

Stereo. HCJDA 38

**Judgment Sheet
IN THE LAHORE HIGH COURT
JUDICIAL DEPARTMENT**

Writ Petition No. 15145 of 2018

Gulf College of Nursing	Vs.	Pakistan Nursing Council etc.
--------------------------------	------------	--

JUDGMENT

Date of hearing:	2.3.2018
Petitioner by:	Mr. M. Safdar Shaheen Pirzada, Advocate
Respondent No.2 by:	Mufti Ahtasham-ud-Din Haider, Advocate Mian Irfan Akram, DAG.

Muhammad Farrukh Irfan Khan, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner-College is seeking a direction to respondent No.2 to complete the process of its affiliation with University of Health Sciences Lahore and accept admission forms of its students for appearing in annual examination 2017-2018. Initially the instant writ petition was filed by Tahira Kalsoom, Asma Shabbir, Khalida Mushtaq and Asma Nazir, who are all students of Gulf College of Nursing, Dera Ghazi Khan. In the petition, they had sought directions to the respondents for acceptance of their admission forms and issuance of enrolment slips for the ensuing annual examination 2017-2018. However, during the hearing of the writ petition on 24.1.2018 learned counsel for the petitioners sought

permission to transpose respondent No.3/Principal, Gulf College of Nursing, Dera Ghazi Khan as the petitioner. The request was allowed and vide order dated 26.1.2018, passed in C.M.No.3/2018, the amended memo. of parties was allowed to be placed on record.

2. The petitioner asserts that the petitioner/College applied to respondent No.1/Pakistan Nursing Council (National Institute of Health), Chak Shehzad, Islamabad (hereinafter called as the “PNC”) for its affiliation. Consequently, after surprise visit of the college, PNC through letter No. PNC F-7-71-Inst/2016-2606, dated November 22, 2016, provisionally allowed petitioner/college to proceed with admission process for 2 years Post RN BSN Degree Program for 50 seats for females only. The PNC Council/Executive Committee in its meeting (21st Session 2016), held on 24-25 October, 2016 decided to conduct surprise inspection of the College for physical assessment of the required facilities. Surprise inspection was conducted on 15.11.2016. PNC vide letter No.PNC F-7-71-Inst/2017-3758, dated October 24, 2017 informed the petitioner that the competent authority had given approval for 2 years Post RN BSN Degree Program in Gulf College of Nursing Dera Ghazi Khan for 40 seats only (for females only). The petitioner in the meantime admitted 50 students for the session 2017-2018 after receiving letter dated November 22, 2016 and started classes on 2.1.2017. It is asserted that the petitioner wrote many letters to respondent No.2/Vice Chancellor, University of Health Sciences, Lahore for completion of the affiliation process but

all its efforts remained futile. It is submitted that as a result of inaction on the part of respondent No.2 future of the students of the petitioner-College is at stake. Hence, the instant writ petition. (emphasis supplied)

3. Learned counsel for the petitioner contends that the petitioner-College is registered with respondent No.1 for affiliation and has been provisionally allowed to admit students for 2 years Post RN BSN Degree Program; that respondent No.1 is the regulatory authority and in view of its recommendations in favour of the petitioner respondent No.2 is bound to allow affiliation to the petitioner-College; that respondent No.2 has no role in affiliation of the petitioner-College as it is only the examination conducting authority; and that due to the conduct of respondent No.2 future of the students of the petitioner-College is at stake; that if admission forms for annual examination of the students of the petitioner-college are not received and enrolment slips are not issued, they will lose benefit of studying for the whole one year.

4. Conversely, learned counsel for respondent No.2 submits that the petitioner-College is not affiliated with the University of Health Sciences (hereinafter called as “UHS”) as required under section 37 of the University of Health Sciences Ordinance, 2002; that though the petitioner applied to UHS for affiliation on 30.9.2016 but so far the process of affiliation has not been completed due to non-rectification

by the petitioner of the deficiencies reported by the Inspection Committee of UHS; that the petitioner has repeatedly been asked to rectify the deficiencies but the needful has not been done; that the petitioner cannot be allowed affiliation with UHS without fulfilling the mandatory requirements of law; that UHS is the only authority in the matter for grant of affiliation to the medical institutions; that as the petitioner has not agitated any lawful grievance or has alleged infringement of any constitutional right, therefore, the instant petition is liable to be dismissed.

