

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11077 OF 2022
WITH WRIT PETITION NO. 11079 OF 2022

PRIVATE NURSING SCHOOLS AND COLLEGES MANAGEMENT
ASSOCIATION THROUGH ITS PRESIDENT AND ANOTHER
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. A.D. Shinde a/w A.V. Hon
AGP for Respondent – State : Ms. R.P. Gaur
Advocate for Respondent No.1 : Mr. B.B. Kulkarni
Advocate for Respondent Nos.2 and 4 : Mr. D.S. Manorkar
Advocate for Respondent No.3 : Mr. M.D. Narwadkar
(in W.P. No. 11077 of 2022)

Advocate for Petitioners : Mr. V.D. Hon, senior Counsel i/b Mr. P.D.
Bachate
AGP for Respondent – State : Mr. R.P. Gaur
Advocate for Respondent No.1 : Mr. R.R. Bangar
Advocate for Respondent No.2 : Mr. D.S. Manorkar
Advocate for Respondent No.4 : Mr. M.D. Narwadkar
(in W.P. No.11079 of 2022)

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CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.

DATE : 24th NOVEMBER, 2022

PER COURT :

1. In the first Petition, the petitioner Association of the Private Nursing Schools and Colleges, has put forth prayer clauses B, C, D and E as under :

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B) Issue writ of certiorari or writ in the nature of certiorari to quash and set aside the notification dated 08.04.2022 issued by the Indian Nursing Council, New Delhi to the extent of having 50 percentile for general, 40 percentile for S.C./S.T./O.B.C., 45 percentile for General PwD and 40 percentile for S.C./S.T./O.B.C.- PwD for admission to B.Sc. Nursing course and also Clause no 4.9 of the Guidelines for NEET UG 2022 dated 17.10.2022 to the extent of admission to B.Sc. Nursing course issued by the Maharashtra State Common Entrance Test Cell, Mumbai for admission process for Health Sciences Courses pertains to B.Sc. Nursing for the academic year 2022-23.

C) Issue a writ of mandamus or writ in the nature of mandamus to the respondents to carry out the admission process for the B.Sc. Nursing Course as per the provisions of Clause 4.9 of the NEET-UG-2021 brochure without insisting for 50 percentile for open category candidate and 40 percentile for reserved category candidates and permit the petitioners to participate in the CAP round for Health Sciences Courses commences from 17.10.2022.

D) Pending the hearing and final disposal of this writ petition, grant stay to the operation, implementation and execution of notification dated 08.04.2022 issued by the Indian Nursing Council, New Delhi, the communication dated 21.10.2022 issued by the Indian Nursing Council and NEET UG Guideline for 2022 dated 17.10.2022 and 24.10.2022 form issued by the Government of Maharashtra State Common Entrance Test Cell, Mumbai and Reschedule from registration on words first round admission process for Health Science Course for B.Sc. Nursing in the State of Maharashtra.

E) Pending the hearing and final disposal of this writ petition, issue writ, order or directions to the respondent No.4 to process the applications of the petitioners for admission to B.Sc. Nursing as per the provisions of Clause 4.9 of the NEET-UG-2021 brochure without insisting for 50 percentile for one category candidate and 40

percentile for reserved category candidates and permit the petitioners to participate in the CAP round for Health Sciences Courses commenced from 17.10.2022 and 24.10.2022 and Reschedule from registration on words first round admission process for Health Science Course for B.Sc. Nursing in the State of Maharashtra.

2. In the second Petition preferred by the aspiring students, prayer clauses B, C, D and E read as under :

B) By way of writ of certiorari or any other appropriate writ, order or direction the Hon'ble Court may kindly quash and set aside the notification dated 08.04.2022 issued by the Indian Nursing Council, New Delhi to the extent of having 50 percentile for general, 40 percentile for S.C./S.T./O.B.C., 45 percentile for General PwD and 40 percentile for S.C./S.T./O.B.C.- PwD for admission to B.Sc. Nursing course and also Clause no 4.9 of the Guidelines for NEET UG 2022 dated 17.10.2022 to the extent of admission to B.Sc. Nursing course issued by the Maharashtra State Common Entrance Test Cell, Mumbai for admission process for Health Sciences Courses pertains to B.Sc. Nursing for the academic year 2022-23.

