a) to maintain the Register and the List, and to provide for the registration and enlistment of nurses;*
- (b) to hear and decide appeals from any decision of the Registrar;*
- (c) to prescribe a Code of Ethics for regulating the professional conduct of nurses;*
- (d) to reprimand a registered or an enlisted nurse, or to suspend or remove him from the Register or the List, as the case may be, or to take such other disciplinary action against him as may, in the opinion of the Council, be necessary or expedient.*
- (e) to hold examinations and to make all necessary arrangements for such examinations;*
- (f) to prescribe the courses of training leading to the examinations held by the Council, and to charge fees for such examinations;*
- (g) to prepare, publish and prescribe text-books and to publish statements of prescribed courses of study;*
- (h) to grant certificates and diplomas and marks of honour;*
- (i) to award stipends, scholarships, medals, prizes and other rewards;*
- (j) to recognise institutions for the purpose of training and giving instruction for the courses leading to the examinations held by the Council, or to cancel such recognition;*
- (k) to regulate the conditions under which institutions for the nursing of the sick, maternity or child welfare may be affiliated to the Council;*
- (l) to provide for the inspection of recognised and affiliated institutions, and to require such institutions to furnish such information as may be necessary;*
- (m) subject to the approval of the State Government, to receive donations and to determine the conditions of acceptance of donations; and*
- (n) to exercise such other powers and perform such other*

duties and functions as are laid down in this Act, or as may be prescribed.”

54 A perusal thereof would indicate that subject to conditions as may be prescribed by the Act, the powers, duties and functions of the Council shall be, inter-alia, to prescribe the courses of training leading to the examinations held by the Council and to charge fees for such examinations; to prepare, publish and prescribe text-books and to publish statements of prescribed courses of study; to recognize the institutions for the purpose of training and giving instruction for the courses leading to the examinations held by the Council or to cancel such recognition and to regulate the conditions under which the institutions for the nursing of the sick, maternity or child welfare may be affiliated to the Council. The Council has to provide for the inspection of recognized and affiliated institutions and to require such institutions to furnish such information as may be necessary. Therefore, the Council has been established so as to confer it with wide powers which are coupled with a duty to ensure that nursing institutions are established and function in a orderly manner. The Council cannot shirk its responsibility of taking all measures so as to provide trained nurses for nursing of sick, old or infirm. If that is the duty of the Council, then, it goes without saying that the Council must be conferred with all such powers so as to perform that duty and function meaningfully, effectively and completely. It is with that intent that the Council has been empowered to maintain register of nurses for the State and that is a power which it exercises through its Registrar vide Section 17. Then comes Section 18 which provides for temporary registration. Section 19 provides for preparation of list of persons not entitled to registration under Section 17, but who have been practicing as nurses. Sections 20, 21, 22, 23 and 24 are all provisions in relation to registration

or enlistment and Sections 25 and 26 under Chapter-IV provide for recognition of training institutions and affiliation of institutions. There are licensing provisions and in relation to nurses establishments (see Chapter-V). Sections 25 and 26 on which emphasis has been laid read as under:-

- “25. *Recognition of training institutions.*
- (1) *The Council shall by its by-laws prescribe examinations to be held by it, the qualifications for admission to such examinations, the courses of studies for such examinations, the standard of passing, the certificates or any other like awards to be given to persons who pass the examinations, and such other matters in respect of such examinations as may be necessary or expedient.*
 - (2) *The Council may, in accordance with the by-laws made by it in this behalf and after inspection by its representative and holding such inquiry as it deems fit, recognise any institution for training nurses for the examinations of the Council.*
 - (3) *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 prescribed manner.*
 - (4) *Any person aggrieved by any order of the Council under this section may, within three months from the date on which such order is communicated to him, appeal against such order to the State Government. The order of the State Government on any such appeal shall be final.*
 - (5) *No school, hospital or other institution which is not recognised under this section 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 practise as a nurse, unless his name is registered or entered in the List under this Act.*
 - (6) *Any person who contravenes the provisions of subsection (5) shall, on conviction, be punished with fine which may extend to three hundred rupees.*

26. *Affiliation of institutions.*
The Council may, in accordance with the by-laws made by it in this behalf and after inspection by its representative and holding such inquiry as it deems fit, affiliate to it any institution for the nursing of the sick, maternity or child welfare.”

