

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

CWP No.1771 of 2012-H

Reserved on: 4.12.2012

Decided on:31.12. 2012

Smt. Promila Devi wife of Sh. Naresh Kumar, resident of village Naresh Niketan Dyrton, Estate Shimla-01 H.P presently working as Staff Nurse, IGMC, Shimla.

.....Petitioner.

Versus

1. State of H.P through Secretary Health to the Govt. of H.P, Shimla-02
2. The Director of Health Services Kasumpti, Shimla-09
3. H.P Nursing Council through its Registrar, Old Dental Building IGMC, Shimla, District Shimla, H.P
4. Registrar H.P Nursing Council, Old Nursing Council, Dental Building IGMC, Shimla, District Shimla, H.P.

.....Respondents

**Civil Writ Petition under Article 226 of the
Constitution of India.**

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ Yes

**For the petitioner : Mr. Bhuvnesh Sharma and
Mr. Ramakant Sharma, Advocates.**

**For the Respondents: Mr. Vikas Rathore, Dy. A.G. for
respondents No.1 and 2.**

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

**Ms. Tanu Sharma, Advocate for
respondents No.3 and 4.**

Justice Rajiv Sharma, Judge.

Essential facts necessary for the adjudication of this writ petition are that the petitioner was appointed as Female Health Worker in the Health Department on 3.8.1991. She was promoted to the post of Staff Nurse. She got herself provisionally enrolled with Indira Gandhi National Open University for undertaking B.Sc. Nursing course on 15.10.2006. Her admission was confirmed on 15.12.2006. Petitioner has placed on record copy of degree issued by Indira Gandhi National Open University vide Annexure P-9. Case of the petitioner, in a nutshell, is that after obtaining degree in B.Sc. Nursing from Indira Gandhi National Open University, she submitted an application for registration with respondent No.3. According to her, she is eligible to be considered for the post of Tutor Nursing but due to non-registration by respondent No.3-Council, her case was not considered by the Departmental Promotion Committee.

2. Case of the respondent-State is that the decision has to be taken by the Himachal Pradesh Nursing Council. Respondents No.3 and 4 have filed

the reply. According to the reply filed by respondents No.3 and 4, petitioner could not be registered since she has passed B.Sc. Nursing from College of Nursing Adesh Institute of Medical Sciences, Muktsar, which is not recognized by the Indian Nursing Council.

3. Mr. Bhuvnesh Sharma has vehemently argued that the degree of B.Sc. Nursing awarded to his client by Indira Gandhi National Open University is valid and on the basis of the same, respondents No.3 and 4 could not refuse to register her name. According to him, the action of respondents No.3 and 4 is illegal and arbitrary, thus, violative of Article 14 of the Constitution of India.

4. Mr. Vikas Rathore, learned Deputy Advocate General and Ms. Tanu Sharma, appearing on behalf of the respondents, have argued that the Institute from where the petitioner has passed B. Sc. Nursing is not recognized by the Indian Nursing Council. They have further argued that the petitioner is required to comply with all the conditions of the Indian Nursing Council as well as the Himachal Pradesh Nurses Registration Act, 1977.

5. I have heard the learned counsel for the parties and have perused the pleadings carefully.

6. The Indira Gandhi National Open University came into existence by the Indira Gandhi National Open University Act, 1985. The University has been established and incorporated as an open University at the national level for the introduction and promotion of open university and distance education systems in the educational pattern of the country and for the co-ordination and determination of standards in such systems. Section 2 (e) defines, “Distance Education System” to mean the system of imparting education through any means of communication, such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combination of any two or more of such means. Section 2 (j) defines expression “Regional Centre”. Section 2 (k) defines the “Regulations”. Section 2 (l) defines “School” to mean a school of studies of the University. Section 2 (m) defines “Statutes” and “Ordinances” to mean the Statutes and Ordinances of the University for the time being in force. “Study Centre” has been defined in section 2 (o) to mean a centre established, maintained or recognized by the University for the purpose of advising, counselling or for rendering any other assistance required by the students. The University has been established under section 3 of

the Act. Section 4 of the Act defines the objects of the University. The objects of the University are to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication, technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage the Open University and Distance Education Systems in the educational pattern of the country and to co-ordinate and determine the standards in such systems and the University is required to give due regard to the objects specified in the First Schedule. The powers of the University have been defined under section 5. Section 24 provides that subject to the provisions of the Act, the Statutes may provide for all or any of the manners, namely:

“(a) the manner of appointment of the Vice-Chancellor, the term of his appointment, the emoluments and other conditions of his service and the powers and functions that may be exercised and performed by him;

(b) the manner of appointment of Pro-Vice-Chancellor, Directors, Registrars, the Finances Officer and other officers, the emoluments and other conditions of their service and the powers and functions that may be exercised and performed by each of the officers.

(c) The constitution of the Board of Management and other authorities of the University, the terms of office of the members of such authorities and the powers and functions that may be exercised and performed by such authorities;

- (d) The appointment of teachers and other employees of the University, their emoluments and other conditions of service;**
- (e) The constitution of a pension or provident fund and the establishment of an insurance scheme for the benefit of the employees of the University;**
- (f) The principles governing the seniority of service of the employees of the University;**
- (g) The procedure in relation to any appeal or application for review by any employee or student of the University against the action of any officer or authority of the University, including the time within which such appeal or application for review shall be preferred or made;**
- (h) The procedure for the settlement of disputes between the employees students of the University, and the University;**
- (i) The conferment of autonomous status on Colleges and Study Centres;**
- (j) The co-ordination and determination of standards in the open University and distance education systems and the allocation and disbursement of grants to Colleges and other universities and institutions;**
- (k) The conditions that are required to be fulfilled for admission of the Colleges to the privileges of the University;**
- (l) All other matters which by the Act are to be, or may be, provided by the Statutes.”**

7. The manner in which the Statutes are to be made have been provided under section 25 of the Act. Section 26 provides for framing of Ordinances. According to Schedule-I of section 4, the objects of the University are as under:

- “1. The University shall endeavour through education, research, training and extension to play a positive role in the development of the country, and, based on the rich heritage of the country, to promote and advance the culture of the people of India and its human resources. Towards this end, it shall:**
- (a) strengthen and diversify the degree, certificate and diploma courses related to the needs of employment and**

necessary for building the economy of the country on the basis of its natural and human resources;

(b) provide access to higher education for large segments of the population, and in particular, the disadvantaged groups such as those living in remote and rural areas including working people, housewives and other adults who wish to upgrade or acquire knowledge through studies in various fields;

(c) promote acquisition of knowledge in a rapidly developing and changing society and to continuously offer opportunities for upgrading knowledge, training and skills in the context of innovations, research and discovery in all fields of human endeavours;

(d) provide an innovative system of university level education, flexible and open, in regard to methods and pace of learning, combination of courses, eligibility for enrolment, age of entry, conduct of examination and operation of the programmes with a view to promote learning and encourage excellence in new fields of knowledge;

(e) contribute to the improvement of the educational system in India by providing a nonformal channel complementary to the formal system and encouraging transfer of credits and exchange of teaching staff by making wide use of texts and other software developed by the University;

(f) provide education and training in the various arts, crafts and skills of the country, raising their quality and improving their availability to the people;

(g) provide or arrange training of teachers required for such activities or institutions;

(h) provide suitable post-graduate courses of study and promote research;

(i) provide the counseling and guidance to its students; and

(j) promote national integration and the integrated development of the human personality through its policies and programmes.

2. The University shall strive to fulfil the above objects by a diversity of means of distance and continuing education, and shall function in cooperation with the existing Universities and Institutions of higher learning and make full use of the latest scientific knowledge and new educational technology to offer a high quality of education which matches contemporary needs.”

