

K.L.E. Society and anr. Vs. Rajiv Gandhi University of Health Sciences and ors.

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Court : Karnataka

Decided On : Nov-11-2002

Reported in : 2003(2)KarLJ480

Judge : N. Kumar, J.

Acts : [Indian Nursing Council Act, 1947](#) - Sections 16(1); Indian Nursing Council Master of Nursing Syllabus (Post-graduate Nursing Education) Regulations; [Rajiv Gandhi University of Health Sciences Act, 1994](#) - Sections 45(10); [Constitution of India](#) - Articles 246(2) and 254

Appeal No. : Writ Petition Nos. 27064 to 27068 of 2000

Appellant : K.L.E. Society and anr.

Respondent : Rajiv Gandhi University of Health Sciences and ors.

Advocate for Def. : S.A. Nazeer, Adv. for Respondent-1, ;B. Manohar, Government Adv. for Respondent-2, ;S.S. Haveri, Adv. for Respondents-3 and 4, ;Jagadish Patil, Adv. for Respondents-5 to 8 and ;R.D. Gokakakar, Adv. fo

Advocate for Pet/Ap. : Ashok B. Hinchigeri, Adv.

Judgement :

ORDER

N. Kumar, J.

1. The first petitioner is a premier educational society in the State of Karnataka which is running the second petitioner-college. The second petitioner-college was started in the year 1990 imparting B.Sc. Nursing course. The petitioners approached the Karnatak University seeking permission to start M.Sc. in Medical Surgical Nursing and Community Health Nursing with an intake capacity of 4 seats in each discipline. The Karnatak University recommended to the Government for granting permission to start the aforesaid courses by its letter dated 30-5-1996. However, from 1-6-1996 the [Rajiv Gandhi University of Health Sciences Act, 1994](#) came into force establishing the first respondent-University. The Government granted permission to the petitioner to start the aforesaid courses by its order dated 9th March, 1998. However, the permission was confined to only two seats in the aforesaid courses from the academic year 1998-99. The first respondent-University accorded continuation of affiliation to the college on 1-9-1998. The second respondent-college requested the Government to accord permission for additional seats on 22-5-1999.

2. The case of the petitioners is, in pursuance of the aforesaid request, experts of respondents 2 and 4 inspected the college on 18-7-1999 and 29-7-1999 and they have recommended for the enhancement of seats from 2 to 4 in each of the post-graduate specialities. However, the second respondent was not in a position to act on the said recommendation immediately in view of the elections to the Assembly and Lok Sabha in September 1999. Therefore, a formal order increasing the intake capacity was deferred. It is further case of the petitioners that when they approached the Government after the election they were given to understand that it is open to them to make admissions as per the proposed intake capacity of 4 students and that the issuance of Government order is only a matter of time. On such assurance the petitioners filled up the two additional seats. Thereafter, they forwarded the names of four students each in two disciplines to the University for approval on 11-3-2000 in the prescribed form. The first respondent-University declined to approve the admission of the four candidates, namely, respondents 5 to 8, to these writ petitions and the second respondent-college was directed to discharge those students immediately as their admission is in excess of the

approved intake. The said letter is dated 15-4-2000. However, after the aforesaid letter of the University the Government by its order dated 20-5-2000 increased the capacity for the academic year 2000-2001. Thereafter, the Government by letter dated 28-6-2000 directed the first respondent-University to approve the admissions of the aforesaid students by adjusting them against the intake capacity of the current academic year 2000-2001 as the college has voluntarily undertaken to forego and surrender four seats in 2000-2001 so that the aforesaid four students admitted for the academic year 1999-2000 could be adjusted against the seats for the current academic year. The said letter is dated 28-6-2000. Thereafter, the second respondent-college brought to the notice of the University the increase in the intake as per the orders of the Government and their undertaking to surrender four seats for the academic year 2000-2001 and therefore the students admitted for 1999-2000 would be adjusted against the said vacancy and their admissions be approved by their letter dated 29th June, 2000. In spite of the said request as the first respondent-University did not approve the admissions of respondents 5 to 8 they were constrained to approach this Court for quashing of Annexure-F, the letter dated 15-4-2000 issued by the University to the college directing them to discharge the respondents 5 to 8 from the college and for a direction to the first respondent-University to approve the admissions of respondents 5 to 8.