55 We have thus seen that in matters of registration of nurses, their training, practice and recognition of training institutions and their affiliation, it is the Council alone which is empowered and authorized by law. None else can claim to be conferred with these powers nor can they discharge these duties. The State Government has a control, but limited in nature. If Sections 39 and 40 of the Maharashtra Nurses Act, 1960 are noticed, it would become at once clear that beyond establishment of the Council and dealing with the instances where the Council is not functioning or incapable of functioning or has ceased to function, that the State Government can step in, but as far as the duties and functions of the Council are concerned, they are to be performed by the Council alone and the State Government has absolutely no role in that behalf.

56 The Indian Nursing Council Act, 1947 would also make it amply clear and particularly vide Sections 10 and 11 that it is the Nursing Council alone which is empowered to recognize the qualifications and withdraw that recognition. In other words, the Central Act by constituting the Indian Nursing Council (INC) ensures that such Council performs its functions of recognizing the qualifications in general nursing, midwifery, auxiliary nursing-midwifery, health visiting or public health nursing. Therefore, one will have to scrutinize the impugned conditions in the backdrop of the above statutory scheme. The Petitioners in each of these Writ Petitions including the Public Interest Litigation concede that the INC

has powers to issue the guidelines or revise them and such guidelines shall apply for opening of schools/ colleges of nursing. The said guidelines provide for obtaining of the Essentiality Certificate from the State Government on receipt of which the INC undertakes first inspection to assess suitability to start the programme. After assessment of the institution, the INC writes to the MNC for inspection. That is only when the INC finds the institution suitable to start the programme. After receipt of inspection report from the MNC, the INC decides whether to permit admission of the students or not.

57 In furtherance of INC guidelines, the Petitioners concede that in matters of issuance of the Essentiality Certificate, the State Government can prescribe the procedure. They do not dispute these procedural aspects in terms of conditions/clauses 1 to 8 of the Government Resolution dated 21.03.2005. There is no challenge to these conditions, save and except the stipulation therein that after the proposal of a Institution is accepted and approved by the INC, still the Institution has to approach the State Government and seek its approval to commence the courses and admit students.

58 We do not find any powers being conferred in the State Government in that behalf and none of the provisions to which we have adverted hereinabove and particularly the Maharashtra Nurses Act, 1966 enable the State Government to impose such conditions.

59 The faint attempt by Mr.Kumbhakoni to suggest and his contention that the power of the State Government to insist upon final clearance or approval as above is inbuilt or implicit in the power to issue

the Essentiality Certificate, cannot be accepted for obvious reasons. The insistence on the Essentiality Certificate is to be found in the revised guidelines issued by the INC for opening of schools/ colleges of nursing. The INC by letter dated 14.09.2000 in continuation of its letter dated 01.07.1999 communicated the MNC that the INC in its meeting held on 28.07.2000 considered the issue in respect of the revised guidelines for opening of schools/ colleges of nursing. It made changes as conveyed to the Registrar of MNC in letter at Annexure-B (dated 14.09.2000) and termed them as revised guidelines. The Essentiality Certificate will have to be obtained by any private trust or any legal entity who wants to open school/college of nursing. The Essentiality Certificate has to be then forwarded to the INC who shall undertake the first inspection to assess suitability to start the programme. Thereafter, the result of assessment by the INC will be communicated to the MNC which shall then undertake inspection. After receipt of inspection report from the MNC, the INC will decide, whether, to give permission to admit the students or not. The INC will conduct inspection every year till the first batch passes out and the recognition is given year by year.