8. The Indira Gandhi National Open University has framed the Statutes. Statute 28 pertains to Distance Education Council, which reads thus:

“28. Distance Education Council

(1) Consistent with the duty of the University to take all such steps as it may deem fit for the promotion of the Open University and distance education systems in the educational pattern of the country and for the coordination and determination of standards of teaching, evaluation & research in such systems; and in pursuance of the objects of the University to encourage greater flexibility, diversity, accessibility, mobility and innovation in education at the University level by making full use of the latest scientific knowledge and new educational technology, and to further cooperation between the existing Universities; it is considered necessary and expedient to establish a Distance Education Council as an authority of the University under Section 16 of the Act.

(2) (a) There shall be a Distance Education Council (DEC) which shall, within the frame work of the policies and guidelines laid down by the Board of Management, be responsible for the promotion and coordination of the open university and distance education system, and for the determination of its standards.

(b) the Distance Education Council is declared by this Statute as an authority of the IGNOU under Section 16 of the IGNOU Act.

(3) (a) The Distance Education Council shall consist of the following members:

i) The Vice-Chancellor, IGNOU, who shall be its Chairman;

ii The Secretary, Incharge of Education in the Dept. of Education, Ministry of Human Resource Development or his nominee;

iii) A member of the University Grants Commission to be nominated by the Chairman, UGC;

iv) Secretary, UGC;

iv) (a) Director, NAAC

v) Two members of the Board of Management, who are not employees of the IGNOU, to be nominated by the Board of Management.

vi) Two vice-Chancellor of State Open Universities which have been declared fit to receive assistance under Section 12B of the UGC Act, to be nominated by the Chairman, DEC, by rotation;

vii) Two Heads of institutions of Correspondence/distance education from universities other than open universities which have been declared fit to receive assistance under Section 12B of the UGC Act, to be nominated by the Board of Management;

viii) Three persons to be nominated by the Visitor of whom one may be a Vice-Chancellor of a Universities other than an open university, one, an open university, one, an expert in vocational/technical, and one, an expert in mass media/communication.

ix) One teacher from the open university/distance education system to be nominated by the Board of Management on the recommendation of the Chairman, DEC.

(b) A Registrar/Director, of the IGNOU designated by the Board of Management shall be the Secretary of the Distance Education Council.

(c) (i) The members of the Distance Education Council nominated under sub-clauses (3)(a)(iii) and (ix) shall hold office for a term of three years from the date on which they are nominated;

ii) The members nominated under sub-clause (3)(a)(v), (vi) and (vii) shall hold office for a period of two years from the date on which they are nominated: provided that one-half of the members nominated under these sub-clauses at the time of the initial constitution of the DEC, shall retire on completion on one year from the date of their nomination according to the alphabetical order of their names:

(d) Six members of the Distance Education Council shall form the quorum for the meeting of the Council.

(4) Powers & Functions of the Distance Education Council.

(a) It shall be the general duty of the Distance Education Council to take all such steps as are consistent with the provisions of this Act, the statues and the ordinances for the promotion of the open university/distance education

systems, its coordinated development, and the determination of its standards, and in particular.”

9. The powers and functions of the Distance Education Council are to promote the Open University/Distance Education System, its coordinated development, and the determination of its standards, and in particular which includes, inter-alia, the following:

“(i) To develop a network of open universities/distance education institutions in the country in consultation with the State Governments, Universities, and other concerned agencies;

(ii) To identify priority areas in which distance education programmes should be organized and to provide such support as may be considered necessary for organizing such programmes;

(iii) To identify the specific client groups and the types of programmes to be organized for them, and to promote and encourage the organization of such programmes through the network of open universities/distance education institutions;

(iv) To promote an innovative system of University level education, flexible and open, in regard to methods and pace of learning, combination of courses, eligibility for enrolment, age of entry, conduct of examination and organize various courses and programmes.

(v) To promote the organization of programmes of human-resource development for the open university/distance education system;

(vi) To initiate and organize measures for joint development of courses and programmes and research in distance education technology and practices;”

10. The Distance Education Council issued guidelines in the year 2006 for regulating the Establishment and Operation of Open and Distance Learning Institutions in India. The Distance Education

Institutes requires approval from DEC. The guidelines also specified that the Institutions shall furnish undertaking for the following:

“3. The undertakings to be given by the ODL institutions seeking Approval from the DEC.