5. Arguments heard. Record perused.

6. The stance of the petitioner is that Pakistan Nursing Council is the regulatory authority in the matter of affiliation of its nursing college and that it has provisionally allowed the petitioner/College to proceed with the admission process for 2 years Post RN BSN Degree Program for 50 seats for female students only, vide letter No. PNC F-7-71-Insat/2016-2606, dated November 22, 2016. For ease of reference the aforesaid letter is reproduced as follows:

“Principal
Gulf College of Nursing
Dera Ghazi Khan.

Subject: **INSPECTION-GULF COLLEGE OF NURSING
DERA GHAZI KHAN**

With reference to the surprise inspection of Gulf College of Nursing Dera Ghazi Khan conducted by PNC on 15.11.2016 in accordance with the decision taken on 21st Session 2016, it is to inform that on the basis of the positive remarks given by Inspectors in

the Inspection Report and short time remaining in beginning of new session, your institution is hereby allowed PROVISIONALLY to proceed with admission process for following nursing discipline:

SR#	PROGRAMS	SEATS
1	02 YEARS Post RN BSN Degree Program	50 seats (for female only)

Be noted that PNC rules & regulation and approved Admission Criteria for aforementioned nursing program must be followed.

Note: This is only a PROVISIONAL permission as final endorsement will be taken in upcoming PNC Council/Executive Meeting.

Fouzia Mushtaq
Acting Registrar PNC

Copy for information:

1. The Vice President PNC
2. The Director General Nursing Punjab Lahore
3. Institution File
4. Daily File

Acting Registrar PNC”

It is to be noted that this was a provisional permission by Pakistan Nursing Council for 50 seats (for female only) and final endorsement was to be taken in upcoming PNC Council/Executive Meeting. Subsequent to the, so called, aforesaid provisional permission a further communication was forwarded on October 24, 2017, vide letter No. PNC F-7-71-Inst/2017, dated October 24, 2017. The said letter is reproduced as follows:

“The Principal
Gulf College of Nursing
Dera Ghazi Khan.

Subject: **IMPLEMENTATION OF COUNCILS DECISION (21st Session 2016)**
PNC Council Meeting-Institutional Agenda Item # 13

The PNC Council/Executive Committee in its meeting (21st Session 2016) held on 24-25 October, 2016 under the chairpersonship of Dr. Rafat Jan President PNC decided that surprise inspection to be conducted in Gulf College of Nursing Dera Ghazi Khan for physically assessment of the facilities.

In accordance with the decision taken in 1st Session 2016, the surprise inspection was duly conducted on 15.11.2016. On the basis of the recommendations of Inspection Team, it is pleased to inform that the competent authority has given the approval for 02 years Post RN BSN Degree Program in Gulf College of Nursing Dera Ghazi Khan with the seats as mentioned under:

SR#	PROGRAMS	SEATS
1	02 YEARS Post RN BSN Degree Program	40 seats (for female only)

The seat allocation as approved above should not be exceeded in any circumstances. PNC prescribed Admission Criteria must be observed.

Note: Recognition Fee Rs.25,000/- in shape of Demand Draft in the favour of Pakistan Nursing Council Islamabad is immediately required from your institute.

Brig. (R) Razia Ishfaq
 Registrar PNC

Copy for information:

1. The Vice President PNC
2. The Director General Nursing Punjab Lahore
3. The Registrar of concerned affiliated University
4. Institute File
5. Daily File

Registrar PNC”

7. A bare reading of the above said letter shows that final approval has been communicated by PNC on October 24, 2017 for 2 years Post

RN BSN Degree Program in Gulf College of Nursing Dera Ghazi Khan with 40 seats (for female only) subject to not to exceed the number of 40 seats in any circumstance. The aforesaid letter also stipulated that PNC prescribed admission criteria is to be observed. From the aforesaid letter it is quite evident that the initial so called provisional permission for admission process was given for 50 seats in November, 2016, however, while granting approval in its 21st Session 2016 on the basis of the surprise inspection conducted on 15.11.2016 PNC gave actual/final approval for 40 seats only (for female only) for the aforesaid program. Now the question before this Court is as to whether the earlier so called provisional permission for 50 seats or the subject final approval for the 40 seats was sufficient for the petitioner College to start the process of admission of students in the aforesaid program.

