

Chanchal Rani Vs. Ignou and ors.

Chanchal Rani Vs. Ignou and ors.

SooperKanoon Citation : sooperkanoon.com/1086767

Court : Delhi

Decided On : Sep-27-2013

Judge : V. K. Jain

Appellant : Chanchal Rani

Respondent : ignou and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :

19. 09.2013 Judgment pronounced on :

27. 09.2013 W.P.(C) 1644/2011 JINCY JOY AND ANR Through: Petitioners Mr. Wills Mathews, Mr. Ginesh P. & Mr. Robin Raju, Advs. versus INDIRA GANDHI NATIONAL OPEN UNIVERSITY AND ORS Respondents Through: Mr. Aly Mirza, Adv. for IGNOU. Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Advs. for Delhi Nursing Council. + W.P.(C) 3036/2012 K. BHARTI SHAKTISAGAR KATRE & ORS. Petitioners Through: Mr. Wills Mathews, Mr. Ginesh P. & Mr. Robin Raju, Advs. versus INDIAN NURSING COUNCIL & ORS. Respondents Through: Mr. Aly Mirza, Adv. for IGNOU. Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Advs. for Delhi Nursing Council. + W.P.(C) 361/2012 MARYKUTTY GEORGE & ORS. Petitioners Through: Mr. Wills Mathews, Mr. Ginesh P. & Mr. Robin Raju, Advs. versus INDIRA GANDHI

NATIONAL OPEN UNIVERSITY & ORS. Respondents Through: Mr. Aly Mirza, Adv. for IGNOU. Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Adv. for Delhi Nursing Council. + W.P.(C) 2774/2011 SAUMINI PRASANNAN Through: Petitioner Mr. Wills Mathews, Mr. Ginesh P. & Mr. Robin Raju, Adv. versus INDIRA GANDHI NATIONAL OPEN UNIVERSITY & ORS. Respondents Through: Mr. Aly Mirza, Adv. for IGNOU. Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Adv. for Delhi Nursing Council. + W.P.(C) 4146/2012 SUNITA DIXIT Through: W.P.(C) 1644/2011 and connected cases Petitioner Mr. Robin Raju, Adv. versus INDIAN NURSING COUNCIL & ORS. Respondents Through: Mr. Aly Mirza, Adv. for IGNOU. Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Adv. for Delhi Nursing Council. + W.P.(C) 5037/2012 CHANCHAL RANI Through: Adv. Petitioner Mr. Ashwin Vaish & Mr. V. Thomas, versus IGNOU & ORS. Respondents Through: + Mr. Aly Mirza, Adv. for IGNOU. Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Adv. for Delhi Nursing Council. W.P.(C) 5165/2012 D SHANTHI SANKAR & ORS. Petitioners Through: Mr. Wills Mathews, Mr. Ginesh P. & Mr. Robin Raju, Adv. versus INDIAN NURSING COUNCIL & ORS. Respondents Through: Mr. Aly Mirza, Adv. for IGNOU. Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Amrit Pal Singh, Adv. for R-3 Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Adv. for Delhi Nursing Council. + W.P.(C) 6642/2012 SUSHIL MATORIA & ORS. Petitioners Through: Mr. G.S. Chauhan and Ashwin Vaish & Mr. V. Thomas, Adv. versus IGNOU & ORS. Respondents Through: + Mr. Aly Mirza, Adv. for IGNOU. Mr. J.P. Tiwari, Adv. for Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Adv. for Delhi Nursing Council. W.P.(C) 7719/2012 FIRDOS ZIA FAROOQUI & ORS. Petitioners Through: Mr. Wills Mathews, Mr. Ginesh P. & Mr. Robin Raju, Adv. versus IGNOU & ORS. Through: W.P.(C) 1644/2011 and connected cases Respondents Mr. V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Adv. for Delhi Nursing Council. + W.P.(C) 2175/2013 AMITA JAIN & ANR. Through: Petitioners Mr. Anuj Aggarwal, Adv. versus IGNOU & ORS. Respondents Through: Mr. Aly Mirza, Adv. for IGNOU. Mr.