60 Now, what the State Government has done is to evolve a procedure for issuance of the Essentiality Certificate. The State Government has been given a limited role and of issuing an Essentiality Certificate. It evolved a procedure and which procedure envisages a scrutiny of documents forwarded by the institution including its registration certificate, bye-laws and audited accounts for the past three years and all this has to be done by the MNC. The MNC has then to insert an advertisement on its website inviting applications from interested institutions. All such proposals which have been received by the MNC

would then be duly scrutinized and together with its recommendations the MNC shall forward the same to the Director, Medical Education and Research, Government of Maharashtra before 30th September. Thereafter, the said Director has to scrutinize these applications and wherever necessary, carry out inspection and submit his report to the State Government before 31st October. Then, there is procedure envisaged of paying the scrutiny fee. After the procedure prescribed in clauses 1 to 5 of the Government Resolution dated 21.03.2005 is complied with, then the State Government will decide as to whether the Essentiality Certificate has to be issued or not. Such Essentiality Certificate, if issued, shall be valid for a period of three academic years. Thereafter, the only act that remains to be performed is to forward the Essentiality Certificate and related papers to the INC.

61 After reading the procedure prescribed in the Government Resolution dated 21.03.2005, we are of the opinion that there is nothing therein which would enable the State Government to insist on its final approval to start the course and enroll the students. If the power to recognize the qualifications has been reserved only in the INC and which is for the purpose of registration as nurse and the power of recognition of the training institutions and affiliation has to be exercised only by the MNC in terms of the Maharashtra Nurses Act, 1966, then, the State Government cannot insist on any further clearance or approval at its end. That would amount to overriding the authority of the MNC. That would also mean contravening the Maharashtra Nurses Act, 1966. Reliance placed by Mr.Kumbhakoni on the power of control which can be exercised in terms of Section 40 of the Maharashtra Nurses Act, 1966, is clearly misplaced in this behalf. That is a power to control the Council if the

Council or its President or Vice-President has failed to exercise or has exceeded or abused any of the powers conferred upon them or has ceased to function or has become incapable of functioning. This power and the situation in which it can be exercised as envisaged by sub-section (2) of Section 40 cannot be of any assistance in contending that the State Government can insist on further clearance or approval from it to commence the training courses or admit students therein. If the State Government cannot have any role beyond issuing the Essentiality Certificate, then, we cannot grant it the authority or power as sought by it. That would mean conferring it some further powers or authority which is not intended by the statute. It is the Council's prerogative to grant recognition and affiliation to the institutions. It is the Council's prerogative to decide the number of students to be admitted in the recognized institutions. The power to make bye-laws conferred by Section 39 includes a power to make bye-laws for the matters stipulated and provided in Section 39(1)(a) to 39(1)(j). The State Government can at the best sanction or refuse to sanction the bye-laws, but it cannot take upon itself the matters which are to be dealt with by the Council and in terms of its bye-laws. Those matters have to be dealt with and decided by the Council and Sections 25 and 26 are clear in that behalf. We are, therefore, of the opinion that the attempt by the State Government, in this case, clearly overreaches the statutory prescription and provision. We cannot, therefore, uphold it.

62 Mr.Kumbhakoni submits that the Essentiality Certificates have been issued in several cases without ascertaining as to whether there is any need to establish a nursing school or college in a particular area. Further the new courses should be started in existing institutions or not,

has also not been considered, yet the Essentiality Certificates have been obtained. If that is so, then, the State Government can bring such matters to the notice of the INC and request it to take such corrective measures or steps as are deemed necessary. The State Government cannot impose the impugned conditions in the garb of examining as to whether the institution, in whose favour the Essentiality Certificate is issued and which is conditional, has fulfilled the norms and conditions laid down by the INC and MNC. If the norms and conditions laid down by these Councils are not fulfilled, it is for these Councils to take note of the same. The State Government can only bring the same to their notice, but beyond that it cannot interfere with the power and authority of the statutory councils. That would mean that the State Government is one more authority envisaged by the statutes in question. That is not provided in the statute and not intended by the Legislature either. In these circumstances, we cannot accept the contentions of Mr.Kumbhakoni.