8. It is to be noted that although in the body of the writ petition the petitioner has nowhere mentioned that it has applied to UHS for grant of affiliation but its correspondence with the UHS, which is appended with the petition shows that it has approached the UHS for affiliation, vide its letters dated 30.9.2016, 28.10.2016, 25.11.2016, 11.2.2017, 17.5.2017, 20.9.2017, 13.10.2017, 9.1.2018 and 13.1.2018. All this correspondence shows that the petitioner-College is undergoing the process of affiliation with the UHS. This fact itself negates the petitioner's version that the UHS has nothing to do with the process of affiliation. It belies the stance taken by the petitioner that it could

proceed with the educational program for imparting education for nursing degree of 2 years. It is not disputed that the petitioner/College is a nursing college and has been established, inter alia, to impart medical education and training to nurses which in fact is one of the forms of teaching of health sciences to the students, therefore, it falls within the definition of “Medical Institution” as defined in section 2(xviii) of the University of Health Sciences, Lahore Ordinance, 2002. Section 19 of the Statutes for Affiliation of Medical Institutions, 2011 with the University of Health Sciences, Lahore provides as under:

“All the Medical Institutions, prior to commencement of the operation, within geographical boundaries of Punjab shall get NOC as per PM&DC/relevant regulatory authority regulations, as the case may be, from the University. Those who will violate the Act and these statutes in establishing of the institute or operating the institute without affiliation with UHS (under Section 37 of UHS Act), shall be liable to be reported to the Government for initiating an appropriate action. The violation, however, shall be reported to the Government only, if the defaulter institution has been provided with an opportunity to make a representation against the decision to the Syndicate of the University, which finds it unsatisfactory.”

From the above provision of law it is evident that no Medical Institution within the geographical boundaries of the province of Punjab can commence to start functioning without getting NOC and without its affiliation with the UHS under section 37 of the University of Health Sciences, Lahore Act, 2002. For facility of reference section 37 *ibid* is reproduced below:

“All medical institutions, whether in public or private sector, located within the geographical boundaries of the province of the Punjab, whether affiliated with any other University, Examination Board or a Medical Faculty, notwithstanding anything contained in any other law for the time being in force, shall affiliate with the University within such period and on such terms and conditions, as may be prescribed.”

9. Although provisional permission was granted by PNC to proceed with the admission process for the above Nursing discipline. However, learned counsel for the petitioner has not been able to show any law which authorizes PNC for grant of provisional permission for admission to the students in a medical institution i.e. an institution where health education and training is imparted without prior permission and affiliation with U.H.S. Therefore, as the PNC has no authority to grant said provisional permission to proceed with the admission process as such it is of no legal value if such permission is granted by an authority which does not have any jurisdiction to do so. Moreover, various letters written to UHS are available on the file, which show that the petitioner was itself aware that it had to obtain prior permission/affiliation from UHS in order to commence its activity. It was because of this reason that it was in communication with respondent No.2 (UHS) and if the permission was not coming forth or was being withheld unreasonably the petitioner could have adopted any lawful means to have the affiliation process with UHS expedited. The petitioner without affiliation and NOC of UHS commenced with the functioning of its institution by admitting 50

students which according to its own stance has been reduced to 40 at the time of giving of final approval, therefore, it shows that the said provisional permission was to enable the petitioner to apply to the UHS for affiliation and not to start the commencement of its college or to start the teaching process for the said program. The act of the petitioner is totally illegal, in clear violation of the provisions of section 37 of the U.H.S. Ordinance and has been done on its own peril for which the petitioner is solely responsible for wrongly admitting and wasting the precious time and money of the students. Even otherwise when the Pakistan Nursing Council has no authority under the law to grant affiliation to any medical institution, any permission by it to admit students in the petitioner's College on provisional or permanent basis is of no legal consequence and is non-est in nature.

9. Here the court cannot help but to mention the highly irresponsible and illegal role of the Pakistan Nursing Council which without insuring fulfillment of all the requirements for establishment of a medical institution for the purposes of teaching and training nursing staff appeared in a hurry to grant "provisional" permission to the petitioner for admission of 50 students (seats) initially which number was reduced to 40 students (seats) when final approval was granted. PNC is a statutory autonomous body whose functions are to determine and lay down the "POLICY" for, inter alia, accreditation of institutions, academic planning for them, laying down rules and regulations for the accreditations and recognition of nursing teaching

and training institutions whether in the public or private sector. However, the most important role of the said body is to ensure “quality assurance” in nursing institutions. In order to conduct inspection to formulate recommendations whether the institution merits recognition under the PNC Act 1973 or otherwise, the following is the criteria and requirement of the PNC which is to be verified by the inspection team for recognition of the institution. It is a pre-requisite that the institution may apply only if all requirements of PNC given below have been fulfilled and these guidelines have been complied with and that the institution is ready for physical verification of facilities of training by inspection. The major requirements and their weightage/credit points on fulfillment of PNC requirements are

