

Punjab-Haryana High Court

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Ms. Neelam Devi And Another vs Haryana Nurses Registration ... on 19 February, 2010

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Writ Petition No.4021 of 2009

Date of decision :19.02.2010

Ms. Neelam Devi and another ...Petitioners versus

Haryana Nurses Registration Council and othersRespondents CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Preeti Khanna, Advocate, for the petitioners. Mr. Amrit Paul, Advocate, for respondents 1 and 2. Mr. Ashish Gupta, Advocate, for respondent No.3. ----

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the reporters or not ? Yes.

3. Whether the judgment should be reported in the digest ? Yes. ----

K.Kannan, J.

I. Petitioners' grievance to non-registration of their degrees by the State Nursing Registration Council

1. The petitioners, who have qualified for General Nursing and Midwifery (GNM) degree, find themselves unable to have their degrees registered with the 1st respondent which alone assures to them a vista into the job market. The contention of the petitioners is that the degrees have been awarded by Doon International University, Raipur, Chhattisgarh, which is a University notified under the gazette notification dated 7th November, 2003 established under the Chhattisgarh Niji Kshetra Civil Writ Petition No.4021 of 2009 -2-Vishwavidyalaya (Sthapana aur Viniyaman) Adhiniyam Act, 2002 (called the Chattisgarh Act). The University had established a study centre at Rohtak where the petitioners gained admission and pursued study and also obtained the degrees awarded by the University. The Government of India through its Ministry of Human Resource Development of Secondary and Higher Education has certified to the Vice Chancellor, Doon International University, Chhattisgarh that the degree awarded by the University established under the Act shall stand automatically recognized. The second contention is that Section 14 of the Punjab Nurses Registration Act provided three classes of persons, who would be entitled to obtain registration and persons such as the petitioners, who had undergone necessary course of training or passed the examination through a degree obtained awarded by the University established under the Act, could not be denied registration. The argument under this head is to the effect that a degree awarded a University established through an enactment obtain sui-generis validity and a subsequent decision striking down the Act will not take away the rights of persons, who had already obtained the degrees and more so, in view of the fact that the specific saving granted under the Hon'ble Supreme Court judgment itself.

II. Reasons for denial of registration

2. The petitioners after having completed course and earned the degrees had sought for registration with the 1st respondent but the 1st respondent had denied such registration on the ground that the Hon'ble Supreme Court had in a judgment Professor Yashpal and another Civil Writ Petition No.4021 of 2009 -3- Versus State of Chhattisgarh and others-(2005) 5 SCC 420 dated 11.02.2005 struck down the Chhattisgarh Act and since the degree of the petitioners have been obtained from the University set up under the Act, their degrees could not be registered. The other contention and more formidable, according to the 1st respondent is that neither the Punjab Nurses Registration Council nor the Government of Haryana had recognized the degree and hence registration could not be made. III. Setting the platform for consideration

(a) The effect of striking down of the Act that established a University in the light of SC observations

3. The petitioners have served a notice demanding such registration pointing out to the judgment of the Hon'ble Supreme Court itself as protecting persons, who were still pursuing their studies and the decision of the Hon'ble Supreme Court dated 11.02.2005 will not apply to the petitioners, who have secured their degrees on 10.02.2005. The petitioners' claim has therefore to be first examined in the context of the judgment of the Hon'ble Supreme Court itself. The decision in Professor Yashpal (supra) provides as follows:

"In order to protect the interests of the students who may be actually studying in the institutions established by such private universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State universities in Chhattisgarh."

(b) Requisites of registration under Punjab Nurses Registration Act

4. The contention on behalf of the 1st respondent is that it is Civil Writ Petition No.4021 of 2009 -4- unable to register the petitioners as GNMs not only because of the striking down of the Chhattisgarh Act by the decision in Professor Yashpal but also on account of the fact that the institute from which the petitioners have obtained the degree, had not been affiliated or recognized by the Haryana Nursing Registration Council, Chandigarh. Reference to Section 14 of the Punjab Nurses Registration Act of 1932 (as applicable to Haryana) would therefore become relevant:- "14. Registration of nurses, health visitors, midwives, nurse-dais, trained dais and dais.- (1) Every person who complies with such conditions and restrictions as may be prescribed by the Council and-

a) has undergone the necessary course of training or passed the examination, if any, prescribed

for nurses, health visitors, midwives, nurse-

dais, auxiliary nurses and mid wives, or trained dais, or

b) is registered as a nurse or midwife or health visitor by any association which is recognized

by the Council, or

c) is able to satisfy the Council that he has anywhere in India undergone a course of

training or passed an examination, similar to

the course of training and examination referred to in clause (a) and recognized by the

Council."