V.S.R. Krishna, Adv. for Indian Nursing Council. Mr. Sunil Kumar & Mr. Rajiv Ranjan Mishra, Advs. for Delhi Nursing Council. CORAM: HON'BLE MR. JUSTICE V.K. JAIN V.K. JAIN, J.

Noticing that as against more than two lakhs registered nurses in the counter, there were only nine programmes (Post Basic B.Sc. Nursing), graduating 140 per year and further noticing the acute shortage of teachers, administrators, supervisors at all levels of teaching, administration, supervision and practice and realizing that it was neither financially nor administratively feasible to start new colleges/structured programmes, the respondent-Indian Nursing Council suggested starting in-service Post Basic B.Sc. (Nursing) course at Indira Gandhi National Open University (hereinafter referred to as the University). The Council suggested starting personal contact programmes at various centres of the said University.

2. Vide letter dated 6.4.1994 the Council informed the University that three years Post Basic B.Sc. (Nursing) Programme at IGNOU was approved by the Council in its General Body Meeting held on 17.2.1994 and the University may take the said course for notification by Punjab Nursing Registration Council. Vide letter dated 3.8.1999, the Council informed the University that under the provisions of Section 13 of the Act a team of Inspectors would inspect their Nursing Institute on the dates mentioned in the programme attached to the letter. On receipt of the said letter, the Director, School of Health Sciences of the University informed the Programme In-charge of IGNOU study centre at Safdarjung Hospital that the said Centre shall be visited on 18.8.1999. Vide Resolution No.72/2000, the Council, in pursuance of the provisions of sub-section (2) of Section 13 of Indian Nursing Act, 1947 declared that the Post Basic B.Sc. (Nursing) course conducted by the University was an approved course of study for admission to an approved examination for the said course. The number of students to be admitted to the said course was 25-30 admissions to each centre. A certificate dated 02.06.2000 was issued by the Council in this regard and the said certificate was valid for a period of 03 years from the date of the meeting of the Council or till next inspection.

3. The first inspection of the programme study centres at the University was carried out between 16 to 20.08.1999 and according to the University at that time it had as many as 21 programme study centres, out of which 06 centres were selected by the Council for inspection on crosssectional basis. According to the University, based on the cross sectional inspections, notification dated 02.06.2000 was issued by the council. Vide letter dated 27.12.2006, the Council requested the University to send inspection fee in respect of each Study Centre so that it could organize inspection accordingly. Responding to the said communication, the University vide letter dated 30.03.2007 sent a cheque of Rs 5 lakh towards inspection fee initially for 10 programme study centres and promised to send later, the inspection fee for the remaining centres. It was also informed that as many as six centres, mentioned in the letter, had already been inspected. Vide communication dated 21.05.2008, the University sent a demand draft of Rs 8 lakh to the Council towards inspection fee for the remaining centres, names of which were given in the letter. It appears that out of 26 centres for which inspection fee was paid by the University, 14 centres were inspected by the Council.

4. The petitioners in W.P.(C) No.1644/2011 joined the aforesaid course of the University at Safdarjung Hospital, New Delhi. They successfully completed the aforesaid course and thereafter applied for admission to the M.Sc. course of Rajkumari Amrit Kaur College of Nursing. The petitioners were required to obtain necessary approval from the Council for the Post Basic B.Sc. (Nursing) course which they had completed with the University. Since no such approval was forthcoming, they have filed this writ petition, seeking a direction to the Council to approve the said course and a direction to respondent No.4 to permit them to appear in the Selection Test, 2011. In W.P.(C) No.7719/2012, the petitioners completed the Basic B.Sc. (Nursing) course from the University in December, 2011/June, 2012 and are aggrieved from the Council not recognizing the said programme conducted by the University through its Study Centre at Safdarjung Hospital. Some of them also applied for admission to the M.Sc. course of respondent No.4 in this petition Nightingale Institute of Nursing , but were refused admission to the said course on account of non-recognition of the B.Sc. (N) course by the Council. They are also seeking approval of the said course by Council, besides a direction to respondent No.4 in the writ petition to admit such of the