63 We also cannot accept his contentions that such power be read into the power to issue the Essentiality Certificate. It is not a case of any implied or incidental power as urged by Mr.Kumbhakoni. The power to issue the Essentiality Certificate is conferred in terms of the guidelines issued by the INC. These guidelines do not confer any further power in the State Government and particularly to monitor the institutions or supervise the functioning or working thereof. If the power to recognize the training institutions and grant affiliation to them is conferred solely in the MNC, then, it is futile to urge that the Essentiality Certificate being insisted by the INC means the State Government is also recognized as an authority by it particularly to oversee the working of the training institutions.

64 We cannot undertake a scrutiny of all applications seeking Essentiality Certificates or the cases of recognition and affiliation granted by the MNC. We are called upon to decide the legal issue and particularly of power and authority of the State Government. If the State Government has only limited power of issuing an Essentiality Certificate, then, while exercising that power and issuing such certificate, the State cannot insist on any approval or permission to start or commence the nursing courses or admit the students therein. That is a matter solely reserved for the MNC. That aspect is covered by the Council's authority to grant recognition to the training institutions and affiliation of the same. In this behalf a harmonious reading of Sections 25, 26 and 39 leaves us in no manner of doubt that it is the Council alone which can prescribe the examinations to be held by it, the qualifications for admissions to such examinations, courses of studies for such examinations, standard of passing, certificates or any other like awards to be given to persons who pass the examinations and such other matters in respect of such examinations as may be necessary or expedient. In furtherance of that the Council has been given discretion, which shall be exercised in accordance with the bye-laws made by it and after inspection by its representative and holding such inquiry as it deem fit, to recognize the training institutions. It is the Council which may withdraw the recognition from such institutions after its inspection by the representative of the Council. If sub-section (5) of Section 25 is perused, it is apparent that the Legislature did not create any authority other than the Council for prescribing examinations, qualifications for admissions to such examinations, courses of studies for such examinations, standard of passing and recognizing any institutions for training the nurses for such

examinations. It is only such person who can be said to be qualified to be a nurse and it is the duty of the Council to train persons to become nurses in terms of the Maharashtra Nurses Act, 1966. Even grant of affiliation is a matter solely to be dealt with by the Council. To enable the Council to exercise all such powers, it has been further empowered to make the bye-laws which shall be in consonance with the provisions of the Act or Rules made thereunder. Thus, the bye-laws inter-alia take care of the conditions for affiliation of institutions, conditions for recognition of institutions and number of students to be admitted to the recognized institutions. To our mind, therefore, neither the commencement of the course or admission or enrollment of students therein, is a matter which can be dealt with by the State Government, far from approving or permitting the same. Thus, the Council's autonomy and independence in these matters is absolute and cannot be interfered with leave alone diluted by the State, particularly in the absence of a law. Therefore, there is merit in the submissions of Mr.Shah and other counsel appearing for the Petitioner/Managements that the State has no power in the above matters. There is no scope for any incidental or ancillary power being then conferred. Once there is case of a clear lack of power, then, any auxiliary, ancillary or incidental power is not an aspect which is required to be dealt with by us. That issue arises only when there is admittedly a power conferred. If specific power or grant is conferred, then, in exercise thereof the authority can take all such steps and measures as are necessary to make the initial grant effective or meaningful. That is the principle of ancillary or incidental power. That has no application in cases of total lack of power.

65 Howsoever Mr.Kumbhakoni may support the State's stand and by urging that the State never refused to grant any Essentiality

Certificate and equally it will not refuse further permissions envisaged by the impugned clauses. Once there is complete lack of power in it, we are not inclined to accede to the request of Mr.Kumbhakoni appearing for the State to allow it to retain the impugned conditions and in the present form. Even if the State makes it clear that it has never attempted to override nor will it override the authority of the MNC or INC, but that stand fails to impress us and on account of such stand we do not concede the State any such powers and particularly as assumed by it.