The ODL institutions shall give and comply with the following undertakings:

3.1 That the provisions of the DEC established under the Statute 28 of the Indira Gandhi National Open University Act, 1985 and the standing orders and directions of the Distance Education Council, shall be observed.

3.2 That the parent institution which intends to start or which has already started Distance Education Institutions (DEIs) should have a provision in its Act / MoA for running Distance Education programme(s);

3.3 That the parent institution shall not establish its Study Centres/Regional Centres outside its jurisdiction as specified in the parent institution Act/ MoA. In case of Deemed to be Universities the offering of distance education programmes will be confined to the state in which the main campus of the parent institution is located, except for programmes that the culturally and linguistically relevant even outside their state. Explicit approval of DEC should be obtained for offering such programmes;

3.4 That the parent institution shall have appropriate legislation to monitor the academic standard and quality of Distance Education within the parent institution.”

11. The Distance Education Council in its meeting held on 23.3.2007 resolved that the Council shall consider the Institutions for approval instead of the programmes evaluation of such Institutions. The resolution reads as under:

“Item No.28.5: To consider and approve the Guidelines and Handbook, 2007 for Establishment and Recognition of Open and Distance Learning Institutions.”

As per decision of the 27th DEC meeting held on 11th December, 2006, the Committee constituted by the Chairman, DEC examined in detail the Guidelines for Recognition of ODL Institutions at its meeting held on 9th February, 2007. The Council discussed the recommendations of the Committee and appreciated the decision taken by the Committee for recognition of institution in place of the existing practice of programme evaluation. Representative of the MHRD suggested that the Ministry would like to go into the details of the guidelines and if within 15 days the feed back from the Ministry is not sent to the Council, the Guidelines may be considered as approved. The Council endorsed the suggestion.”

12. The Distance Education Council published a hand-book in the year 2007 for recognition of open and distance learning. Hand-book contemplated that it should be mandatory for all institutions to seek prior approval of DEC for all existing and new programmes offered through distance mode. Table 1.1 fixed norms for offering programmes through distance mode based on credit system. It included Bachelors Degree (Technical) with 132-136 numbers of credits with minimum duration of 4 years. It stipulated that:

“In case of professional/specific programmes norms/guidelines of the respective apex bodies are to be followed and approval/recognition sought, whenever necessary;”

Part-II of the Hand Book contemplates the following:

“For recognition purposes, mainly, processes and infrastructure facilities of the Institution will be considered which inter alia include the following:

- i. The study material may be prepared based on the Model Curriculum prescribed by the UGC/DEC or other Statutory Body as the case may be;**

- ii. The study material should be in Self-Learning Format as per DEC Guidelines;
- iii. Core faculty in position as per DEC guidelines;
- iv. In case of Professional/Specific Programmes norms/guidelines of the respective apex body are to be following and approval/recognition sought, wherever necessary; Institution should follow criteria like eligibility for admission, duration of the programme etc. as per the guidelines of the respective apex bodies;"

13. Section 3 of the Indian Nursing Council Act, 1947 provides for constitution and composition of the Council. Section 10 provides for recognition of qualifications. It reads thus:

"10. Recognition of qualifications.

(1) For the purposes of this Act, the qualifications included in 1[Part I of] the

Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority within the States 2* * * which, being recognised by the State Government [in consultation with the State Council, if any] for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, [auxiliary nursing midwifery], health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognized qualification for the purposes of this Act.

(3) The Council may enter into negotiations with any authority 3[in any 4[territory of India to which this Act does not extend] or foreign country] which by the law of [such territory] or country is entrusted with the maintenance of a register of nurses, midwives or health visitors, for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a

qualification granted by any authority in any [such territory] or country, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act:

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice 3[of the foreign country] in which the qualification is granted persons domiciled or originating [in India] and holding qualifications recognized under this Act are permitted to enter and practise the nursing profession [in that country] Provided further that-

(i) any reciprocal arrangements subsisting at the date of the commencement of this Act between a State Council and any authority outside India for the recognition of qualifications shall, unless the Council decides otherwise, continue in force, and

6[(ii) any qualification granted by an authority in a territory of India to which this Act did not extend at the date of its commencement, and recognised on the said date by the State Council of a State to which this Act then extended, shall continue to be a recognised qualification for the purpose of registration in that State.]