C) Issue a writ of mandamus or writ in the nature of mandamus to the respondents to carry out the admission process for the course B.Sc. Nursing as per the provisions of Clause 4.9 of the NEET-UG-2021 brochure without insisting for 50 percentile for open category candidate and 40 percentile for reserved category candidates and permit the petitioners to participate in the CAP round for Health Sciences Courses commences from 17.10.2022.

D) Pending the hearing and final disposal of this writ petition, grant stay to the operation, implementation and execution of notification dated 08.04.2022 issued by the Indian Nursing Council,

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New Delhi, the communication dated 21.10.2022 issued by the Indian Nursing Council and NEET UG Guideline for 2022 dated 17.10.2022 and 24.10.2022 form issued by the Government of Maharashtra State Common Entrance Test Cell, Mumbai and Reschedule from registration on words first round admission process for Health Science Course for B.Sc. Nursing in the State of Maharashtra.

E) Pending the hearing and final disposal of this writ petition, issue writ, order or directions to the respondent No.4 to process the applications of the petitioners for admission to B.Sc. Nursing as per the provisions of Clause 4.9 of the NEET-UG-2021 brochure without insisting for 50 percentile for one category candidate and 40 percentile for reserved category candidates and permit the petitioners to participate in the CAP round for Health Sciences Courses commences from 17.10.2022 and 24.10.2022 and Reschedule from registration on words first round admission process for Health Science Course for B.Sc. Nursing in the State of Maharashtra.

3. A marathon hearing was conducted on 20.11.2022, 23.11.2022 and today.

4. The issue turns upon, whether the State Government could automatically apply the NEET-UG-2022 exam results to the admission process applicable to the B.Sc. (N) course, in the backdrop of the Indian Nursing Council having specifically mandated in it's notification dated 5th July, 2021 introducing the Indian Nursing Council {Revised Regulations and Curriculum for B.Sc. (Nursing) Program – Corrigendum}, Regulations, 2020 and

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by notification dated 08.04.2022 in the 2022 Regulations, that the State Government shall conduct an entrance test examination for the admission to the Nursing Courses. Under the 2020 regulations, admission terms and conditions indicate that, the candidate must have qualifying 12th Standard examination (10+2 exam) and must have obtained a minimum of 45% marks in Physics, Chemistry and Biology, taken together and should have passed English subject individually. Clause-7 indicates that, selection of candidates should be based on the merit of the entrance examination. The entrance test is mandated to be conducted by the University / State Government.

5. The learned A.G.P. concedes on instructions that, since 2016 onwards no entrance examination has been conducted and NEET-UG results have been taken into account while granting admissions to the nursing courses. By a notification dated 11.08.2021, the Secretary of the Indian Nursing Council (Lt Col (Dr) Sarvjeet Kaur) introduced a clarification that 'the National Testing Agency (NTA) public notice dated 3rd August, 2021 states that, "the results of NEET (UG) 2021 may be utilized by other entities of Central and State Government...". Hence, utilisation of NEET (UG) 2021 result is not mandatory / compulsory by

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concerned Nursing Institutes / Nursing College’.

6. The learned A.G.P. points out that, prior to the above notification, the State Government issued a G.R. dated 01.12.2016 through the Medical Education and Drugs Department declaring that the NEET entrance examination result would be also applicable for the admission to the Nursing Colleges.

7. By notification dated 8th April, 2022 issued by the Indian Nursing Council introducing the 2022 - Regulations, the admission terms were modified under Section 16(3) of the Indian Nursing Council Act, 1947. The minimum qualifying marks of 50% in the entrance test were modified to percentile marks of the candidate who have appeared for the entrance test. However, the State of Maharashtra, never conducted an entrance test for B.Sc. Nursing.

8. In the light of the above, we called upon the learned advocate for the Indian Nursing Council to take instructions as to whether, (a) the Nursing Council had ever agreed to permit the admission process to the Nursing courses by relying upon the results of the NEET-UG examination, (b) whether in the absence

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of any specific entrance test, the HSC results should be considered, (c) whether the Nursing Council agrees to the act of the State of Maharashtra in relying upon the NEET-UG result without conducting any entrance test, for admitting the students to Nursing course and (d) as to what is the mode adopted by various States for admitting students to the Nursing courses.