66 The argument that the State has to ensure fulfillment of the terms and conditions on which the Essentiality Certificate is issued and therefore, there is nothing illegal or unconstitutional about the impugned conditions, also fails to impress us. The State must take all precautions before it issues the Essentiality Certificate and must not issue it indiscriminately and for the asking. If it is worried and concerned about the welfare and interest of students, then, before the Essentiality Certificate is issued, it can take requisite measures. The clauses 1 to 5 of the Government Resolution dated 21.03.2005 enable the State Government to peruse all the records pertaining to the institutions desirous of setting up of nursing schools and colleges. Such records are forwarded with recommendations by the MNC to the Director, Medical Education and Research, Government of Maharashtra. While exercising his power under clause 4 of the Government Resolution dated 21.03.2005, the said Director can scrutinize all proposals and make appropriate recommendations to the State Government. The State Government is expected to act in terms of these recommendations and of its own senior official. If the said Director has, upon scrutiny of proposals and recommendations of the MNC, recommended grant of the Essentiality

Certificate to only some Institutions and not all, then, such recommendations carry serious weight and the State Government is expected to take them into consideration. It must not override them or reject them without assigning cogent and satisfactory reasons. The Director, to enable himself to exercise his powers effectively, can frame such guidelines as are permissible and within limited scope of the State's authority so that grant of Essentiality Certificates indiscriminately and without adherence to any rules or norms or procedures, can be avoided. The State has such mechanism available with it by which it controls and regulates the issuance of the Essentiality Certificates only to deserving institutions and depending upon the need of nursing school or college or course in a particular area or region.

67 The State can always carryout or conduct a study about the requirement of nursing schools and colleges throughout the State. It can prepare a regionwise plan and modify it from time to time depending upon the need to locate such institutions. It can, depending upon health concerns and equally the requirement of the old, aged, infirm and disabled, provide for establishing nursing schools and colleges within the State. If this homework is done properly and effectively, then, the Essentiality Certificates will not be granted as a routine affair or as a matter of course or for the asking. There are, therefore, enough checks and balances and the State need not feel compelled to issue a Essentiality Certificate. Further, it can bring the cases of undeserving institutions or those misusing the certificates to the notice of the MNC and the INC. If the MNC fails to take note of the serious complaints and recommendations of the State, the State can proceed against the MNC. If the MNC recommends grant of a Essentiality Certificate to a particular

institution or institutions, the State is not obliged to accept its recommendations. The State can undertake an independent scrutiny of proposals received from the MNC through the Director, Medical Education and Research who can reject the MNC recommendations or record a contrary opinion by giving reasons. In such circumstances the apprehension as expressed by Mr.Kumbhakoni will not enable us to hold that the State has any power to insist on its final approval or permission either to start the courses or to admit the students therein. The institutions are not expected to go round and round and seek approvals from the State Government even after statutory bodies and all authorities have favourably recommended their case for issuance of necessary and requisite certificates. That would inconvenience all and will not be in public interest either as such process would delay the establishment of the nursing institutions, their recognition and affiliation and commencement of courses. Ultimately, a trained nurse is required to serve public and in public interest the process of training a nurse through the recognized and affiliated institution needs to be expedited. In such circumstances we do not think that there is any merit in the submissions of Mr.Kumbhakoni.

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68 Equally untenable is the argument that the State is issuing the scholarship to the deserving backward class students for undertaking and completing study in nursing and to enable them to discharge their duty as trained nurses. Therefore, such scholarships are given from public funds and by utilizing public money. The State, therefore, must be empowered to control the commencement of the courses and admission of students so that such scholarships are not wasted or misused by undeserving students. To our mind, the scholarships and concessions to backward class students are matters of policy. The State has evolved a

policy to give financial assistance to the deserving backward class students so as to enable them to enroll themselves in the schools and colleges of nursing and become trained nurses. The State, in terms of its own policy measures and directives, lays down the terms and conditions for availing of such scholarships. It can control grant of such scholarships by prescribing stipulations for eligibility and limits thereof. This has nothing to do with the power to recognize the nursing institution or grant affiliation to the course for training of nurses. The State can take care of the complaints that the scholarships are being misused and those availing of the same, have not undertaken the study or not completed the same. The State can stop such scholarships as no one can claim any vested right in concessions and exemptions. If a fee is prescribed for the course, but only because of poverty and on account of lack of funds, the deserving student is unable to undertake the study in nursing and complete it, that such scholarships and concessions and financial benefits are given to the students and particularly backward class students. The State has enough powers reserved in it to control arbitrary and high handed grant of such scholarships or misuse or misutilization thereof or public funds in particular. We cannot in the garb of such control confer in the State Government any power as desired by it and particularly in the terms of the impugned conditions. Thus, even that aspect did not detain us any further.

