**Kvm Trust Vs. Kerala University of Health and Allied Sciences**

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**SooperKanoon Citation** : sooperkanoon.com/946707

**Court** : Kerala

**Decided On :** Nov-17-2011

**Judge** : C.N. Ramachandran Nair &Amp; P.S. Gopinathan

**Appeal No.** : W.A.No.1528 of 2011

**Appellant** : Kvm Trust

**Respondent** : Kerala University of Health and Allied Sciences

**Judgement** :

P.S. Gopinathan, J.

This appeal is preferred against the judgment of the learned Single Judge whereby the writ petition filed by the appellant was dismissed. The appellant Trust applied before the Indian Nursing Council seeking permission to start Post Basic B.Sc., Nursing Programme with an intake of 50 students in the nursing college run by the appellant. By Ext.P1 order dated 21.4.2010, permission was granted subject to the approval of the State Nursing Council and University/Board. Though applied before the Kerala Nurses and Midwives Council, by order dated 7.7.2011 permission was accorded for intake of only 30 students. Simultaneously, the appellant applied before the respondent - Kerala University of Health and Allied Sciences for granting affiliation. By Ext.P4 order dated 4.8.2011, affiliation was granted for an annual intake of 30 students. In the meanwhile, on a further representation before the Kerala Nurses and Midwives Council, by Ext.P2 order

dated 31.8.2011, sanction was accorded to the appellant for an enhanced intake of 50 students. The appellant on 23.8.2011 requested the respondent for re-considering Ext.P4 and to accord sanction for enhancement in the intake to 50 students. By Ext.P6 dated 3.9.2011, the request was turned down and the appellant was asked to submit fresh application in the prescribed format with necessary fees as and when the notification for the next academic year is issued by the respondent. Assailing Ext.P6 order, the writ petition was preferred.

2. Interalia the appellant contended that once the Indian Nursing Council and the State Nurses and Midwives Council accorded permission for the intake of 50 students, the respondent has no authority to restrict the intake to a lesser number. It was also contended that the appellant has got amenities for running the course with an intake of 50 students. The learned Single Judge, by the impugned judgment dated 13.10.2011, relying upon the decision reported in University of Calicut v. Amala Institute of Medical Sciences (2009 (3) KLT SN 78) and Upasanna College of Nursing v. Kerala University for Health and Allied Sciences (2010 (4) KLT 318) and the decision of the Division Bench in W.A. 1715/2010 and connected cases, arrived at a finding that granting affiliation is not an empty formality and that the respondent has the authority to satisfy the availability of the infrastructure facilities before granting affiliation despite the permission granted by the National or State Nursing Council. Therefore, the writ petition was dismissed with liberty to the appellant to apply for enhanced intake during the next academic year. Now this appeal.

3. Before us no much argument was advanced against the authority of the respondent to satisfy the availability of the infrastructure facilities before granting affiliation. Learned counsel has not assailed the finding of the learned Single Judge that granting affiliation is not an empty formality. Going by the decisions referred and the regulations of the Indian Nursing Council, we find that the permission accorded by the Indian Nursing Council is basing upon a prima-facie satisfaction of the availability of the infrastructure facilities and it is for the State Council to accord its permission as well as the respondent University to conduct inspection and satisfy the availability of the infrastructure facilities for running the course before granting affiliation. We uphold that granting affiliation is not an

empty formality. Ext.P4 would show that the recommendation of the inspection commission was taken note of for issuing Ext.P4 order. What was the infrastructure facilities available is not borne out by any of the documents produced. What all are the subsequent additions, if any, after the visit of inspection commission is not known. If there is no subsequent additions, so long as there is no challenge against Ext.P4, the challenge against Ext.P6 is devoid of merit because Ext.P4 is based upon the report of the inspection commission and so long as there is no changed circumstance, Ext.P6 is absolutely correct. Ext.P2 would show that subsequent to the issuance of the order dated 7.7.2011, there was a representation by the appellant and it is taking into account of that representation Ext.P2 order was issued according permission for an enhanced intake of 50 students. Ext.P2 did not show that any further inspection was conducted by the State Nurses and Midwives Council before issuing Ext.P2. Adding to that, at the time when Ext.P6 was issued, State council had accorded permission for 30 students only. Ext.P2 is a subsequent order. Ext.P2 did not show that the appellant had arranged infrastructure facilities for the enhanced intake of 50 students or that before issuing Ext.P2, State Council had verified and satisfied the required infrastructure facilities. It is specifically stated in Ext.P2 that before admitting students for the additional seats affiliation should be obtained from the respondent. Ext.P2 and R1(a) would show that Ext.P2 order dated 31.8.2011 was on the last date for applying for affiliation. Since as on the date of Ext.P4 State Council had accorded permission for intake of 30 students only, the respondent cannot be found fault with for restricting the intake to 30 students by Ext.P4 order. Ext.P2 would show that State Nurses Council had noted many deficiencies, which according to the appellant had subsequently cured. What were the deficiencies is not born out by any document. Report of rectification is also not before us. It is yet to be known whether report of rectification was sent to the respondent or not. Ext.P6 refers about no such report. Ext.P6 is in response to a request dated 23.8.2011 on which date also, the intake permitted by the State Council was only 30 students. In the above circumstances, we find no material to come to a conclusion that the respondent was erred while issuing Ext.P6 order. We are not in a position to come to a conclusion that the appellant had got sufficient infrastructure facilities for the intake of 50 students. The availability of the

infrastructure facilities is a question of fact and it cannot be decided in a writ jurisdiction unless the same is specifically pleaded and not disputed by the respondent. It is also pertinent to note that after Ext.P2, the appellant had not filed any application before the respondent requesting for enhanced intake. Application is yet to be filed. Ext.R1(a) would show that the last date for application for 2011-2012 is over.

Therefore, the respondent was correct in stating that the request for 2012-13 would be considered if applied in the prescribed format in accordance with the notification. Ext.P6 is no way vitiated. The appeal is devoid of merits and no interference is warranted in appeal against the judgment of the learned Single Judge.

In the result, the appeal fails. Accordingly, it is dismissed. No costs.