petitioners, who want to do M.Sc. Nursing course. The petitioners in W.P.(C) No.5165/2012, completed their B.Sc. Nursing Course from the University in 2001-2002, 2002-2003, 2003-2004 and 2004-2005, after studying at Safdarjung Hospital Study Centre of the University and after completing the said course they also applied to the M.Sc. Nursing course of respondent No.4-Nightingale Institute of Nursing. They also were refused admission on the ground that their B.Sc. Nursing course was not recognized by the Council. The petitioners in W.P.(C) No.5037/2012 completed her Nursing Course in December, 2011 and sought admission in the M.Sc. Nursing Course of Rajkumari Amrit Kaur College of Nursing. She also was refused admission on the ground that B.Sc. Nursing was not recognized by the Council. The petitioners in W.P.(C) No.361/2012 completed their B.Sc. Nursing course through the University and some of them applied to the admission in B.Sc. course of Rajkumari Amrit Kaur College and Nightingale Institute of Nursing. They also were refused admission on the same ground. The petitioner in W.P.(C) No.4146/2012 joined B.Sc. Nursing course during the period 2001-2004 and was awarded degree on 10.4.2006. She also applied for admission to the M.Sc. Nursing course of Nightingale Institute of Nursing, but was denied admission on the same ground. The petitioners in W.P.(C) No.6642/2012 joined the aforesaid course in the year 2009 and claimed to have passed all the papers in the said course. They had studied at Sri Ganganagar Nursing College which was one of the Study Centres of the University for the said course. They are also challenging non-recognition of the course by the Council. The petitioner in W.P.(C) No.2175/2013 completed the aforesaid course in December, 2006 and thereafter sought registration with Delhi Nursing Council. The said registration was, however, not been granted on the ground that they require a No Objection certificate from Indian Nursing Council. The said No Objection certificate, however, has not been granted to them. The petitioners in W.P.(C) No.3036/2012 completed the aforesaid course from Madhya Pradesh Bhoj University, Bhopal. They are qualified from the resolution passed by the Council on 03.01.2012 resolving that the candidates qualifying the said course from Madhya Pradesh Bhoj University through distance education are not eligible for M.Sc. (Nursing programme).

5. In its counter-affidavit, respondent-Indian Nursing Council has stated that as a result of the inspection conducted by it, only 22 Study Centres of the University

have been approved for the purpose of Post Basic B.Sc. (Nursing) course and only the candidates who passed out from such Study Centres are eligible for admission to the M.Sc. (Nursing Course). According to the Council, the course of study undertaken in other Centres of the University is not recognized and, therefore, the qualification earned by the petitioners who studied at such centres is not a valid qualification for admission to the M.Sc. Nursing Course. It is further stated that the course conducted by the University from Safdarjung Study Centre is not a recognized course. This is also the claim of the Council that the notification dated 02.06.2000 permitting the University to conduct distance learning programmed in Post Basic B.Sc. (Nursing) course is a notification only as regards the University, not a general approval of all its Study Centres. It is emphasized in the counteraffidavit of the Council that each Study Centre needs to be inspected to ascertain whether it possess the requisite clinical, teaching and infrastructural facilities to conduct the nursing course or not. In its counter-affidavit filed in W.P.(C) No 3036/2012, the Council has stated that in the absence of any application from the University, seeking approval of the course, there can be no question of granting any such approval. It is further stated that though earlier a communication was issued, stating therein that Post Basic B.Sc. (Nursing) course conducted by Madhya Pradesh Bhoj University, Bhopal through distance learning mode was recognized in the State of Madhya Pradesh, the said communication was issued inadvertently and in fact the said course is not recognized at all.

