



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JANUARY 2023

PRESENT

THE HON'BLE MR. PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT APPEAL No.839 OF 2022 (EDN-RES)

BETWEEN:

THE KARNATAKA STATE ASSOCIATION OF THE
MANAGEMENT OF NURSING AND ALLIED HEALTH
SCIENCE INSTITUTIONS
HAVING ITS REGISTERED OFFICE
AT NO 7380, DADAPEER LAYOUT
NH4 NELAMANGALA, BENGALURU - 562123
REP. BY ITS PRESIDENT SRI S SHIVAKUMAR

...APPELLANT

(BY SRI. UDAYA HOLLA, SR.ADV. FOR
SRI KRISHNA.T, ADV.)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND FAMILY WELFARE
MEDICATION EDUCATION
M.S.BUILDING, BENGALURU-560 001
REPRESENTED BY ITS PRINCIPAL SECRETARY
- 2 . THE KARNATAKA LEGISLATIVE COUNCIL
VIDHANA SOUDHA
POST BOX NO.5079

BENGALURU - 560001
REP. BY ITS UNDER SECRETARY

- 3 . THE SECRETARY
KARNATAKA LEGISLATIVE COUNCIL
ROOM NO.156-C, 1ST FLOOR
VIDHANA SOUDHA
BENGALURU-560 001.
- 4 . THE UNDER SECRETARY
KARNATAKA LEGISLATIVE COUNCIL
VIDHANA SOUDHA,
POST BOX NO.5079
BENGALURU - 560001
- 5 . THE INDIAN NURSING COUNCIL
8TH FLOOR, NBCC CENTRE
PLOT NO.2, COMMUNITY CENTER
OKHLA PHASE - I
NEW DELHI - 110002
REP. BY ITS PRESIDENT
- 6 . THE RAJIV GANDHI UNIVERISTY OF
HEALTH SCIENCES
4TH T BLOCK, JAYANAGAR
BENGALURU - 560001
REP. BY ITS REGISTRAR
- 7 . THE KARNATAKA STATE NURSING COUNCIL
ANANDA RAO CIRCLE
BENGALURU - 560009
REP. BY ITS REGISTRAR

.....RESPONDENTS

(BY SRI.DHYAN CHINNAPPA, AAG A/W
SRI. S.RAJASHEKAR AGA FOR R1 TO R4
SRI. SHIVARUDRA, ADV. FOR R5
R6 AND R7 ARE SERVED AND UNREPRESENTED)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO CALL FOR RECORDS OF THE CASE WP No-9456/2022 AND BE PLEASED TO SET ASIDE THE ORDER DATED 11.08.2022 PASSED THEREIN AND GRANT SUCH OTHER AND FURTHER RELIEFS AS ARE JUST.

THIS APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.11.2022, COMING ON FOR PRONOUNCEMENT, THIS DAY, **ASHOK S KINAGI J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This intra-court appeal is filed under Section 4 of the Karnataka High Courts Act challenging the order dated 11.08.2022, passed in W.P.No.9456/2022 by the learned Single Judge.

2. Parties are referred to as per their ranking before the learned Single Judge. Appellant is the petitioner and respondents are the respondents before the learned Single Judge.

3. Brief facts leading rise to filing of this appeal are as under:

Respondent No.3 issued a communication dated 04.05.2022, bearing No.119, wherein a Sub-

Committee has been constituted to inspect the Nursing Colleges and Allied Health Sciences Colleges and Nursing Schools in the State of Karnataka to ascertain as to whether they have been running the institution as per the guidelines issued by the Indian Nursing Council and to inspect the building infrastructure, etc. The petitioner aggrieved by the communication dated 04.05.2022, constituting a Sub-Committee, preferred a writ petition in W.P.No. 9456/2022. The learned Single Judge after considering the material on record, dismissed the writ petition vide order dated 11.08.2022. The petitioner, aggrieved by the order passed by the learned Single Judge, has filed this intra-court appeal.

4. Heard Sri. Udaya Holla, learned senior counsel for the petitioner and Sri. Dhyan Chinnappa, learned Additional Advocate General for respondents No.1 to 4 and Sri. Shivarudra, learned counsel for respondent No.5.