3. This Court while entertaining the writ petition on 28-9-2000 passed an interim order permitting the respondents 5 to 8 to take the examination held in September 2000. By further order on 5-9-2001, respondents 5 to 8 were permitted to take the examination in second year M.Sc. Nursing course. Thus, the students have completed the course, taken the examination and as there was an order not to announce the results, the results have not been announced.

4. The Government issued a corrigendum on 26-4-2001 to its earlier order dated 20-5-2000 to the effect that the academic year 2000-2001 mentioned in the Government Order, dated 20-5-2000 is to be read as 1999-2000. The effect of the said corrigendum is that the second respondent-college was permitted the intake of two extra seats in each discipline from the academic year 1999-2000 itself.

5. The first respondent-University has filed its counter. It is submitted that the Indian Nursing Council has fixed the intake of the petitioner-college in M.Sc. Nursing Course for the academic year 1999-2000 as four. A certificate dated 1-7-1999 issued by Indian Nursing Council to the second respondent-college fixing the intake as four seats for the academic year 1999-2000 is produced. The University has granted continuation of affiliation to conduct M.Sc. Nursing course for the academic year 1999-2000 by notification dated 7-9-1999 keeping in view of the permission granted by the Indian Nursing Council in the aforesaid letter. It was submitted that since the apex body as also the University have fixed the intake of the petitioner-institution to the said course for the academic year 1999-2000 at four, the college is not justified in admitting respondents 5 to 8 who are in excess of the admission capacity of the college. The University was justified in refusing to approve the admission of respondents 5 to 8. The Government cannot direct the University to approve the admission made by the college in excess of the admission capacity of the college fixed by the Competent Authorities. Therefore, they submit that these writ petitions lack merits and are liable to be dismissed.

6. Learned Counsel appearing for the petitioner submits that the Competent Authority to fix the intake for admission to the aforesaid courses is the Government and when once the Government has sanctioned the intake of four students in each discipline, it is not open to the first respondent-University to refuse to approve the admissions on the ground that the Indian Nursing Council has fixed the intake at four seats, and therefore submits, the order of the first respondent-University directing the second petitioner-college to discharge respondents 5 to 8 is liable to be quashed and a direction to be issued to the University to approve the admission of respondents 5 to 8.

7. Per contra, learned Counsel appearing for the first respondent-University submits, though the Government has fixed the intake at four students in each discipline, according to them, the Government has no power to fix the intake and it is the Indian Nursing Council which is competent to fix the intake and as they have fixed the intake at only two students in each discipline they are bound by the said intake fixed by Indian Nursing Council, the fourth respondent herein, as such the admissions of respondents 5 to 8 cannot be approved.

8. Learned Counsel appearing for the fourth respondent-Indian Nursing Council submits, the fourth respondent is the authority to fix the intake in any college which comes under its jurisdiction and as the Council found that the infrastructure available in the second petitioner-college do not warrant for any additional intake, they have fixed at only two seats in each discipline and therefore any admission made in excess of what is prescribed by the fourth respondent is illegal and cannot be approved and the University is justified in refusing to approve the admissions of respondents 5 to 8 which are made in excess of the approved intake.

9. From the aforesaid facts and rival contentions, the short point that arises for my consideration in these writ petitions is as under.-

'Who is the Competent Authority to fix the intake for M.Sc. in Medical Surgical Nursing and Community Health Nursing?'

10. The second petitioner-college was started with the permission of the Government in the year 1996. It was affiliated to the Karnatak University. The second petitioner made an application to the Karnatak University for permission to start M.Sc. in Medical Surgical Nursing and M.Sc. in Community Health Nursing with an intake capacity of four seats in each discipline. On receipt of the said application, the Karnatak University by a communication dated 30th May, 1996 addressed a letter to the Government stating that the Committee constituted by the Syndicate of the University visited the college on 2-4-1996 and has recommended for grant of permission to start the aforesaid courses. However, the [Rajiv Gandhi University of Health Sciences Act, 1994](#) (hereinafter referred to as the 'Act') was passed to establish and incorporate a University in the State of Karnataka to be known as the Rajiv Gandhi University of Health Sciences, for the purpose of ensuring proper and systematic instruction, teaching, training and research in modern medicine and Indian Systems of Medicine in the State of Karnataka. Section 5 of the Act deals with jurisdiction and admission to privileges. Sub-section (1) of Section 5 states that no college in the State of Karnataka imparting education in Health Sciences shall save with the consent of the University and the sanction of the Government, be associated in any way with or seek admission to any privileges of any other University in India or abroad. Sub-