6. A perusal of the Statements of Objects and Reasons for enactment of the Indian Nursing Council Act, 1974 would show that the Council was set up for the purpose of prescribing minimum standards of education and training for the nurses, midwife and health visitors and to supervise examinations and maintain a schedule of qualifications recognized for registration throughout the country. Section 10 of the Act provides that for the purpose of the said Act, the qualifications included in Part-I of the Schedule shall be the recognized qualifications, whereas the qualifications included in Part-II of the Schedule shall be the recognized higher qualifications. Section 11(1)(b) of the Act provides that no person shall, after commencing of the Act, be entitled to be enrolled in any State register as a nurse, midwife, health visitor or public health nurse, unless he or she holds a recognized qualification. Section 13 of the Act enables the Executing Committee of the Council to appoint

inspectors for the purpose of inspection of any institution recognized as a training institution and to attend examinations held for the purpose of granting any recognized qualification or higher qualification. Such inspectors are required to report to the Executive Committee on the suitability of the institution for the purposes of training and on the adequacy of the training therein or on the sufficiency of the examinations, as the case may be. The report of the inspection is to be forwarded to the authority or institution concerned and thereafter to the Central Government or the State Government and State Council of the State in which the authority or institution is situated, along with remarks, if any, of the concerned authority or institution. Section 16 of the Act empowers the Council to make regulations, prescribing inter alia (i) the standard curricula for the training of nurses, midwives and health visitors (ii) for training courses for teachers of nurses, midwives and health visitors and for training in nursing administration. Section 10(2) of the Act provides that any authority within the State, which is recognized by the State Government for the purpose of granting any qualification and which grants a qualification in general nursing, midwifery, health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognized.

7. The petitioner in WP (C) Nos.1644/2011, 5037/2012, 361/2012, 4146/2012, 7719/2012, 2175/2013, 2774/2011, 5165/2012, completed their Post Basic B.Sc. (Nursing) course from Safdarjung Hospital Centre which admittedly was a Study Centre of the University. It is an admitted case that no inspection of Safdarjung Hospital was carried out by the Council at any point of time. The case of the Council is that since Safdarjung Hospital Study Centre of the University was never inspected by it, it does not know whether or not the said centre possessed, at the relevant time, the requisite educational, training and other infrastructure, which would render it a suitable institution for the purpose of nursing training, there can be no question of its having recognized the said Centre in terms of Section 10(2) of the Indian Nursing Council Act, 1947. The contention of the learned counsel for the petitioners as well as the learned counsel for the University, on the other hand, was that i) no Study Centrewise approval was required; (ii) the notification, issued by the University on 02.06.2000 permitted admission in each centre with intake of

25-30 in each centre and having granted approval without carrying out inspection, it is not open to the Council to deny recognition at a later date on the ground that it did not, in the first instance, carry out inspection of all the Study Centres, (iii) the qualification referred in Section 10 of the Act is the degree in B.Sc. Nursing, awarded by the University, irrespective of the Centre in which the students had undergone study of the course and no Study Centre-wise recognition is envisaged under the Act, (iv) IGNOU having deposited requisite fee for inspection of its Study Centres, including Safdarjung Hospital Study Centre, it is not open to the Council to now say that in the absence of inspection, it could not have taken a view on the suitability of Safdarjung Hospital Study Centre for the purpose of assessing its suitability for the training of nurses; and 7A. In W.P.(C) No.5604/2010, Ms. Bessy Edison and Another vs. Indira Gandhi National Open University and Ors., decided on 26.10.2010, the petitioners before this court completed their Post Basic B.Sc. (Nursing) course from Safdarjung Hospital Study Centre of IGNOU in the year 2008-2009. When they sought admission to the M.Sc. Nursing Course of Nightingale Institute of Nursing, the NOC required by the said Institute, was refused by the Council. Being aggrieved, they preferred the aforesaid writ petition seeking approval of the course so as to enable them to pursue the M.Sc. Nursing course. The stand taken by the Council, however, was that it was required not only to grant recognition of qualifications, but also assess the suitability of individual institution to impart training for awarding the said qualification and Safdarjung Hospital Study Centre was not one of the 18 centres of IGNOU, which the Council had inspected and approved. Allowing the writ petition, this Court, inter alia held as under:-