9. The learned advocate placed before us the Notification 11 of 2022 dated 16th June, 2022 issued by the Indian Nursing Council through its Secretary, (Lt Col (Dr) Sarvjeet Kaur) which states that, the admission process shall commence on 1st August and would conclude by 30th September of each year. Same was applicable for the year - 2022 admission process. It is also stated that admissions to B.Sc. Nursing during the academic year 2022-23 can be completed either by merit list or by conducting the Entrance Examination by the State Government / Universities. The said notification is taken on record and marked as 'X-1' for identification.

10. He then placed before us the copy of the Notification dated 23rd November, 2022 (yesterday) issued by the Indian Nursing Council through the Secretary (Lt Col (Dr) Sarvjeet Kaur), in

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continuation with the earlier notification dated 16th June, 2022 of the Indian Nursing Council, which clarifies that the selection of the candidates for B.Sc. Nursing for the academic year 2022-23 can be completed either by merit list or aggregate percentage of marks obtained in the 3 core subjects i.e. Physics, Chemistry, Biology of the qualifying examination (10+2) and having passed in English individually or by conducting an Entrance Examination, whichever is feasible for the University / State Government. The said notification is marked as 'X-2' for identification.

11. The learned senior advocate Mr. Hon, therefore, submits in the light of the above that the State Government will have to admit students to the various Nursing institutions by following 10+2 examination results (HSC). The learned advocate representing the Nursing Council submits on instructions that, all other States have not conducted entrance test separately for admitting students to the Nursing courses and have relied upon the HSC results of the students for conducting such admissions. The learned A.G.P. submits that, she has collected information that Delhi has relied upon the NEET results for granting admission to the Nursing courses.

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12. The Notification X-1 placed before us, was already on the website of the Indian Nursing Council since 16th June, 2022, which appears to have gone unnoticed. The issue before us now is as regards the creation of the Regular batch and the Irregular batch of admitted students. The learned A.G.P. - Ms. R.P. Gaur rightly submits that, the Regular batch of students are admitted upto 31st August, 2022, on the basis of the NEET-UG score. Any admission effected from 1st November, 2022 till the permissible date 31st December, 2022 is being termed as the 'Irregular batch'. If students being admitted to the Irregular batch in the light of the notifications X-1 and X-2 are considered, it is likely to create an anomaly since the Regular batch consists of all students who are selected on the basis of the NEET-UG score and those who would be selected in the Irregular batch would be as per the HSC results. We find that the anxiety expressed by the learned A.G.P. is well placed.

13. The Notification - 16 of 2022 dated 21st October, 2022 issued by the Indian Nursing Council through its Joint Secretary (K.S. Bharati) reads as under :

NOTIFICATION-16 OF 2022

In continuation to INC Notification-11 & 13 dated 16.06.2022

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and 09.09.2022 respectively, Indian Nursing Council has considered the request letter from the States with respect to extension of last date of admission to B.Sc and P.B.B.Sc. (N) for the Academic year 2022-23 from 31st October, 2022 to 31st December, 2022

The Universities / Colleges of Nursing shall implement the B.Sc (N) syllabus semesterwise. In this context, it is clarified that the students who are admitted upto 31st October, 2022 shall be considered as REGULAR BATCH. The students admitted from 1st November, 2022 to 31st December, 2022 will be considered as IRREGULAR BATCH and their classes will start from 2nd January, 2023. Hence, total number of students admitted upto 31st October, (Regular batch) & 31st December, 2022 (Irregular Batch) should add up to the sanctioned strength and shall not exceed the ANNUAL intake.

Examination shall be conducted separately for the above batches.

NOTE :

Universities shall ensure that Institution shall comply with semester requirements as prescribed in the syllabi before the conduct of examination :

- i) A candidate must have minimum of 80% attendance (irrespective of the kind of absence) in theory and practical in each course / subject for appearing for examination.
- ii) A candidate must have 100% attendance in each of the practical areas before award of degree

Yours faithfully,

K.S. Bharati
Joint Secretary

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14. In view of the above, on the one hand, the State has initiated the admission process on the basis of the NEET-UG score. The B.Sc. Nursing course admissions commenced on 17th October, 2022 upto 31st October, 2022 which was conducted as per the NEET-UG score. On the other hand, further admissions would be conducted on the basis of the HSC score. For example, one candidate namely Ritu Sanjay Gaikwad has scored 512 out of 600 in her HSC (10+2) examination (85.33%) and her score in NEET-UG-2022 is 80 marks out of 720. In percentage, it would be 9% and in percentile, it would be 33.34 percentile. Now this candidate would be considered for the admission in the Irregular batch in view of the notifications X-1 and X-2.