SCORE CHART FOR 100 ADMISSIONS

Spot	Scoring points	Min. Req	Score by Inspectors
Legal	100	100(100%)	----
Financial	100	100(100%)	----
Infrastructure	200	200(50%)	----
Hospital	250	250(100%)	----
Faculty	350	350(100%)	----

Category	(%) Score	Status
Z	<70	Not approved for recommendation
Y	70~80	Revisit to recommendation
X	80~90	Approved for recommendation with conditions
W	90~100	Approved for recommendation

PART II

STEPS IN THE PROCESS OF RECOGNITION OF A NURSING, INSTITUTION

3. All nursing institution, recognized and desirous of recognition, shall fulfill all requirements under this criterion and when ready for the initial inspection for recognition, shall submit an application for recognition of a school/college which shall be addressed to PNC.
4. All institutions seeking recognition shall apply to the PNC so that the Council shall inspect the institutions and hold to decide these cases of recognition and shall forward these cases for process of notification, wherever indicated. The same procedure shall also be applicable to recognized institutions that are applying to the Council for permission to increase the number of annual admissions to the course.
5. The PNC shall conduct inspection under this criteria and requirements Inspectors are commissioned in the laid down manner and their reports are placed before the Executive Committee with observations of the inspected institution on them. The recommendations of the Executive Committee are then placed before the Council.
6. The Council decides whether notification of recognition shall be issued. The Council determines the number of annual admissions commensurate with available facilities.
7. College Authorities will get letter of intent from the University having territorial jurisdiction, that it will affiliate the college once it gets recognition from PNC. The recommendations of the Council shall be provided to the University to enable it to issue a formal letter of affiliation.
8. Only once notified by the PNC in the relevant schedules of the PNC Act 1973, the institution can admit the nursing students for training.

Stages	Stage of Processing
Stage 1.	Receipt of applications of the institution through the University/DAI to the PNC
Stage 2	Issue of letter of inspection by PNC
Stage 3	Inspection by PNC

Stage 4	Applicant institution to send its observations on the PNC inspection report.
Stage 5	Recommendation of Pakistan Nursing Council Executive Committee for the Council
Stage 6	Formulation of recommendations by the Council for notification in the schedules.
Stage 7	Letter of no objection by the Council to the University for affiliation.
Stage 8	Inclusion in the Third Schedule by the Federal Government on the recommendations received from the Council and the University.
Stage 9	Advertisement for admission and admission of students by the institution.
Stage 10	Registration of Students by PNC

10. From the above it is very much clear that the PNC did not observe any of its own criteria laid down above and granted provisional and then final recognition without seeing to it that the petitioner was:

- a) not affiliated with a 250 bed hospital
- b) did not have the required legal framework
- c) did not have the desired financial muscle
- d) the infrastructure was insufficient to support the programmes being undertaken
- e) did not have adequate and fully qualified faculty (teaching staff)

Unfortunately the petitioner fails to meet any of the aforesaid criteria as per the report of the inspectors of UHS which aspect should have

firstly been observed by PNC and petitioner required to adopt remedial measure before being given any form of permission whether temporary, provisional or final. It appears that the petitioner and the PNC are hand in glove to defraud the poor students, as it appears that the petitioner has embarked up to set up its facilities after collecting the admissions and tuition fees from the illegally admitted students. .

11. So far as prayer of the petitioner that respondent No.2 may be directed to complete the process of affiliation, the stance of respondent No.2/UHS is that the process of affiliation is not being completed due to the conduct of the petitioner. The petitioner applied for affiliation to UHS on September 30, 2016. The affiliation Committee of UHS visited the College on May 17, 2017 and presented its report to the Syndicate in its 52nd meeting held on December 15, 2017. The Secretary Affiliation Committee, UHS, vide letter No.UHS-AFFL-18/1011, dated 18.1.2018, conveyed the petitioner about the decision taken by UHS in 52nd meeting of the Syndicate on the basis of the Report of Gulf College of Physiotherapy, Nursing & Allied Sciences, DG Khan for B.SC. Nursing Post RN (02 years) and Doctor of Physical Therapy Programmes. The decision of the Syndicate which is quoted in the aforesaid letter is reproduced below:

“The deficiencies reported by the Committee shall be shared with the college with the request to rectify the same. On receipt of rectification report, the college will be re-inspected.”