5. Learned senior counsel for the petitioner submits that respondent No.3 has no jurisdiction to constitute a Sub-Committee to ascertain whether the Nursing Institutions are running as per the guidelines issued by the Indian Nursing Council and to inspect the building infrastructure, etc. He further submits that the Sub-Committee has no right to assess and the same is not the function of the legislative Council. He further submits that the legislature has not framed any statute setting out the powers, privileges and immunities of the House of the legislatures of the State and of the members and the Committees of the House as mandated under Article 194(3) of the Constitution of India. He submits that the learned Single Judge wholly erred in not noticing the scope of powers, privileges and immunities. He submits that the impugned order is arbitrary and erroneous. In order to buttress his argument he has placed reliance on the following decisions:

- (1) Hon'ble Punjab & Haryana High Court in the case of Sandeep Kumari & Ors. vs. State of Punjab & Anr., reported in 2013 SCC Online P&H 15602;
- (2) Amarinder Singh vs. Special Committee Punjab Vidhan Sabha & Ors., reported in (2010) 6 SCC 113;
- (3) Ashish Shelar & Ors. vs. Maharashtra Legislative Assembly & Anr., reported in 2022 SCC Online SC 105;
- (4) Ajit Mohan, Vice-President & Managing Director of the petitioner 2 Face book India Online Services Pvt. Ltd. & Ors. vs. Legislative Assembly, National Capital, Territory of Delhi & Ors., reported in (2022) 3 SCC 529; and
- (5) Naseem Bano (Smt.) vs. State of UP & Ors., reported in 1993 Supp. (4) SCC 46.

Hence on these grounds, he prays to allow the writ appeal.

6. Per contra Sri. Dhyan Chinnappa, learned AAG submits that the Sub-Committee has been constituted as per Rule 199 of the Rules of Procedure & Conduct of Business in the Karnataka Legislative Council ('the Rules' for short). He further submits

that the Sub-Committee can take evidence and call for papers, records or documents as per Rule 205 of the Rules and the Sub-Committee can record the examination of witnesses and he further submits that as per Rule 223 of the Rules, the Committee has such powers, other functions as may be assigned to it by the Chairman from time to time. He further submits that the Sub-Committee has been constituted only with an intention to ascertain whether the institution has got the basic infrastructure for the purpose of running Nursing Colleges. He submits that constituting the Sub-Committee is in accordance with the Rules. In order to buttress his arguments, he has placed reliance on the following decisions:

- (1) Kalpana Mehta & Ors. vs. Union of India & Ors., reported in (2018) 7 SCC 1;
- (2) Matajog Dobey vs. H.C.Bhari, reported in AIR 1956 SC 44;
- (3) Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors., reported in (1978) 1 SCC 405.

Hence on these grounds he prays to dismiss the writ appeal.

7. Perused the records and considered the submissions of the learned senior counsel for the petitioner and learned AAG for respondents 1 to 4 and learned counsel for respondent No.5.

8. It is not in dispute that a question was raised in the Karnataka Legislative Council regarding permissions being granted to the new Nursing Colleges and Allied Health Sciences Institutions inspite of institutions having no infrastructures and violating the directions of the Indian Nursing Council and it has resulted in discussion pertaining to Nursing Colleges in general and it was suggested to constitute a Sub-Committee to examine the irregularities. The Chairman after taking consensus of the House, appointed a Special House Committee to go into the matters raised and discussed in the House, as per Rule 242A of the Rules and also specified the terms of

reference and notified as per the publication No.42 dated 16.04.2021. The learned Single Judge extracted the terms of reference in para-4 of the impugned order. Pursuant to the same, a Sub-Committee was constituted as per Rule 199 of the Rules. Rule 199 provides power to appoint a Sub-Committee as under:

- (1) A Committee may appoint one or more Sub-Committees each having the powers of the undivided Committee to examine any matters that may be referred to them and the reports of such Sub-Committees shall be the reports of the whole Committee if they are approved at a sittings of the whole Committee;
- (2) The order of reference to a Sub-Committee shall clearly state the point or points for investigation. The report of the Sub-Committee shall be considered by the whole Committee.

9. Clause (1) of Rule 199 of the Rules contemplates that Committee may appoint Sub-Committee and the Sub-Committee have the powers to examine any matters that may be referred and report of such Committee shall be the report of the

whole Committee. Further, clause-2 provides that order of reference to a Sub-Committee shall clearly state the point or points for investigation. The Council has appointed a Sub-Committee under Rule 199 of the Rules to examine the matter referred to them and submit a report. Meanwhile, the petitioner aggrieved by the appointment of Sub-Committee has filed this writ petition. It is the case of the petitioner that Sub-Committee cannot visit the colleges physically and verify their functioning as contemplated in Annexures A & B to the writ petition.

10. In order to consider the contentions of the learned Senior counsel for the petitioner, it is necessary to examine Clause-3 of Article 194 of the Constitution of India, which reads as under:

"194. Powers, privileges, etc., of the Houses of Parliament and of the members and Committees thereof.

(1) xxx

(2) xxx

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and Committees immediately before the coming into force of Section 26 of the Constitution forty fourth Amendment Act, 1978.

(4) xxx"

(emphasis supplied)

11. Article 194(3) contemplates the power, privileges, etc., of a house of the legislature of a State and of the members and the committees of a house of such legislature.