The counsel for the respondent would submit that the degree secured by joining the Rohtak institute situated in the State of Haryana, had not been approved by the Haryana Government nor had it issued 'No Objection

Certificate' for opening and running of such institute in the State of Civil Writ Petition No.4021 of 2009 -5- Haryana. Since the institute where the petitioners had studied had been established in Haryana without either the Government approving the same or approval from the Indian Nursing Council, New Delhi, the petitioners shall not be entitled to have registration in view of Section 14 (c) referred to above, unless recognized by the Council. IV. Degree conferred by a University established under an enactment is sui generis and self validating

5. The objection on behalf of the respondents through their reliance of Section 14(c) would be incomplete without referring to the other Clauses in (a) and (b). The registration that Section 14 envisages is the fulfillment of anyone of the clauses. They are mutually exclusive and if the petitioners satisfy Clause (a), they need not also satisfy Clause (c). It may be that the State of Haryana did not recognize the degree or the Indian Nursing Council Act of 1947 itself does not provide for a recognition but if there is a University established under the Act of Parliament or a State legislature and the University existed till the Act was struck down by a decision of the Hon'ble Supreme Court, the degree obtained through such a University would require no recognition from anybody. The recognition comes through the very fact that the institute that awarded the degree is established under a University through an enactment. The Hon'ble Supreme Court which struck down the Act specifically provided for how the students of the institute, who are continuing the education shall be allowed to continue their courses by having the institutes affiliated to the already recognized universities in the State. I have already reproduced the portion of the decision of the Hon'ble Supreme Court and it admits of no doubt that it did not want the Civil Writ Petition No.4021 of 2009 -6- students even studying at the relevant time when the judgment was delivered to suffer from want of recognition. If even students, who were studying in institutes and who had not completed their courses, were directed to be protected by the order of the Hon'ble Supreme Court, students, who had already passed and secured degrees even a day earlier to the decision of the Hon'ble Supreme Court, could not be in worse off situation. I find, therefore, that the degree obtained by the petitioners through an institute affiliated to the University established under an enactment, could not be denied its validity or recognition.

6. The effect of a degree through an institute affiliated to University and the non-necessity of obtaining approval from any other body was affirmed by the Hon'ble Supreme Court in Bharathidasan University and another Versus All India Council for Technical Education and others-AIR 2001 Supreme Court 2861, referring to a University established under the Bharthidasan University Act of 1981, a degree granted by University established, the Hon'ble Supreme Court held, was not required to seek prior approval of the All India Council for the Technical Education (AICTE) to start a department for imparting a course or programme in technical education. I have not been shown through any provision that any institute which offers the course within the State of Haryana shall require to be registered with the Haryana Nursing Council or recognized by the Haryana Government. I have already extracted Section 14 of the Punjab Nurses Registration Act as applicable to Haryana that sets out three different situations that shall exist in alternation in order that a degree holder obtains a registration. Civil Writ Petition No.4021 of 2009 -7- V. Technical education obtains validity either from recognition of the Technical Education Council set up by an enactment or by University established by an Act

7. The learned counsel appearing for the 1st respondent relies on a judgment in Shiv Shakti Educational Society (Regd.) Versus State of Punjab and others-2008(1) SCT 691 that dealt with the case of educational institution (a society) seeking for a direction to grant to it permission for admission to 40 students in a nursing course in the College established by the Society. It was an institution which had obtained a 'No Objection Certificate' for establishing a nursing course from the Punjab Nurses Registration Council but had still failed to obtain affiliation from the University, in view of the fact that the University after carrying out inspection found that there were deficiencies with regard to the faculty, building, maintenance etc. Noticing that the Indian Nursing Council had been constituted under the provisions of the Indian Nursing Council Act, the Bench had held that the approval of the Indian Nursing Council was required for making admissions. Raising an issue whether a State Government or a State Nursing Council could allow an institution to admit students in the absence of an approval by the Indian Nursing Council or affiliation by the University, it held that an

approval from the Indian Nursing Council was necessary. This judgment, in my view, will not apply since the institution that was seeking for permission to admit students was an institution that had not been either approved by the Indian Nursing Council or affiliated to a University. In this case, the institute from which the petitioners studied had been affiliated to a University which had been established under an enactment. The Act Civil Writ Petition No.4021 of 2009 -8- itself was struck down after the degree was issued and even the judgment of the Hon'ble Supreme Court provided for protection also to students, who had been continuing to study, when it directed the State Government to affiliate such institutes in any of the existing Universities. The position of recognizing degrees by an institute which had neither approval from the Technical Council which, in this case, is Indian Nursing Council nor affiliated to a University is different from an institute which conducts the course for a degree awarded by a University, but which establishment was subsequently annulled by striking down the Act itself. It is this prior affiliation which enables a person studying a course to seek for registration of such degree without having to wait for an approval from a Technical Council. This distinction was brought out in Bharathidasan University case referred to above. We have seen that institute such as All India Council of Technical Council could not make any regulation in exercise of its powers to institutes affiliated to University. A technical council may lay down some norms to be followed and the limits of jurisdiction and such technical councils will be governed by the Act that establishes it. To borrow the expressions from Bharathidasan(supra), a Technical Council, which is created under an enactment, is not intended to be an authority either superior to or to supervise and control the University and thereby super-impose itself upon such Universities merely for the reason it is imparting technical education or programmes in any of its departments or units. What applied to AICTE as regards an institution established by University will apply also as a principle of law to an institute affiliated to University that Civil Writ Petition No.4021 of 2009 -9- cannot be controlled or supervised by the Indian Nursing Council.