15. It is pointed out from page 63, which is NOTICE NO. 02 dated 17th October, 2022 issued by the Government of Maharashtra through its Competent Authority and Commissioner, State Common Entrance Test Cell, Maharashtra State, Mumbai (Mahendra B. Warbhuvan, I.A.S.), that the declaration of CAP round - 1 Selection List was on 28th October, 2022. The physical joining and Filling of Status Retention Form with All Original Documents and Requisite Fees by DD/Cheque, was from 29th October, 2022 to 4th November, 2022 till 05:30

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p.m. The candidate selected by this program is termed as the Regular batch. The learned advocate representing the students as well as managements before us, submits that the petitioner students are interested in securing admissions to the Nursing courses, no matter whether they are included in the Regular Batch or Irregular Batch since the only difference is that the admission of the Regular Batch concluded on 4th November, 2022 and admission to the Irregular Batch would be concluded on 31st December, 2022. Barring this feature, there would be no difference and all this students would be qualified Nurses after completing their B.Sc. Nursing course.

16. The learned senior advocate for the petitioners as well as the learned advocate for the Council, submit that, though the problem of the petitioners is resolved, the State Government will have to conduct the admissions of those students who may not have registered themselves in the admission process as the percentile score of NEET-UG-2022 was very low or since the 12th Standard marks would not be considered. With X-1 and X-2 notifications, those students who are desirous to seek admission to the nursing course will now be considered by the State Government as per the 12th Standard results.

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17. We do not have any doubt that the admission process to any particular course cannot be completed by adopting two different modes. Either the NEET-UG score be considered or the 12th Standard score be considered. It appears that the notification dated 11th August, 2021 was nullified by X-1. For the sake of clarity we are reproducing the Notification dated 11th August, 2021 hereunder :

F. NO. 11-10/NEET/2019/-INC

NOTIFICATION

Admission to B.Sc.(N) on the basis of NEET 2021 score
Refer National Testing Agency (NTA) public notice dated 3rd August, 2021 and 6th August, 2021 following which many queries/clarifications are being raised by Nursing Institutions / nursing students at this Council.

In this regards, it is clarified that NTA public notice dated 3rd August, 2021 states that “the results of NEET (UG) 2021 may be utilised by other entities of Central & State Government...”

Hence, utilisation of NEET (UG) 2021 result is not mandatory / compulsory by concerned Nursing Institutes / Nursing College.

Yours faithfully,

(Lt Col (Dr) Sarvjeet Kaur
Secretary

18. The State Government appears to have lost sight of the

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fact that the above reproduced notification was no longer in force, due to the introduction of X-1 and X-2. It is stated in X-1 as under :

For the academic year 2022-23 -

- commencement of Academic Session - 1st August, 2022
- Last date of admission - 30th September, 2022

Admissions to B.Sc. (N) during the academic year 2022-23 can be completed either by merit list or by conducting Entrance Examination by State Government / Universities. Admission terms & conditions of the candidates given in the revised B.Sc. (N) syllabus shall be followed.

The notification dated 23.11.2022, X-2 reads as under :

In continuation with the earlier notification of Indian Nursing Council bearing letter no. F. No. 22-10/NEET/2018-19-INC dated 16.06.2022, it is clarified that selection of the candidates for B.Sc.(N) for the academic year 2022-23 can be completed either by merit list or aggregate percentage of marks obtained in the 3 core subjects i.e. Physics, Chemistry, Biology of the qualifying examination (10+2) and having passed in English individually or by conducting entrance examination whichever is feasible for the University / State Government.