69 Once we have found that on all counts the State has failed to convince us, we have no alternative but to declare that the impugned conditions insofar as they conferring in the State a power to insist on further approval and permission from it so as to enable the nursing institutions to commence the courses and enroll or admit the students

therein, are wholly illegal, arbitrary and violative of the constitutional mandate enshrined in Article 14 and 19(1)(g) of the Constitution of India. The impugned conditions are, therefore, struck down as prayed. Rule in the Public Interest Litigation and in other Writ Petitions is made absolute in these terms. The Institutions need not comply with the impugned conditions and to the extent declared unconstitutional as above. The State Government cannot insist on compliance either and must allow the Institutions to commence the courses and admit students as desired by them and in terms of the certificates obtained, namely, the Essentiality Certificates and Suitability Certificates.

70 In the view that we have taken it is not necessary to refer to all the decisions which have been cited before us. These decisions lay down the settled principle that no statutory power can be exercised unless it is conferred and such conferment by an executive fiat or administrative instruction is impermissible once the requirement is that of clear statutory prescription or provision in that behalf. In other words, unless the statute provides or prescribes conferment of the power, same cannot be conferred or exercised by taking recourse to any executive fiat or administrative instruction. We have proceeded on these very lines, therefore, each of the decisions cited need not be referred to. Suffice it to clarify that no statute or law having been brought to our notice by the State Government, we were obliged to apply the law as laid down in the above decisions. The State has not relied upon any decision nor brought anything to the contrary to the above, to our notice.

71 Mr.Kumbhakoni has tried to impress upon us that our declaration of the law as aforesaid may mean that the State Government

will be rendered helpless in the matter and in that behalf he invites our attention to the affidavit of Mr. Ashok Maruti Atram, Deputy Secretary, Department of Medical Education and Drugs, Government of Maharashtra dated 22.11.2012. In paragraphs 4, 5 and 6 of the said affidavit, this is what is stated:-

- “4. I say that in all 415 [271 (ANM) + 144 (GNM)] Essentiality Certificates were issued in 2011. Out of these, clear recommendations were made by the inspection committees and the Directorate of Medical Education and Research, Maharashtra State, in as many as 402 [267 (ANM) + 135 (GNM)] cases. The remaining 13 [4 (ANM) + 9 (GNM)] cases were not recommended by the concerned inspection committees and/or the Directorate due to some deficiencies, which have been pointed out in the inspection reports, because of which these institutes fell short of fulfilling the Indian Nursing Council's “Minimum Standard Requirements” for opening ANM/GNM programme. However, since these deficiencies were extremely minor in nature, the State Government took a conscious decision to issue Essentiality Certificates to the applicants on the condition that these applicants shall remove these deficiencies before actually starting the programme applied for. It is extremely vital and important to state here that an Essentiality Certificate is merely an eligibility document to apply to the Indian Nursing Council for obtaining a “Suitability Certificate” and clearly not a permission to start a nursing programme.
5. I say that during the course of hearing, the learned Advocate for the intervener raised the issue of several Essentiality Certificates having been issued by the State Government in 2011 without the Maharashtra Nursing Council's recommendations. In this regard, I say that of the 514 Essentiality Certificates issued by the State Government in 2011, there were no recommendations from the said Council in as many as 81 [61 (ANM) + 20 (GNM)] cases. These institutes had complained to the Government that on account of totally malafide and vindictive reasons, their proposals had been rejected by

the Maharashtra Nursing Council even though they fulfilled all the requirements for starting the programmes applied for. They, therefore, petitioned the Government to conduct their inspections so as to ascertain their fitness with respect to their proposals and then consider their cases on merit for grant of Essentiality Certificates by the State Government. Hereto annexed and marked as Exhibit R-1 to Exhibit R-7 are the true copies of some of these complaints/ petitions.