7. On the facts and documents it is clearly established that in the recognition granted to IGNOU and/or in any of the correspondence/documents of the corresponding time there is nothing to indicate that approval of study centre was to be taken. Though the question of inspection did come up in the year 1999 after the grant of recognition in 1997 but admittedly no inspection of any of the study centre was carried out. The recognition certificate without any such limitation was issued in June, 2000. The question of inspection was thereafter raised only in November, 2006 and by which time the petitioners had already joined the course/programme with the study centre at Safdarjung Hospital.

8. It thus appears that IGNOU was under a bona fide belief that it was not required to obtain any approval for each of its study centres. IGNOU continued to admit students to the said course/programme with study centre at Safdarjung Hospital representing that upon successful completion of the course/programme Degree recognized by INC will be awarded. INC also did not take any steps to disturb the said position.

9. Safdarjung Hospital wherefrom the petitioners have done their graduation is also a large premier government hospital with thousands of patients everyday and with most eminent persons in its faculty. No particular fact has come on record to show that the study centre of IGNOU at Safdarjung Hospital even if having no formal approval, was not equipped to impart the necessary education/training to the petitioners. Nursing is a profession with much more emphasis on practice and experience than on theory. I find it hard to believe that the petitioners in their three years graduation course at study centre in Safdarjung Hospital would not have imbibed the necessary practical experience and education for graduation in nursing. Even otherwise, the examination for conferring the Degree is held by the University. According to INC also some of the study centres of IGNOU and the Degree in B.Sc. Nursing of IGNOU were approved. The examination held by IGNOU for students of the approved and unapproved study centres was the same. The very fact that the petitioners have cleared the said examination shows that the petitioners did not lack in any theoretical knowledge also of the subject.

11. .It is however clarified that nothing contained in this order shall tantamount to this Court holding that the approval as contended by INC to be necessary of study centres of IGNOU is not so necessary or entitle any other student of the said study centre to any benefit from INC the relief to the petitioners having been granted in the peculiar facts aforesaid.

An appeal against the above-referred order is stated to be pending.

8. This can hardly be disputed that before granting recognition in terms of Section 10 (2) of the Act the Council can and, in fact, should direct inspection by the Inspectors in terms of Section 13 (1) of the Act since in the absence of such inspection it may not be possible for the Council to verify as to whether the

Institution meets the conditions, if any, prescribed by the Council in terms of Section 16 (1) (h) of the Act for admission to courses of training and standards of examination and other requirements prescribed, in terms of Section 16 (1) (i) of the Act. For instance if the council has prescribed the qualification and experience for the teaching faculty, the Institution seeking recognition in terms of Section 10 (2) of the Act must necessarily employ faculty which is so qualified. Similarly, if the council prescribes any infrastructural requirement such as size and number of class rooms, the training equipment to be made available to the students, etc., the institution seeking recognition must possess the prescribed infrastructure before it can be recognized by the Council. But, then, the Council must necessarily prescribe all such requirements by way of regulations in terms of Section 16(1). If the Council does not prepare regulations, prescribing such requirements, a meaningful inspection of the institution concerned will not be possible since in that case, the recommendation of the Inspectors would be based upon a subjective assessment with respect to availability of teaching faculty and physical infrastructure. A perusal of the Regulations framed by the Council in exercise of the powers conferred upon it by sub-section (1) of Section 16 of the Act, however, does not indicate that the Council had by way of those Regulations, prescribed such infrastructural and other requirements before an institution could be recognized in terms of Section 10 (2) of the Act. Regulation 63 (5) (e) of the aforesaid Regulations require the Inspectors to report on the adequacy of the teaching programme with particular reference to class and demonstration rooms, teaching equipment, number of nursing tutors, facilities for practical experience, supervision of practical work, etc. The Regulations are however silent as to on what basis the Inspectors have to assess the adequacy or otherwise of such infrastructural facilities. Even the counter affidavit of the Council is silent as regards the infrastructural requirements, if any, prescribed by the Council, by way of statutory regulations, for the institutions seeking recognition in terms of Section 10 (2) of the Act.