19. We are, therefore, of the view that, there has been a complete lack of coordination between the Nursing Council and the State Government while conducting the admissions to the B.Sc. Nursing course. All along the Nursing Council was insisting

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for an entrance exam or the merit score of the students. The merit score relates to 12th Standard results. Entrance exam specifically for admitting students to the nursing course was never conducted by the State Government. By G.R. dated 1st December, 2016, the NEET-UG score was applied even to the admission to the Nursing course. The notification dated 11th August, 2021 indicates that, NEET-UG result may be utilised/restricted only to other entities or Central or State Government and it would not be mandatory / compulsory for B.Sc. Nursing course. Yet, the State Government has proceeded to effect admissions to the Regular Batch by relying upon the NEET-UG-2022 score, in the backdrop of a clear mandate set out in X-1 that the admission to the B.Sc. Nursing course should be completed either by the merit list or by conducting entrance examination by the State Government / Universities.

20. The learned senior advocate for the petitioners submits that, in the light of notifications X-1 and X-2, these petitions stand worked out and can be disposed of with the direction to the State Government to reconcile the admissions to the B.Sc. Nursing course. Speaking for the petitioners, it is submitted that further admissions can be carried out on the basis of the

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notifications X-1 and X-2.

21. We find that the admission process to the B.Sc. Nursing course cannot be split into two portions by applying NEET-UG score to the admission for the Regular Batch and by applying HSC score to the admissions for the Irregular Batch. Rest of the States in the country, where there has been no entrance examinations, are said to have relied upon the 12th Standard score of the students for admitting them to B.Sc. Nursing.

22. We are of the view that, admissions to the particular course can only be completed by relying upon such rules, which have been applied uniformly and not by having two sets of rules being applied for the admissions to the same course, merely because the Indian Nursing Council has segregated the students admitted in the first batch under the title Regular Batch admission and by placing the second batch of the students under the title Irregular Batch.

23. The learned advocate representing the Maharashtra State Common Entrance Test Cell, Mumbai submits that, 1236 students have already joined the respective nursing colleges pursuant to the conclusion of admissions to the Regular Batch.

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He further submits that, these students cannot be disturbed. There are several students who have scored less marks in the NEET-UG examination. Several such students who have passed HSC exam, may not have registered for the B.Sc. Nursing course. Some of the petitioners also have not registered. The admission authority can proceed to carry out an exercise of permitting students to register on the basis of their HSC result and they can be considered for admission on the basis of such 12th Standard result, in the light of X-1 and X-2 notifications.

24. The learned senior advocate Mr. Hon submits that, neither the respondents nor the petitioners desire that the admitted students be disturbed. There are 6420 total seats available in the State of Maharashtra for the B.Sc. (Nursing) course. 1236 seats have been admitted in the CAP-1 round. 5184 seats are still vacant. The learned senior advocate further submits that, the website status indicates that there are 5300 seats vacant as some of the students may have given up their admissions.

25. The learned advocate representing the Indian Nursing Council submits on instructions that, the State Government can consider all such desirous candidates who can be given an

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opportunity to be registered on the basis of their 12th Standard results, *viz.* passing percentage of Physics, Chemistry and Biology, all together as prescribed by Nursing Council and the English subject be passed individually.

26. In view of the consensus, amongst the litigating parties as recorded in the foregoing paragraphs, these petitions are disposed off.

27. By way of a one time measure and in view of the consensus between the parties, we direct respondent No.3, the Commissioner, CET Cell (Admission Regulatory Authority) to give wide publicity in Maharashtra for inviting students to register themselves for the second round of admission on the basis of their HSC (10+2) score within a period of five (5) days from the date of uploading such notice on the website. The closing time on the fifth (5th) day when the registration of candidates would be stopped, should be mentioned in the notice. Thereafter, the admission process on the basis of HSC (10+2) score as per the admission guidelines of the 2022- Regulations (Notification dated 8th April, 2022) would be conducted in such manner and within such time, as may be advised. We expect the Indian

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Nursing Council to coordinate with respondent No.3 - the Commissioner, CET Cell (Admission Regulatory Authority). It is expected that this exercise of admission of students would not be continued beyond 31st December, 2022 as has been set out in the Notification-16 of 2022, dated 21st October, 2022 reproduced above.

28. Before parting with this case, we deem it appropriate to direct that the Indian Nursing Council would set right the mode of conducting the admissions for the B.Sc. Nursing course, by ensuring uniformity in the admission process, from the next academic year.

29. Pending Civil Application would not survive and stands disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)