section (3) of Section 5 makes it clear that with effect on and from the date of commencement of this Act all colleges and autonomous institutions of Health Sciences previously admitted to the privileges of or affiliated to the Universities of Mysore, Bangalore, Kar-natak, Mangalore, Gulbarga and Kuvempu shall be deemed to be admitted to the privileges or affiliated to the University. By virtue of the aforesaid provision as the second petitioner-college was affiliated to Karnatak University prior to the amendment of the Act, the second petitioner-college shall be deemed to be admitted to the privileges or affiliated to the Rajiv Gandhi University and it is entitled to all the privileges enjoyed by the college prior to the commencement of the Act. The said Act came into force from 1-6-1996. After the Act came into force, the Government of Karnataka by its order dated 9th March, 1998 as per Annexure-B granted permission to start the M.Sc. in Medical Surgical Nursing and M.Sc. in OP and D Nursing with an intake of two seats in each discipline from the academic year 1998-99 as against the request of the petitioner to fix the intake at four seats in each discipline. Acting on the aforesaid Government Order the first respondent-University by its order dated 1-9-1998 as per Annexure-C continued the affiliation to the second petitioner-college with an intake capacity of two seats in each of the disciplines subject to the conditions stipulated to the said order. Subsequently, as per Annexure-R1, dated 7-9-1999, the affiliation was continued by the University for the academic year 1999-2000 subject to the conditions mentioned therein.

11. The Indian Nursing Council, fourth respondent herein, also issued what is styled as suitability certificate as per Annexures-R2 and R3 for four seats in M.Sc. Nursing courses in pursuance of the provisions of Sub-section (2) of Section 13 of the Indian Nursing Council Act of 1947. Thereafter, they approached the Government for increase of the intake from two seats to four seats in each discipline as per Annexure-D, dated 22-5-1999. In the meanwhile, the second petitioner-college admitted four students for the academic year 1999-2000 for the aforesaid two disciplines. The second petitioner-college addressed a letter to the first respondent-University on 11-3-2000 as per Annexure-E enclosing along with the same the name of eight students admitted for the academic year 1999-2000 and requesting the University to approve those admissions. It is in answer to this, the first respondent-University as per Annexure-F informed the second petitioner-

college that the four candidates, namely, respondents 5 to 8 should be discharged immediately as their admissions are in excess of the sanctioned intake. After the aforesaid letter, the Government by order dated 20-5-2000 increased the intake from two seats to four seats in each discipline as requested by the petitioner. However, the said Government Order made it clear that it would come into effect from the academic year 2000-2001. Subsequently, a corrigendum was issued on 26-4-2001 correcting the academic year as 1999-2000 instead of 2000-2001. In spite of the Government sanctioning the intake at four students in each discipline, the University declined to approve the admissions of respondents 5 to 8 on the ground that the Government is not the authority to fix the intake and according to them it is the Indian Nursing Council which is the Competent Authority to fix the intake.

12. Section 45 of the Act deals with affiliation of colleges. Sub- section (10) of Section 45 which deals with admission of students to the college and to a course and also the intake reads as under.-

'(10)(a) No admission of student shall be made by any new college seeking affiliation to the University or by an existing college seeking affiliation to a new course of study to such course, unless, as the case may be, affiliation has been granted to such new college or to the existing college in respect of such course of study.

(b) The maximum number of students to be admitted to a course of study shall not exceed the intake fixed by the University or the Government, as the case may be and any admission made in excess of the intake shall be invalid'.

13. A reading of the aforesaid provision makes it clear, the intake for any course of study is to be fixed by the University or the Government as the case may be and any admission made in excess of the intake shall be invalid. It is not in dispute that the University has not fixed the intake of any course. The intake for a Nursing course is fixed by the Government. Now, admittedly in the instant case Government has fixed the intake for the academic year 1999-2000 as four for each discipline. If that is so, the admission of respondents 5 to 8 for the academic year 1999-2000 would be well-within the intake prescribed by the Government.

Therefore, it cannot be said that their admissions cannot be approved as they are admitted in excess of the approved intake.

14. Learned Counsel appearing for the respondents contend, the Indian Nursing Council Act of 1947 being a Central legislation it would have an overriding effect on the Act which is a State legislation and therefore if the power to fix the intake rests with the Indian Nursing Council the Government has no power to fix the intake for any course. In that view of the matter any order of the Government fixing the intake for any of the Nursing courses has to be ignored and they have to give effect to the intake fixed by the fourth respondent-Council.

