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Gsvs Association Vs. the State of Karnataka and ors.

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Court : Karnataka

Decided On : Nov-15-1996

Reported in : ILR1997KAR2263

Judge : Tirath S. Thakur, J.

Acts : The Karnataka Nurses, Midwives and Health Visitors Act, 1961 - Sections 23

Appeal No. : W.P. No. 17150 of 1996

Appellant : Gsvs Association

Respondent : The State of Karnataka and ors.

Advocate for Def. : A.V. Srinivasa Reddy, AGA

Advocate for Pet/Ap. : Udaya Holla, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Tirath S. Thakur, J.

1. By an order dated 12th of October 1994, the 3rd respondent-Director of Vocational Education permitted the petitioner's Pre-University College to start an

additional Vocational Course in Nursing. The permission granted was restricted to the academic year 1994-95. The petitioner appears to have started the said additional course and while the same was in progress, the Government by its order dated 29th of January 1996 cancelled the permission granted. Similar permissions granted to run courses in Pharmacy and Dental Technicians were also cancelled primarily on the ground that the courses were allowed to be started without the permission of the statutory authorities concerned. Aggrieved, the petitioner has filed the present Writ Petition assailing the cancellation inter alia on the ground that the course having been started pursuant to the permission granted by the Government by its order dated 11th of October 1994, the same could not have been cancelled simply because the Pharmacy Council of India had objected to a Vocational Course in Pharmacy being offered by Vocational Institutes without its permission.

2. In the statement of objections filed by the respondents, it is pointed out that the Central Government has under a Scheme formulated by it sponsored vocationalisation of secondary education. The said Scheme was initially applicable only to Technical, Agricultural and Commerce based trades, but was extended to para-Medical Courses also including Nursing, Pharmacy and Laboratory Technicians. The Scheme, it appears, envisages financial grants for the institutions offering the same. Such a grant was sanctioned in favour of the petitioner also for the Nursing Course started by it. It is further pointed out that the Pharmacy Council of India had objected to the conduct of Vocational Courses contrary to the provisions of the Pharmacy Act and asked the State Government to take steps to rectify the said violation. The Council, it appears, had threatened not to recognise any such course particularly when the same was undertaken by persons, who did not possess the minimum qualifications prescribed therefor. The objections raised by the Pharmacy Council were examined by the State Government, which revealed that the Vocational Courses in Pharmacy, Nursing and Dental Technology were governed by specific enactments on the subject regulating the grant of permission to institutions offering such courses. Consequently the permissions granted were cancelled and the institutes asked to stop the Courses in view of the fact that they were not approved by the concerned statutory bodies. The petitioners' institute, it is urged, not being approved by the

State Nursing Council under Section 23 of the Karnataka Nurses, Midwives and HealthVisitors Act, 1961 was not entitled to continue the course which it was permitted to start only for the year 1994-95. The impugned order has thus been stoutly defended by the respondents both on principle as also on the ground that the permission granted to the petitioner was limited only to one academic year and there being no permission for the petitioner for the year 1996 onwards, the question of its continuing to offer any such course did not arise.

3. The Karnataka Nurses, Mid-wives and Health Visitors Act, 1961 (hereinafter referred to as the Act) envisages the establishment, incorporation and constitution of a Council called the Karnataka Nursing Council. Section 18 of the Act forbids any person from practising or holding himself out, whether directly or by implication, as practising habitually or for personal gain as a nurse, midwife, auxiliary nurse-midwife or health visitor, except after getting himself enlisted in terms of Section 17 thereof. Section 23 of the Act relates to training institutions and provides that institutes which are approved and recognised by the Council after inspection by its representative shall be competent to train nurses, midwives, auxiliary nurse-midwives or health visitors and to send them for examination for the qualifying certificate of the Council. Sub-section (3) of Section 23 contains a prohibition against any School, Hospital or other Institution which is not approved and recognised under the said Section issuing to any person a certificate or entering the name of any person in any document purporting to show that such person is qualified by reason of his having passed any examination or undergone any course of training to practice as a nurse, midwife, auxiliary nurse midwife or health visitor, Section 23(4) makes the contravention of Sub-section (3) punishable with fine extending upto Rs. 300/-.