6. *I say that the Maharashtra Nursing Council has a dubious record of exceeding and abusing its power. In fact, it was for these reasons that the State Government had dissolved this Council vide its notification dated 08.04.2011, which later came to be stayed by the Hon'ble High Court of Judicature at Bombay vide its interim orders dated 18.04.2011, passed in Writ Petition (Lodging) No.723 of 2011. Considering the blemished and dubious record of the Council, it was quite likely that there would be some substance in the above stated complaints and petitions. Therefore, the Government directed the Directorate of Medical Education and Research to carry out detailed inspections of these institutes as well. Accordingly, inspections were carried out in all such 81 cases. Interestingly, all the institutes so inspected were found to be fit and eligible with respect to their proposals, whereupon the Directorate of Medical Education and Research recommended all of these 81 cases to the Government for grant of Essentiality Certificates. Based on these recommendations, the Government issued Essentiality Certificates to the applicants.”*

72 It is for the State Government even now to conduct an inquiry into the affairs of the Council if already not initiated and equally in individual cases as noted by it. It can make appropriate recommendations to the MNC and INC if it is of the opinion at conclusion of such inquiry that the cases not recommended by the MNC for grant of the essentiality certificates, have also been accepted or the cases were not recommended by the Director of Medical Education and Research, yet the

institutions have commenced the courses and admitted the students therein. If such of the defaulting institutions as have been referred to in paragraphs 4 and 5 of this affidavit of Mr. Ashok Atram are known and identified by the State, then, our orders and directions so also the declaration given by us, will not prevent the State Government from initiating such measures and taking such steps so as to enable the MNC and INC to withdraw the recognition and affiliation to such institutions. The State can scrutinize the records and through its Director recommend to the MNC and INC to take steps to withdraw the recognition and affiliation to such institutions. Equally, the State can request these Councils to protect interest and welfare of the students of such institutions in the event such students are found to be innocent and unmindful of the misdeeds of the institutions and being not party to the same. All such measures can be taken by all authorities including the Councils irrespective of our declaration of law and we clarify that we have not foreclosed these options at all. All steps and measures can be taken and particularly as are necessary in the interest of and for the welfare of students. All contentions and pleas of parties in that behalf are kept open.

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73 As far as the Intervener's grievances are concerned, once we have clarified that the State can proceed against individual institutions and even the MNC as well, in exercise of its power of control, then, his grievances need not detain us. If the MNC or its members or office bearers have acted contrary to law or have misused or abused their position and power, then, all such proceedings, civil as well as criminal, can be initiated and instituted against them by the State and equally by the Intervener. Nothing prevents him from bringing to the notice of the State the acts of institutions which were recognized or their courses affiliated

despite a clear prohibition in terms of this Court's order dated 18.04.2011. In all such cases and post this date, the State can take all measures and equally the Intervener can proceed against them in accordance with law.

74 We direct the State Government to forward all the cases as are enlisted in the affidavit of Mr.Ashok Atram and equally brought to its notice by the Intervener, to the MNC and INC within a period of six weeks from today. The MNC and INC shall consider these complaints and cases and take requisite steps including institution of appropriate inquiries in the matters of recognition of the training institutions and their affiliation and take necessary decisions upon conclusion of these inquiries and needful be done within a period of four weeks from the date of receipt of the required papers and documents from the State Government. Liberty is also given to the Intervener to forward the papers and documents with regard to all such cases including those highlighted by him in his Intervention Application and the MNC and INC and equally the State Government should act on the basis of the same within the time stipulated above. In the absence of the Institutions, their office bearers and the students being before us, we cannot cancel or withdraw their recognitions and affiliations nor can we issue directions concerning the students.

75 As a result of the above discussion, Rule is made absolute in these terms. No order as to costs.

(R.G.Ketkar, J)

(S.C. Dharmadhikari, J)