15. In order to appreciate the said contention, it is necessary to have a look at the provisions of the Indian Nursing Council Act of 1947 (hereinafter referred to 'INC Act') to find out whether the said Act empowers the Council to fix the intake of any of the Nursing courses.

16. The INC Act was passed to constitute an Indian Nursing Council in order to establish a uniform standard of training for nurses, midwives and health visitors and for other matters. Section 2 of the INC Act deals with definitions, Section 3 deals with constitution and composition of the Council, Section 4 incorporation of the Council, Section 5 with mode of elections, Section 6 deals with term of office and casual vacancies, Section 7 deals with meetings, Section 8 deals with officers, committees and servants of the Council, Section 9 deals with the Executive Committee and Section 10 deals with recognition of qualifications. It deals with what are the recognised qualifications and recognised higher qualifications and they are set out in Parts I and II of the Schedule and it also provides only when the Council recognise the qualification or grants the authority it would be recognised as qualifications for the purpose of the said Act. Section 11 deals with effect of recognition and it provides, notwithstanding anything contained in any other law any recognised qualification shall be a sufficient qualification for enrolment in any State register and no person shall after commencement of this Act be entitled to be enrolled in any State register as a nurse, midwife, auxiliary nurse-midwife, health visitor or public health nurse unless he or she holds a recognised qualification. Section 12 deals with power to require information as to courses of

study and training and examination. Section 13 deals with the power of the Executive Committee to appoint Inspectors for inspection of the institutions and other incidental matters. Section 14 deals with withdrawal of recognition by the Executive Committee when the education imparted by any institution is not in conformity with the regulations made under the INC Act or fall short of the standards required thereby or that an institution recognised by a State Council for the training of nurses, midwives, auxiliary nurse-mid-wives or health visitors does not satisfy the requirements of the Council. Section 16 deals with power to make regulations. In particular Section 16(g) deals with prescribing the standard curricula for the training of nurses, midwives and health visitors, for training courses for teachers, of nurses, midwives and health visitors and for training in nursing administration. Section 16(h) provides for prescribing the conditions for admission to courses of training as aforesaid and Section 16(i) provides for prescribing the standards of examination and other requirements to be satisfied to secure for qualifications, recognition under this Act. Therefore, in the entire scheme of the INC Act there is no provision specifically empowering the Council to prescribe the intake in any particular course.

17. In exercise of the powers conferred by Sub-section (1) of Section 16 of the INC Act the Council has made the regulations which are called as Indian Nursing Council Regulations. Part I of the said regulation deals with time and place of, and preparation of business for meetings of the Council, Part II deals with conduct of business at meetings of the Council, Part III deals with minutes of the Council, Part IV deals with election of members of the Council, Part V deals with resignation and filling of casual vacancies, Part VI deals with tenure of office and powers and duties of the President and Vice-President, Part VII deals with constitution of the Executive Committees, Part VIII deals with constitution of Committees, Part IX deals with tenure of office and powers and duties of Secretary and other officers and servants of the Council and Part X deals with inspection of examination and training institutions. Regulation 63 which is relied on by the learned Counsel for the fourth respondent to point out that though specifically there is no provision empowering the Council to fix the intake a reading of this Regulation 63 impliedly confers power on the Council to fix the intake. A reading of the aforesaid regulation makes it very clear, it only deals with the inspection of examinations

under Section 13(1) of the INC Act and it does not deal with any fixation of intake by the Council and therefore it is not-possible to accept the contention of the learned Counsel for the respondents that the aforesaid regulation by implication confers power on the Council to fix the intake.

18. Learned Counsel for the fourth respondent also relied on the Indian Nursing Council Master of Nursing Syllabus and Regulations (Post-graduate Nursing Education) dealing with general requirements which provides as under.-

'I. The number of admission to Master course in Nursing in each speciality shall not be more than two per post-graduate teacher per year.

II.

III.

IV. In exceptional cases, in a speciality with one post-graduate teacher and another teacher with post-graduate qualification a maximum of four students can be admitted per year'.