9. Admittedly, no inspection of any study centre of the University was carried out by the Council before the letter dated 6.4.1994 came to be issued by it to the University. The aforesaid letter contained no condition or stipulation either for inspection of the study centres by the Council or the provision of any particular

infrastructure in such centres. There is no explanation from the Council as to why such a blanket approval was granted by it without first carrying out an inspection in terms of Section 13 of the Act. Had the Council insisted upon carrying out inspection of the study centres before issuing the aforesaid letter dated 6.4.1994, or had it granted conditional approval subject to inspection of the study centres in terms of Section 13 of the Act, it would not have been possible for the University to start Post Basic B.Sc. (Nursing) Course, on the strength of the letter dated 6.4.1994, unless such an inspection carried out. Having allow the University to set up study centres and admit students by granting such a blanket approval, it would be difficult for the Council to refuse recognition to the aforesaid course.

10. The case of the University is that the first inspection of its study centres was carried out by the Council between 16th and 20th August, 1999. According to the University, the Council, instead of inspecting each and every study centre chose to inspect only six (6) centres on crosssectional basis, though it had as many as twenty-one (21) study centres functioning by that time. This is also the case of the University that the notification dated 2.6.2000 came to be issued by the Council on the basis of the aforesaid cross-sectional inspections. A perusal of the resolution dated 2.6.2000 would show that this was an unconditional and unqualified approval to the Post Basic B.Sc. (Nursing) course of the University, without any stipulation with respect to inspection of the individual study centres or the provision of any particular infrastructural requirement. I, therefore, see no good reason to reject the case of the University that the aforesaid resolution dated 2.6.2000 was based upon cross-sectional representative inspections carried out by the Council to assess the availability of infrastructural and other facilities available in various study centres of the University. It appears to me that considering that IGNOU is a statutory University, not actuated by any monetary considerations, the Council chose not to inspect each and every study centre of the University since it felt that the infrastructure available in the centres which it had inspected shall also be available in other study centres of the University, and that is why the resolution dated 2.6.2000 was passed without physical inspection of all the study centres of the University.

11. In view of the approval dated 6.4.1994 coupled with the resolution dated 2.6.2000, the Council in my view would be precluded from refusing recognition to the Post Basic B.Sc. (Nursing) course of the University considering that the students taking admission to the aforesaid course would not be aware of the correspondence between the University and the Council and on being apprised of the approval dated 6.4.1994 coupled with the approval/resolution dated 2.6.2000, they would certainly be entitled to assume that the aforesaid course of the University was duly recognized by the Council. It would, therefore, be highly unjust, unfair and unreasonable to the students if after having passed the aforesaid course or taking ad interim therein, they are denied recognition by the Council solely on the ground that each and every study centre was not inspected by it. As noted by this Court in Ms. Bessy Edison and Another case (supra), Safdarjung Hospital is a large premier hospital being visited by thousands of patients everyday. It would be difficult to even say that the aforesaid hospital did not have adequate infrastructure required for the Post Basic B.Sc. (Nursing) course. This is more so when the Regulations framed by the Council do not prescribe the infrastructural requirements in such centres and this is not the case of the Council in the counter affidavit that Safdarjung Hospital and Sriganganagar Centres, in fact, did not, possess the infrastructure necessarily required for the aforesaid course.