(4) The provisions of sub-sections (2) and (3) and of sections 14 and 15 shall apply mutatis mutandis to the declaration by the Council of a qualification granted in respect of post-certificate nursing training as a recognised higher qualification.”

14. According to section 12 of the Indian Nursing Council Act, 1947, every authority in any State which grants a recognized qualification or a recognized higher qualification is required to furnish such information as the Council may, from time to time, require as to the courses of study and training and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations

are required to be undergone and such qualifications conferred, and generally as to the requisites for obtaining such qualification. Section 13 deals with inspections. Section 14 deals with withdrawal of recognition. Section 16 empowers the Council to frame Regulations. The Council is competent to make Regulations for prescribing the standard curriculum 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. It can also frame Regulations prescribing the conditions for admission to courses of training and also for prescribing the standards of examination and other requirements to be satisfied to secure for qualifications recognition under the Act.

15. The Indian Nursing Council has notified the syllabus and Regulations for B.Sc. Nursing. The minimum age for admission in B.Sc. Nursing is 17 years and the minimum educational requirements are as under:

“Higher Secondary School Certificate Examination (12 years course), Senior School Certificate Examination (10+2), Pre Degree Examination (10+2) or an equivalent with 12 years schooling with Biological, Physical sciences and English.”

16. The duration of course is four years. The candidates are also required to undergo compulsory

internship. The experience is intended to help students learn to give comprehensive care in different areas as well as to develop professional skill in giving of care. Internship experience assists to bridge the gap between the professional, academic perspective gained during education, and conflict and identification discrepancies upon work entry. The suggested practical are to be in anatomy and physiology, biochemistry, microbiology, psychology, nutrition, introduction to community health, including family welfare, introduction to principles of administration, nursing service and education, research and statistics and sociology. According to the Regulations, practical experience is co-related with theory. The practical is to be closely supervised. The candidates are required to undergo practical in children's surgical ward, psychiatric nursing, midwifery and community health nursing. The staffing pattern has also been provided under the Regulations. According to the Regulations, all nursing teachers must possess a basic University or equivalent qualification as laid down in the Schedules to the Indian Nursing Council Act, 1947. The Regulations also talk of physical facilities, including laboratories, library, offices, residential accommodation for students, separate offices to the faculty, including

appointment of the Nursing Superintendent, Joint/Deputy Nursing Superintendent, Assistant Nursing Superintendent/Departmental Supervisor, etc.

17. The registration of nurses, health visitors, midwives, auxiliary nurse midwives and *dais* in Himachal Pradesh is regulated under the Act called “the Himachal Pradesh Nurses Registration Act, 1977”. Chapter-III provides for registration of nurses, health visitors, midwives, nurse *dais*, auxiliary nurse midwives, trained *dais* and *dais*. According to section 18 of the Himachal Pradesh Nurses Registration Act, 1977, every person who complies with such conditions and restrictions as may be prescribed by the Council and has undergone the necessary course of training or passed the examination, if any, prescribed for nurses, health visitors, midwives, nurse *dais*, auxiliary nurse midwives, trained *dais* and *dais* or is registered as a nurse or health visitor or midwife or auxiliary nurse midwife by any association which is recognized by the Council, or is able to satisfy the Council that he/she 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, or is already employed or practising in Himachal Pradesh as a *dai* or