On the basis of the aforesaid regulations, he contended that having regard to the post-graduate teachers available in the second petitioner-college they cannot admit more than two students per discipline, and therefore contends, in view of the aforesaid provisions it is the Council which is the ultimate authority to fix the intake of the students of any particular course. In support of his contention he relied on the decision of the Supreme Court in the case of Medical Council of India v. State of Karnataka, : [1998]3SCR740 .

19. Apart from the aforesaid Act, regulations and guidelines nothing is placed on record to substantiate their contentions that it is the Council which is the ultimate authority to decide the intake in respect of all Nursing courses. If the INC Act and its regulations had categorically provided that the Council shall fix the intake of any particular course and if the law passed by the State legislation was in conflict with the aforesaid provision then the question of repugnancy would arise and in that context the law passed by the Parliament would have an overriding effect on the law passed by the State legislation.

20. In the case of Medical Council of India, supra, prior to the amendment to the Indian Medical Council Act, 1966, it is the State Government which was fixing the intake. After amendment to the MCI Act by introducing Sections 10-A, 10-B and 10-C it is made clear that notwithstanding anything contained in the said Act or any other law for the time being in force a bare reading of Section 10-A(1)(b)(ii) as also Section 10-B(3) clearly shows that no medical college shall increase its admission capacity in any course of study and training except with the previous permission of the Central Government obtained in accordance with the provisions of Sub-section (2) of Section 8 or Section 10-A. In that context it was held in the said judgment that no medical college could admit any student in excess of its admission capacity fixed by the Medical Council subject to any increase thereof as approved by the Central Government and that Sections 10-A, 10-B and 10-C will prevail over Section 53(10) of the State Universities Act and Section 4(b) of the State Capitation Fee Act. However, in the instant case admittedly there is no provision in the INC Act providing for fixation of intake of students for any course by the Council. No corresponding amendments as contained in Sections 10-A, 10-B and 10-C of the MCI Act has been introduced into the INC Act. By virtue of Entry 25 of List III i.e., the concurrent list the State Legislature is competent to legislate regarding education, including technical education, medical education and Universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I Vocational and Technical Training of Labour. In the absence of the Parliament not making any provision regarding fixation of intake of students under the INC Act, the law passed by the State Legislature fixing the intake of students for admission to the Nursing course would be valid and legal and has to be given effect to. The result would be in the absence of any specific provision in the INC Act in view of Sub-clause (b) of Sub-section (1.0) of Section 45, the Government has the power to fix the intake. Therefore, the Competent Authority to fix the intake for M.Sc. in Medical Surgical Nursing and Community Health Nursing is the Government and the Nursing Council under the INC Act has no power to fix the intake of students for the aforesaid courses.

21. In the instant case, when the Central legislation do not provide for fixing of the intake by the Council, the State has full power to provide for the intake in view of Sub-section (10)(b) of Section 45 of the Act. In exercise of the said power when

the State Government fixes the intake it is not open to the first respondent-University, to ignore the intake fixed by the Government and to take note of the letters written by the fourth respondent to the University fixing the intake of the second petitioner-college. When the fourth respondent has no power to fix the intake even if they had written a letter to the University informing that the intake fixed by them for the second petitioner-college is only two per discipline it has no value in the eye of law and the same has to be ignored by the University. The Government Order fixing the intake at four per discipline is to be given effect to. In that view of the matter, the approach of the University is illegal and cannot be countenanced.

22. In fact, the second petitioner-college has shown their bona fides by not admitting the four students in each discipline for the academic year 2000-2001 and they have restricted their admission for the academic year only for two students per discipline and they have surrendered two seats and have requested the Government to adjust the same towards the admissions made for the academic year 1999-2000. This conduct of the college is fair and just and the University was in total error in not acceding to the request made by the second petitioner-college to approve the admissions of respondents 5 to 8. Under these circumstances, I pass the following order:

The impugned order passed by the first respondent bearing No. RGUHS/AC2-ADM M.Sc. (NV2000-2001/02, dated 15-4-2000 as per Annexure-F is hereby quashed.

A direction is issued to the first respondent to approve the admissions of respondents 5 to 8, namely, Sri Rajesh M.S. and Sri Mejula J. Rajamani in Medical Surgical Nursing and Ms. Meenakshi B. Devangmath and Sri Vinod A. Hukkeri in Community Health Nursing.

A further direction is issued to announce the results of both the I and II year M.Sc. and if the respondents 5 to 8 have passed in the said examination to give them all consequential benefits such as issue of marks card, certificates etc.

Parties to bear their own costs.