12. As noted by this Court Ms. Bessy Edison and Another case (supra) the issue of inspection was raised by the Council for the first time in November, 2006. As noted earlier, the first inspection by the Council was carried out in August, 1999. Thereafter the Council passed the resolution dated 2.6.2000 granting unconditional approval to the aforesaid course. For more than six (6) years after passing the resolution dated 2.6.2000 the Council did not seek inspection of any study centre nor did it ask the University to stop admissions in the study centres which had not been inspected by it. If the intention of the Council while passing the resolution dated 2.6.2000 was to approve only those study centres which had been inspected by it there could be no reason for the Council not asking the University to stop making admissions to the study centres which had not been inspected by it. It would be pertinent to note here that this is not the case of the Council that prior to November, 2006, it was not aware of the University admitting

students to the study centres which it had not inspected. Admittedly, Shrimati Shashi Chugh, the then Secretary of the Council was a part of the faculty in Safdarjung study centre of the University. Considering her presence in the said centre it would be difficult to say that the Council was not aware of the students studying in the said centre. Despite that, the Council never asked the University not to admit students at the aforesaid study centre.

13. As noted earlier the University vide letter dated 30.3.2007 sent a cheque for Rs.5.00 lakh to the Council towards inspection fee for ten (10) study centres and promised to send inspection fee for the remaining study centres at a later date. By that time six (6) study centres mentioned in the aforesaid letter had already been inspected by the Council. This was followed by communication dated 21.5.2008 whereby another draft of Rs 8.00 lakh was sent to the Council towards inspection fee for the remaining study centres mentioned in the said letter. There is no explanation from the Council as to why all the study centres of the University were not inspected by it despite receipt of the aforesaid inspection fee. If the fee received by the Council was deficient it could always have asked the University to pay the balance fee. No such course, however, was adopted by the Council. Therefore, failure to inspect the remaining centres is attributable solely to the inaction on the part of the Council. In any case even if I assume that the University also needs to share the responsibility for the inspection of the remaining study centres, the students who have taken admission already passed out or have admission to the aforesaid course cannot be made to pay for the negligence/inaction on the part of the Council and/or the University, since while taking admission in the study centre of a statutory University they had no reason to suspect that the course in which they were taking admission was not recognized by the Council.

14. It was contended by the learned counsel for the Council that the students should have verified from the website of the Council as to which were the study centres of the University which had been approved by the Council and had they done so, they would have come to know that only some of the study centres, names of which appear on the website were approved by the Council. There is nothing on record to show as to whether the list of all the inspected study centres was available on the website of the Council at the time the petitioners

before this Court took admission in the aforesaid course. In any case, it would be unrealistic to expect the students to visit the website of the Council to verify as to which were the study centres approved by the Council for the aforesaid course. In the absence of any public notice from the Council they had no reason to suspect that the study centres of a statutory University such as IGNOU would not have the statutory approval of the Council. During the course of arguments, along with his written submissions the learned counsel for the petitioners has filed the guidelines and minimum requirements to establish Post Basic B.Sc. (Nursing) course. However, it cannot be ascertained as to when the aforesaid guidelines came to be framed by the Council. The guidelines do not have a statutory force and cannot be substituted for the regulations in terms of Section 16 (1) of the Act. In any case this is not the case of the Council that Safdarjung Hospital study centre and Tantia Higher Education Institutes Campus Sri Ganganagar study centre of the University did not have the infrastructure stipulated in the aforesaid guidelines.

15. As regards the petitioners in WP (C) No.3036/2012, I find that the aforesaid petitioners passed their Post Basic B.Sc. (Nursing) course from respondent No.2/Madhya Pradesh Bhoj (Open) University, Bhopal. Admittedly, the aforesaid qualification of Madhya Pradesh Bhoj (Open) University, Bhopal was never recognized by the Council either in principal or otherwise. In its counter affidavit, the aforesaid University does not claim that it had sought recognition from the Council in terms of Section 10 (2) of the Act. The plea taken in the counter affidavit is that the resolution of the Council, resolving that the candidates qualifying Post Basic B.Sc. (Nursing) course from the aforesaid University for M.Sc. is ultra vires the Constitution of India as the aforesaid University is duly recognized by the University Grants Commission (for short UGC). However, the aforesaid University has not been able to show how the resolution passed by the Council with respect to Post Basic B.Sc. (Nursing) course from the said University is ultra vires the Constitution. Mere recognition by the UGC does not absolve the University from a statutory obligation to seek recognition from the Council in terms of Section 10 (2) of the Act. In the absence of any such recognition from it, the Council was fully justified in taking the stand that the aforesaid degree awarded by Madhya Pradesh Bhoj (Open) University, Bhopal is not recognized by it. It appears that vide communication dated 25.9.2009 the Council had informed the Registrar of the