doing the same work as a nurse, health, visitor, midwife, auxiliary nurse midwife, nurse *dai*, trained *dai* or *dai* at the commencement of the Act may apply to the Registrar to have his/her name registered. According to sub-section 2 of section 18, if the Registrar is satisfied that any nurse, health visitor, midwives, nurse *dais*, auxiliary nurse midwives, trained *dais* and *dais* applying under clause (a) or clause (b) of sub-section (1) is entitled to be registered, he on payment of such fees as may be prescribed, enter the name of such nurse, health visitor, midwives, nurse *dais*, auxiliary nurse midwives, trained *dais* and *dais* in the prescribed register and if the Registrar is satisfied that any person applying under clause (c) or clause (d) of sub-section (1) is entitled to be registered as a nurse, health visitor, midwives, nurse *dais*, auxiliary nurse midwives, trained *dais* and *dais*, as the case may be, he shall place the application before the Council with a recommendation that he be permitted to enter the name of such person in the prescribed register and shall not make any entry in the prescribed register in respect of such person until the entry is permitted by the Council to be made. Section 23 empowers the Council to make Bye-Laws, including to prescribe the course of training and qualification for the registration of

nurses, health visitors, midwives, nurse *dais*, auxiliary nurse midwives, trained dais and dais and to provide for the recognition of institution competent to give such training. These bye-laws are required to be confirmed by the State Government and published in the official gazette.

18. In the instant case, petitioner has got herself provisionally admitted with Indira Gandhi National Open University for undergoing B.Sc. Nursing course on 15.10.2006. Her admission was confirmed on 15.12.2006. She was admitted for academic session 2007-2008 and 2008-2009, i.e. duration of two years. Respondents No. 3 and 4 have sought the information from the Indian Nursing Council vide communication dated 16.3.2012 about the P.B.B. Sc. Nursing Training Institutions. Necessary information was supplied by the Indian Nursing Council on 2.5.2012. According to the Indian Nursing Council, Study Centre of Indira Gandhi National Open University, Khanna, Punjab for Post Basic B. Sc. (N) course through distance by IGNOU was not recognized by it. Similar clarification was also sought on 12.4.2012 and the Indian Nursing Council has again reiterated on 14.5.2012 that Study Centre of Indira Gandhi National Open University, Khanna, Punjab for

Post Basic B. Sc. (N) course through distance by IGNOU was not recognized by it. It is on the basis of these two communications that respondent No.3- H.P. Nursing Council has refused to register the name of the petitioner in the register. There is neither any illegality nor arbitrariness in the decision of respondent No.3 while refusing to enter the name of the petitioner in the register since she has obtained the B.Sc. Nursing degree from an institution which is not recognized by the Indian Nursing Council.

19. Petitioner has been awarded degree by Indira Gandhi National Open University vide Annexure P-9. According to the Regulations framed by the Indian Nursing Council, the duration of the course is four years. However, in the case in hand, the petitioner has only undergone two years course. The duration of the course as per the requirement of Indira Gandhi National Open University for undergoing B.Sc. Nursing course by way of distance education is three years, which could be extended to five years. The eligibility of B. Sc. (N) (Post Basic) is:

- (i) **10+2 with diploma in general Nursing and Midwifery with a minimum of two years experience in the profession and male nurses and nurses who have not done Midwifery in the GNM programme must submit a certificate of completion of a course of 6 to 9 months**

duration approved by the Indian Nursing Council in lieu of Midwifery, or

- (ii) 10th class matriculation or its equivalent with diploma in General Nursing and Midwifery with a minimum of five years experience in the profession and the male nurses and nurses who have not done Midwifery in the GNM Programme must submit a certificate of completion of a course of 6 to 9 months duration approved by Indian National Council in lieu of Midwifery.**

20. The selection for B.Sc. Nursing programme is by merit and the merit is worked out on the basis of giving 80% weightage to the total marks obtained in General Nursing and Midwifery and one mark for each year of experience in nursing over and above the years of experience required for eligibility for admission subject to a maximum of 20 marks.

21. The institution from where the petitioner has obtained her B.Sc. Nursing degree was required to fulfill the general requirements prescribed by the Indian Nursing Council, more particularly, academic regulations, as noticed hereinabove. The requirement of qualification is provided under section 10 of the Indian Nursing Council Act, 1947 and the Regulations framed by the Indian Nursing Council under section 16 of the Act. The degree awarded by Indira Gandhi National Open University does not find mention under section 17 of the Act. Similarly, under section 17 Part-II, the

degrees awarded by the Indira Gandhi National Open University are not included for recognizing higher qualification.