4. From a reading of the above provisions of the Act, it is apparent that the Subject relating to training, practice, registration, enlisting, qualification etc. of nurses, midwives, health visitors and auxiliary midwives is covered by the Act and the Rules framed thereunder. The provisions of Sections 18 and 23 in particular forbid any person not included in the list maintained under the Act from practising as a nurse and any training institute from issuing to any person a certificate suggesting that any such person is qualified as a nurse, health visitor or mid-wife. The State

Government was, therefore, perfectly justified in cancelling the permission already granted to the petitioner, whose institute, it is admitted, has not been approved or recognised by the Nursing Council. The very fact that permission to start a nursing course had been granted pursuant to a Centrally sponsored Scheme for vocationalisation or that pursuant to the said Scheme, the petitioner had secured certain financial assistance from the respondent would not by itself entitle it to continue offering the nursing course even in the absence of an approval by the Council. The grant of assistance under a Scheme or the permission to run any such course could not be derogation of the requirements of the statute which squarely governs the subject and regulates matters relating to training and establishment of training institute.

5. Counsel appearing for the petitioner however argued that the petitioner-Institute does not issue any certificate to any one undergoing training with it and that such a certificate was issued only by the Directorate of Vocational Education. He urged that permitting the petitioner to carry on the course even in the absence of approval by the Nursing Council would not therefore in any manner offend Section 23(3) of the Act. There is no merit in this Submission. A careful reading of Section 23 would show that no School or other institute, which is not approved and recognised under the said Section can issue to any person a certificate to the effect that he is qualified by reason of his having passed any examination or undergone any course or training. If that be so, the Directorate of Vocational Education cannot grant any formal certificate or other document certifying any such person to be a qualified nurse, health visitor or mid-wife etc., particularly so when the issue of any 'such certificate even by the Directorate would be possible only if the candidate concerned is certified by the institute offering the course to have undergone any such training or course. If the institute itself is under a disability from issuing any certificate to the effect that the candidate concerned has undergone any course or training, the question of the Directorate issuing any formal certificate or other document recognising any such training does not arise.

6. It was next argued by the learned Counsel that the impugned order was in violation of the principles of natural justice, inasmuch as no opportunity was afforded to the petitioner before cancelling the permission granted to it. There is no

Substance even in this Submission. I say so firstly because the permission granted to the petitioner was limited only to the year 1994-95. It is not in dispute that the candidates admitted by the petitioner during 1994-95 have been allowed to pass the course and the withdrawal under the impugned order is applicable only from the year 1996 onwards and secondly because the cancellation of the permission has come in consequence of the Governments realising the difficulties on account of the specific statutory provisions on a interpretation whereof, the view taken by the Government has been found by me to be justified. If the petitioners' institute is not approved by the Council and if the provisions of the Act forbid the petitioner from offering any Nursing Course in the absence of any such approval, it would make little difference whether or not a notice was issued to the petitioner before the withdrawal of the permission by the impugned order. It is true that the mere absence of a possible explanation may by itself be no ground to dispense with the application of principles of natural justice, but then it is equally well settled that the Courts do not issue futile writs. Assuming that the petitioner is granted an opportunity of being heard in the matter, the result of any such hearing would not make any material difference for in the light of the admitted position mentioned earlier, the petitioner would not be entitled to offer any such course till such time the Nursing Council grants its approval under Section 23.

7. It was lastly argued by the learned Counsel that the Registrar of the Nursing Council had by a communication dated 26th of September 1996 clearly opined that the Vocational Courses in Nursing do not come in the purview of the Director, Health & Family Welfare Services and State Nursing Council. It was urged that since the Registrar had expressed his opinion and found that the Nursing Course does not fall within the jurisdiction of the Nursing Council, it must be assumed that the provisions of the Act had no application to the course offered by the petitioner. I am not impressed by this Submission. As to whether the provisions of the Act apply to the instant case would depend upon the provisions contained therein and a true and proper interpretation thereof. The communication issued by the Registrar does not really suggest that the Act has no application. Even assuming that the Registrar meant to say so, his opinion can hardly be said to be of any consequence. Since the Act has been found by me to be applicable to the instant case, the bar contained in Sections 18 and 23 would squarely apply to the nursing

course offered by the petitioner.

8. In the totality of the above circumstances, therefore, I see no reason to interfere. The Writ Petition fails and is accordingly dismissed, but in the circumstances without any orders as to costs.

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