12. The Committee has power to record the evidence and to call for records as per Rule 205 of the Rules. The learned Single Judge referred Rule 205 in paragraph No.13 of the impugned order and held that the Committee has the power to record evidence. The learned Single Judge has recorded a finding that education, including technical education, medical education and universities is a part of item No.25 of

the concurrent list in Schedule-7 of the Constitution of India and the Nursing Colleges are bound by the Indian Nursing Council Act, 1947, which is a central enactment and also the Karnataka Nurses Midwives & Health Visitors Act, 1961 and Rajiv Gandhi University of Health Sciences Act, 1994, which are the enactments of the Karnataka State. Thus the Karnataka State Legislature is empowered to legislate in respect of Nursing Colleges and Committees can always be constituted by the Legislative Council to study the performance of the Nursing Colleges in the State of Karnataka. As per Section 3 of the Karnataka Nurses, Midwives and Health Visitors Act, 1961, the State government is empowered to establish Council and Council consists of members i.e., the Director of Health and Family Planning Services in Karnataka or such other officer as the State Government nominate. From the perusal of the materials placed before the court, there was a debate in the House pertaining to the Nursing Colleges in

regard to the Indian Nursing Council issuing permission to run Nursing School & Colleges without infrastructures, etc. The Legislative Council suggested to constitute a sub Committee to study the prevailing situation so that it can enlighten the legislatures on the whole range of governmental actions and the information obtained can be used as a basic for the legislation or administrative reforms. The duty of the sub Committee is to present the report to the Legislative Council by the Chairman of the Committee as per Rule 215 of the Rules. After presentation of the report by the Committee, the Chairman may after considering the state of business allot such a time for discussion of the report of the Committee under Rule 217 of the Rules. The Committee shall have such or other functions as may be assigned to it by the Chairman from time to time as per Clause-3 of Rule 223 of the Rules of Procedure and Conduct of Business in the Karnataka State Legislative Council. Once if the Committee submits

the report, the said report will not be made available to the public. The grievance of the petitioner that if the Committee is appointed and a report is submitted, it will be made available to the public and the said report may be misused by the public. The grievance of the petitioner is taken care of by the Rules.

13. As observed above, the Committee is constituted only to study the functioning of the colleges and not to supervise or perform the functions of the authorities under the various laws. Hence the Committee has the power to visit Nursing Colleges to study about the infrastructures, etc. The said Committee is not vested with any adjudicatory jurisdiction which belongs to judicature under the constitutional scheme.

14. The Hon'ble Apex Court in the case of **KALPANA MEHTA (SUPRA)** has held at para-444 as under:

"Adjudication of rights of the people is a function not entrusted to the Legislature of the country. Apart from legislation our Parliament has become multi-functional institution performing various roles, namely, inquisitorial, financial and administrative surveillance, grievance redressal and developmental. Parliament, however, is not vested with any adjudicatory jurisdiction which belongs to judicature under the constitutional scheme."

15. The appointment of Committee is conferred by the Rules. It is a rule when the law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command. The Hon'ble Apex Court in the case of **MATAJOG DOBEY (SUPRA)** held at paragraph No.23 as under:

"Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or

overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. The true position is neatly stated thus in Broome's Legal Maxims, X Edition, page-312: 'It is true that when the law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command'."

16. From the perusal of the judgments referred above, the Committee is not an adjudicatory authority. It only submits a report regarding the reference made to the Committee. The learned senior counsel for the petitioner placed reliance on the judgment of the Hon'ble Punjab & Haryana High Court in the case of **SANDEEP KUMARI (SUPRA)**. In the said case, Committee was appointed by Punjab Vidhan Sabha and the Committee has submitted a report and the said report was not accepted by the State Government and further held that the question of re-determination of their *inter se* merit i.e., selective candidate should not *stricto sensu* be the function of the legislative Committee. In the present case, as the Indian Nursing Council is granting the permission to

run the Nursing Colleges/Schools without infrastructure, and the said issue was raised in the Council and it was suggested to appoint a Committee to inspect the Nursing Colleges/Schools to ascertain the infrastructures, as per the guidelines of the Indian Nursing Council. In the instant case, the sub-committee is yet to submit the report. Before submitting the report, the petitioners have knocked the doors of this court. The facts involved in the said case is different from the facts involved in the present case. The said decision is not applicable to the present case in hand. Further there is no dispute in regard to the principles laid down in the other judgments placed on record by the learned counsel for the petitioners. The said judgments are not applicable to the present case on hand.

17. Learned Single Judge after considering the entire material on record was justified in passing the impugned order. We do not find any error to interfere

with the impugned order. Accordingly, we decline to interfere with the impugned order. Hence we proceed to pass the following:

ORDER

The writ appeal is dismissed.

In view of disposal of the writ appeal, pending IAs., if any, do not survive for consideration and are accordingly disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

RD