University that its Post Basic B.Sc. (Nursing) course was valid for working within the State of Madhya Pradesh. According to the Council, the aforesaid letter was issued inadvertently and was later on withdrawn. Be that as it may, even the aforesaid letter dated 25.9.2009 does not amount to recognition of Post Basic B.Sc. (Nursing) course of the said University by the Council outside Madhya Pradesh.

16. For the reasons stated hereinabove, I am of the view that though the petitioners before this Court except the petitioners in W.P(C) No.6642/2012 must necessarily get benefit of Post Basic B.Sc. (Nursing) course of IGNOU in future, the University should not make any further admissions for the study centres which have not been inspected and approved by the Council.

17. In view of the foregoing, WP (C) No.3036/2012 is hereby dismissed without any orders as to costs. WP (C) Nos.1644/2011, 5037/2012, 361/2012, 4146/2012, 7719/2012, 2175/2013, 2774/2011, 5165/2012 and 6642/2012 are disposed of with the following directions: i. It is hereby declared that the Council had duly recognized, in terms of Section 10 (2) of the Indian Nursing Council Act, 1947, the Post basic B.Sc. (Nursing) course of the respondent Indira Gandhi National Open University, in respect of the students who have already passed out or have already taken admission to the aforesaid course, irrespective of the study centre from which they had passed out or in which they are studying. ii. The respondent-Council shall grant the necessary permission/NOC to the petitioners in the above-referred writ petitions for admission to the M.Sc. (Nursing) course if the petitioners have already approached or approach it in future seeking requisite permission/NOC, on the strength of Post Basic B.Sc. (Nursing) degree awarded to them by Indira Gandhi National Open University. iii. The respondent-Raj Kumari Amrit Kaur College of Nursing and Nightingale Institute of Nursing shall not refuse admission to the petitioners in the above-refereed writ petitions, in their respective M.Sc. (Nursing) course on the ground that the Post Basic B.Sc. (Nursing) degree obtained from Indira Gandhi National Open University is not recognized by the Indian Nursing Council. iv. The respondent-Indira Gandhi National Open University shall not make further admission to its Post Basic B.Sc. (Nursing) course, wherever such course is to be pursued at a study centre which is not already

inspected and approved by the Council in terms of Section 10 (2) of the Act. v. Within two (2) weeks from today the University shall send to the Council a list of the study centres which are yet to be inspected and approved by the Council. On receipt of the said information the Council shall intimate the fee, if any, required to be paid to it for the purpose of the aforesaid inspection. While raising a demand in this regard, the Council shall adjust the unutilized fee, if any, paid to it. The University shall remit the deficient fee, if any, to the Council within two (2) weeks of demand raised by the Council in this regard. The Council shall carry out inspection of the study centres in respect of which fee is paid to it by the University within eight (8) weeks of the receipt of the requisite fee. (vi) A final decision on the recognition of such study centres shall be taken by the Council within four (4) weeks of carrying out inspection and removal of deficiencies, if any. If any deficiencies are found during the course of inspection the same shall be communicated to the University within two (2) weeks of the inspection and the University shall remove those deficiencies within four (4) weeks thereafter. The writ petitions stand disposed of accordingly with no order as to costs. V.K.JAIN, J
SEPTEMBER 27 2013 BG/rd

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com