22. Mr. Bhuvnesh Sharma has also argued that the degree awarded by the Indira Gandhi National Open University is valid for the purpose of employment in the State of Himachal Pradesh. Now, the Court will advert to the question of great public importance whether the Indira Gandhi National Open University can award degrees in technical courses like B.Sc. Nursing, diploma/degree in Engineering and other technical courses. The Board of Management of the Indira Gandhi National Open University has resolved on 19.7.1991 to insert Statute 28 in the Statutes of the University. According to Statute 28, Distance Education Council, has been constituted to take all such steps as it may deem fit for the promotion of the Open University and distance education systems in the educational pattern of the country and for the coordination and determination of standards of teaching, evaluation and research in such systems and in pursuance of the objects of the University to encourage greater flexibility, diversity, accessibility, mobility and innovation in education at the university level by making full use of the latest scientific knowledge

and new educational technology. The functions of the distance education council have already been quoted hereinabove. The powers and functions of the Distance Education Council are to develop a network of open universalities/distance education institutions in the country in consultation with the State Governments and other concerned agencies, to identify priority areas in which distance education programmes should be organized and to provide such support as may be considered necessary for organizing such programmes and also to identify the specific client groups and the types of programmes to be organized for them, and to promote and encourage the organization of such programmes through the network of open universities/distance education institutions and also to promote an innovative system of University level education, flexible and open, in regard to methods and pace of learning, combination of courses, eligibility for enrolment, age of entry, conduct of examination and organize various courses and programmes and also to promote the organization of programmes of human-resource development for the open university/distance education system and to initiate and organize measures for joint development of courses and programmes and

research in distance education technology and practices. The Distance Education Council has also issued guidelines in the year 2006 for regulating the establishment and operation of Open and Distance Learning Institutions in India. The Institutions are required to give undertaking that the provisions of Distance Education Council shall be observed. The parent institution which intends to start or which has already started Distance Education Institutions should have a provision in its Act/MoA for running Distance Education Programme. The parent institution cannot establish its Study Centres/Regional Centres outside its jurisdiction as specified in the parent institution Act/MoA. The parent institution is required to monitor the academic standard and quality of Distance Education within the parent institution.

23. What emerges from the combined reading of Statute 28 of the Indira Gandhi National Open University Statutes and the powers and functions of the Distance Education Council is that there is no provision for providing technical education by way of distance education. The courses of B.Sc. Nursing and M.Sc. Nursing are very technical in nature. The candidates besides possessing theoretical knowledge are also

required to obtain practical knowledge. The candidates admitted in regular courses of B.Sc., M.Sc./B.E. in Engineering and other technical courses in recognized institution have to attend the minimum number of lectures in theory as well as in practical examination. The knowledge acquired by the candidates through regular courses cannot be compared with technical qualification obtained by way of distance education. The Regulations framed by the Indian Nursing Council are very comprehensive vis-à-vis the Regulations framed by the Indira Gandhi National Open University for awarding B.Sc. Nursing degree. The recognized/valid institutions are required to comply with all the academic regulations framed by the Indian Nursing Council with regard to the syllabus, curriculum, appointments of teachers, eligibility criteria, staffing pattern, including building etc. The major difference which has already been taken note of is that the duration of B.Sc. nursing course is four years as per the academic regulations framed by the Indian National Council and 3-5 years in case of Indira Gandhi National Open University. In the instant case, petitioner was admitted only for two years for the academic sessions 2007-2008 and 2008-2009.

24. According to the Regulations framed by the Indian Nursing Council, upon completion of B.Sc. Nursing degree programme the graduates are expected to:

“1. Assess health status, identifying nursing needs, plan, implement and evaluate nursing care for patients/clients that contribute to health of individuals, families and communities.