8. The decision of the Division Bench in Shiv Shakti Educational Society (supra) must be applied to a different situation of an institute seeking an approval from either the State Government or the National Council, when it is not itself affiliated to any University. Section 10 of the Indian Nursing Council Act of 1947 makes automatic the issue of recognition to such of those examination conducted by the enumerated Councils or Boards mentioned in the Schedule. It does not and cannot exclude a degree offered by institute which is affiliated to University established through an enactment.

VI. Student shall not be penalized for a mistake/fault, not her own

9. The petitioners refer to a decision in Suresh Pal Versus State of Haryana-(1987) 2 SCC 445 that has supported the situation of how a student who, while undergoing the course in an institute enjoyed State recognition but withdrawn later. The Hon'ble Supreme Court held as under:-

"2..... On the basis of this recognition granted by the State of Haryana to the certificate course....., the petitioners joined ... and were receiving instruction in this institution until January 9, 1985 when the State of Haryana

derecognized the certificate course with the result that the certificates obtained by the petitioners at the end of the certificate course became useless for obtaining service as Physical Training Instructors in Haryana. The petitioners, therefore, filed a writ petition in the High Court of Punjab and Haryana for a writ directing the State of Haryana to recognize the certificates obtained by them, because they had joined the course on the basis of the recognition given Civil Writ Petition No.4021 of 2009 - 10 - by the State of Haryana and the recognition was in force at the time when they joined the course. The writ petition was however rejected summarily by the High Court and hence the present appeal by special leave.

3. We are of the view that since at the time when the petitioners joined the course, it was recognized by the Government of Haryana and it was on the basis of this recognition that the petitioners joined the course, it would be unjust to tell the petitioners now that though at the time of their joining the course it was recognized, yet they cannot be given the benefit of such recognition and the certificates obtained by them would be futile,

because during the pendency of the course it was derecognized by the State Government on January 9, 1985. We would, therefore, allow the appeal and direct the State Government to recognize the certificates obtained by the petitioners..."

10. The difference in this case to what obtains in Suresh Pal is that in Suresh Pal, the recognition had been granted by the State of Haryana to the certificate course but later withdrew it. In this case, although the State Government had not granted any recognition to the institute, the institute had been affiliated to University established under the Act. When the student had not been himself guilty of misrepresentation and had taken a degree through an institute affiliated to University which till the date when the degree was awarded had a right to exist as such an institute, the student cannot be punished.

11. In *Sanatan Gauda Versus Berhampur University*-(1990) 3 SCC 23, the Hon'ble Supreme Court held:-

"(Sharma J.) 3... In that situation it cannot punish the student for the negligence of the Principal or the University Civil Writ Petition No.4021 of 2009 - 11 - authorities. It is important to appreciate that the appellant be accused of making any false statement or suppressing any relevant fact before anybody.... and cannot be accused of any fraud or misrepresentation..."

4. Before parting I would like to impress the University authorities to frame the rules in such clear terms that it may not require great skill for understanding them. It is a serious matter if a student who acts upon one interpretation of a rule and spends a considerable period of his youth, is later threatened by a possible alternative construction, which may cost him several years of his life.

(Sawant J) 15.... The appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so- called ineligibility to be admitted to the Law Course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course. "

12. In two other decisions, the Hon'ble Supreme Court was referring to situations when the students themselves could not be penalized for any mistake committed by any functionary of University or any institute. Reliance could be had on *Ashok Chand Singhvi Versus Civil Writ Petition No.4021 of 2009 - 12 - University of Jodhpur*-(1989) 1 SCC 399 when a person, who was admitted by the University could not suffer by any default by the Vice Chancellor or the Dean of the particular faculty. In *Shri Krishnan Versus Kurukshetra University*-(1976) 1 SCC 311, if a student had been allowed to take examination, the University would not have any jurisdiction to cancel the candidature. The above two decisions are not directly on the point but they address the concern of the Court that a student shall not be penalized or put to any hardship, when he or she is not guilty of any separation or has taken any advantage. VII. Conclusion

13. The petitioners are entitled to have the degrees registered by the 1st respondent and there shall be a mandamus in the manner sought for by the petitioners. The writ petition is allowed on the above terms, but there shall be however no direction as to costs. (K.KANNAN)

JUDGE

19.02.2010

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