It would be advantageous to reproduce the report of the inspection of the petitioner-College as provided by respondent No.2 hereunder:

“DEFICIENCY REPORT OF GULF COLLEGE OF PHYSIOTHERAPY, NURSING & ALLIED HEALTH SERVICES, DG KHAN FOR DOCTOR OF PHYSICAL PROGRAMME”

1. The institution intends to start two programmes in the same building whereas only two lecture theatres are available. The institution should establish two more lecture theatres, properly equipped with audiovisual aids and sufficient seating capacity.
2. Faculty for basic sciences is not available, only inexperienced demonstrators are available.
3. Faculty of physiotherapy is inexperienced only one instructor has teaching experience of one year.
4. Anatomy lab is insufficiently equipped. Only one set of manikin is present. Histology slides are also unavailable.
5. Physiology lab equipment are not adequate in number. Only two microscopes are there. The number of required equipment must be increased.
6. Kinesiology and electrotherapy labs are not well established and poorly equipped/
7. The space for library is inadequate and computer lab is also in same room and three (3) computers are available. The library has insufficient seating capacity. Library lacks adequate number of books.

8. There should be faculty offices for faculty members, presently there is only room shared by faculty of both programmes.
9. Clinical area is not well defined. The existing MoU between Gulf College and DHQ DG Khan was not endorsed by Principal/Chief College of Ghazi Khan Medical College.
10. Clinical setup at Gulf College is also deficient in equipment, modalities and space. Only four cabins with curtain partitions were there along with a small area of gym. One small PT room was also shown which was also not adequately equipped. There was no document or record shown to verify the functionality of this set up.”

In the above said letter it has been mentioned that on receipt of rectification report, the college will be re-inspected. The petitioner instead of rectifying the deficiencies pointed out by the UHS has opted to file the instant writ petition on the very next day i.e. on 19.1.2018.

12. The petitioner has also not approached this Court with clean hands as it firstly presented some of the students to file the writ petition, however, when their *locus standi* was challenged the “Gulf College of Nursing” came forth as the petitioner. The material filed by the petitioner and respondents, which is available in the file, shows that the proper and correct name of the petitioner is “Gulf College of Physiotherapy, Nursing & Allied Health Sciences, D.G. Khan”. However, this petition has been filed in the name of “Gulf College of

Nursing, Dera Ghazi Khan, through its Principal Madeha Mukhtar daughter of Muhammad Mukhtar, resident of Khayaban-e-Sarwar Block C, D.G. Khan” as petitioner. Therefore, it is apparent that this has been done to create an impression upon the Court that it is only an institution for nursing education so that the deficiency of inadequacy of space in particular the lecture theatres, service labs, clinical cabins, equipment in the clinical labs etc. which is required for running two different facilities i.e. Nursing and Physiotherapy simultaneously could be camouflaged from the court and to obtain favourable orders on the said basis and also on pleading sympathy for the students who have been victimized by the petitioner and its owners.

13. This Court in exercise of its powers under Article 199 of the Constitution of Pakistan, 1973 cannot issue any direction to the respondent-UHS for grant of affiliation to the petitioner-College by dispensing with any of the mandatory and statutory requirements of the applicable law. Learned counsel has failed to bring on record any proof to convince this Court that despite fulfilling and complying with all the mandatory requirements for grant of affiliation its case is being delayed by respondent No.2. In absence of any proof of infringement of any legal right the petitioner cannot be allowed to invoke the Constitutional jurisdiction of this Court. Even otherwise writ jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is to protect an existing legal right and not to create any right. Furthermore, Constitutional jurisdiction

under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is discretionary in nature and cannot be exercised to perpetuate ill-gotten gains. Reliance in this regard is placed on the case of *Syed Raunaq Ali and others v. Chief Settlement Commissioner and others* (PLD 1973 SC 230).

14. In view of the above, the instant petition is **dismissed** as being not maintainable.

(MUHAMMAD FARRUKH IRFAN KHAN)
JUDGE

APPROVED FOR REPORTING:

Rafiq