***Primary Care* denotes health promotion and specific protection.**

***Secondary Care* deals with early diagnosis and treatment.**

***Tertiary Care* refers to disability limitation and rehabilitation.**

The essential elements of nursing practice are those that are related to maintaining or restoring normal life functions, assessing patient's physical and emotional state, assessing environmental factors, formulating and implementing a plan for the provision of nursing care based on scientific principles. In providing these services, the nurse functions as a member of the Health team in interpreting and carrying the instructions of physicians, by collaborating with professional colleagues in the planning and delivery of health services and by acting independently when the needs of the patient and the principles of nursing practice so indicate.

***Different Settings* refer to rendering care in hospitals, health centres, rural and urban community health agencies, industries, nursing institutions, educational institutions and national and international organizations.**

2 .Demonstrate competency in the skills and techniques of nursing based on concepts and principles from selected areas of physical, biological and behavioral sciences.

3 .Participate as members of health team in the promotive, preventive and restorative health care delivery system of the country.

4 .Demonstrate leadership qualities and decision making abilities in various situations.

5 .Recognize the need for continued learning for their personal and professional development.

6 .Demonstrate skills in teaching, management, interpersonal relations and communications.

7 .Practice ethical values in their personal and professional life.”

25. Their Lordships of the Hon’ble Supreme Court in ***Prof. Yashpal and another*** versus ***State of Chhattisgarh and others***, (2005) 5 SCC 420 have held that interest of the society requires that the holder of an academic degree possesses the requisite proficiency and expertise in the subject, which the degree certifies. Their Lordships have held as under:

“25. The Commission noted that many of the Universities did not compare favourably with the best of British and American universities in respect of their teaching and examination standards. Unless highest standards of teaching in the Universities are ensured, the degree given by them will not command recognition and respect. The Commission observed : “....Our universities should maintain the academic character of their work on a level recognized as adequate by the universities of other countries. Universities are our national institutions, and to keep up our national prestige, our degrees must be such as to command international recognition....”

38. A degree conferred by a University is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a Doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the concerned subject by doing some original research work. A University degree confers a kind of a status upon a person like a graduate or a post-graduate. Those who have done research work and have obtained a Ph.D., D.Lit., or D.Sc. degree become entitled to write the word "Doctor" before their name and

command certain amount of respect in society as educated and knowledgeable persons. That apart the principal advantage of holding a University degree is in the matter of employment, where a minimum qualification like a graduate, post-graduate or a professional degree from a recognized institute is prescribed. Even for those who do not want to take up a job and want to remain in private profession like a doctor or lawyer, registration with Medical Council or Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognized by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given under Section 22 of UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by Government was pointed out by a Constitution Bench in *Azeez Basha v. Union of India*. AIR 1968 SC 662."

26. The Nursing Council has also issued revised guidelines for Council School of Nursing and College of Nursing and the relevant extract reads as under:

"Any organization under the Central Government, State Government, Local Body or a Private or Public Trust, Mission, Voluntary registered under Society Registration Act or a Company registered under company's Act wishes to open a

School/College of Nursing, should obtain the No Objection/Essentiality Certificate from the State Government.

The Indian Nursing Council on receipt of the proposal from the Institution to start nursing programme (School/College), will undertake the first inspection to assess suitability with regard to physical infrastructure, clinical facility and teaching faculty in order to give permission to start the programme.

After the receipt of the permission to start the nursing programme from Indian Nursing Council, the institution shall obtain the approval from the State Nursing Council and examination Board/University.

Institution will admit the students only after taking approval of State Nursing Council and examination Board/University.

The Indian Nursing Council will conduct inspection every year till the first batch completes the programme. Permission will be given year by year till the first batch completes.”

27. Their Lordships of the Hon’ble Supreme Court in ***Annamalai University represented by Registrar versus Secretary to Government, Information and Tourism Department and others***, (2009) 4 SCC 590 have held that the distinction between a formal system and an informal system is in the mode and manner in which education is imparted. Their Lordships have held as under:

“40. UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able

to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act was in substitution of the formal system is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. UGC Act was enacted for effectuating co- ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect.”

28. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the writ petition and the same is dismissed. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.

**(Justice Rajiv Sharma),
Judge.**

31.12. 2012

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