

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942

WA.No.1508 OF 2020

JUDGMENT DATED 03.11.2020 IN WP(C) 16974/2020(V) OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

K.V.M COLLEGE OF NURSING
CHERTHALA, ALAPPUZHA DISTRICT, REPRESENTED BY THE PRINCIPAL.

BY ADVS.
SRI.GEORGE POONTHOTTAM (SR.)
SMT.NISHA GEORGE

RESPONDENT/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF
SECRETARIAT, THIRUVANANTHAPURAM – 695 001.
- 2 LBS CENTRE FOR SCIENCE AND TECHNOLOGY,
NANDAVANAM, PALAYAM, THIRUVANANTHAPURAM – 695 033,
REPRESENTED BY THE DIRECTOR,
- 3 THE KERALA UNIVERSITY OF HEALTH SCIENCES
MULANGUNNATHUKAVU, MEDICAL COLLEGE P.O, THRISSUR – 680 596,
REPRESENTED BY ITS REGISTRAR.
- 4 KERALA NURSES AND MIDWIEVES COUNCIL,
RED CROSS ROAD, JAI VIHAR, KUNNUKUZHY,
THIRUVANANTHAPURAM – 695 035, REPRESENTED BY ITS REGISTRAR.
- 5 THE INDIAN NURSING COUNCIL
COMBINED COUNCILS BUILDING, KOTLA ROAD, TEMPLE LANE,
OPP. MATA SUNDRI COLLEGE, NEAR I.T.O, NEW DELHI – 110 002,
REPRESENTED BY ITS SECRETARY.

R1 BY SRI.M.A.ASIF, SPL. GOVERNMENT PLEADER
R2 BY SMT.SHAMEENA SALAHUDEEN, SC
R3 BY SRI.P.SREEKUMAR, SC
R4 BY SRI. N.RAGHURAJ SC
R5 BY DR. ABRAHAM P. MEACHINKARA, SC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH
WA.1509/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942

WA.No.1509 OF 2020

JUDGMENT DATED 03.11.2020 IN WP(C) 28745/2019(P) OF HIGH COURT OF KERALA

APPELLANTS/PETITIONER:

- 1 K.V.M. COLLEGE OF NURSING
CHERTHALA, ALAPPUZHA DISTRICT,
REPRESENTED BY THE PRINCIPAL.
- 2 DR.V.V. PYARELAL
DIRECTOR, K.V.M. TRUST, CHERTHALA, ALAPPUZHA DISTRICT.

BY ADVS.
SRI.GEORGE POONTHOTTAM (SR.)
SMT.NISHA GEORGE

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARIAT, GOVERNMENT OF
SECRETARIAT, THIRUVANANTHAPURAM – 695 001.
- 2 THE KERALA UNIVERSITY OF HEALTH SCIENCE
MULANGUNNATHUKAVU, MEDICAL COLLEGE P.O, THRISSUR -680 596,
REPRESENTED BY ITS REGISTRAR.
- 3 THE INDIAN NURSING COUNCIL
REPRESENTED BY ITS SECRETARY, 8TH FLOOR, NBC CENTRE, PLOT
NO. 2, COMMUNITY CENTRE, OKHILA PHASE -I, NEW DELHI – 110 020.
- 4 KERALA NURSES AND MIDWIVES COUNCIL
RED CROSS ROAD, JAI VIHAR, KUNNUKUZHY,
THIRUVANANTHAPURAM – 695 035. REPRESENTED BY ITS REGISTRAR,

R2 BY SHRI.P.SREEKUMAR, SC, KERALA UNIVERSITY OF HEALTH
SCIENCES

R3 BY DR.ABRAHAM P.MEACHINKARA,SC

R4 BY SHRI.N.RAGHURAJ, SC

R1 BY SRI. M.A. ASIF, SPL. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH
WA.1508/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 22nd day of December, 2020

SHAJI P. CHALY, J.

The captioned writ appeals are filed by the petitioners in the writ petitions aggrieved by the common judgment dated 03.11.2020 of the learned single Judge in W.P.(C) Nos. 16974 of 2020 and 28745 of 2019, whereby the learned single Judge dismissed the first among the writ petitions shown as above holding that the appellant is not entitled to get provisional affiliation from the Kerala University of Health Sciences to conduct Nursing Colleges and Nursing Schools for the academic year 2020-2021, since in the inspection conducted by the University on 18.12.2019 and re-inspection conducted on 17.02.2020, various deficiencies, including deficiency in bed occupancy, were noted by the Inspection Commission and that considering those reports, the Scrutiny Committee found that the inpatient strength in the parent hospital was not at all sufficient to grant continuation of provisional affiliation for the academic year 2020-2021. It was further found that even for the minimum intake of 30 seats for B.Sc Nursing course, the appellant college has not rectified the deficiencies pointed out in the first inspection report and it was, accordingly, that the University, by Ext.P16 order, rejected the request made by the appellant college for continuation of provisional affiliation for the academic year in question and, therefore, declined

interference in the said order impugned. Similarly, the learned single judge declined interference in Ext.P29 order dated 09-10-2019 in W.P. (C) No. 28745 of 2019 passed by the University refusing additional intake of students exceeding 34 for various reasons, including suppression of the material fact that exceeding the affiliation granted, additional 26 students were admitted to the course.

2. Above all, insofar as the issue relating to W.A. No. 1508 of 2020 is concerned, it was found by the learned single Judge that the Kerala University of Health Sciences is having ample powers to conduct inspection in order to satisfy the availability of infrastructure, clinical facilities etc. for running the course before granting affiliation since granting affiliation is not an empty formality.

3. Insofar as the issue relating to W.A. No. 1509 of 2020 is concerned, it was held as follows at paragraphs 50 to 52:

"50. As already noticed hereinbefore, in the inspection conducted on 27.09.2019, the Inspection Commission found that the three affiliated hospitals are having bed occupancy less than the required minimum of 75%. The bed occupancy in General Hospital, Alappuzha was only 39.75%, that in Taluk Head Quarters Hospital, Cherthala was 71.71% and that in Women and children Hospital, Alappuzha was 54.22%. Moreover, the staff strength in those hospitals was also not sufficient to meet the requirement of staffing norms mandated by INC. Pursuant to the order of this Court dated 29.10.2019, in W.P.(C).No.28745 of 2019, statement showing the average inpatient bed occupancy, in those hospitals, for a period of one

year immediately preceding the inspection conducted by the University was placed on record before this Court. After considering that statement and report this Court, in the order dated 30.10.2019, found that what is reflected in Ext.P29 with respect to the bed strength and staff ratio is substantially correct. Thereafter, pursuant to the order of this Court dated 25.08.2020, the learned Special Government Pleader has placed on record the reports submitted by the Superintendent of the three affiliated hospitals, furnishing the details of bed occupancy from September, 2018 to September, 2019. As per those reports, the bed occupancy rate in those hospitals ranges from 25% to 45% and 31% to 41% in respect of General Hospital, Alappuzha and Women and Children Hospital, Alappuzha. The bed occupancy rate in Taluk Headquarters Hospital, Cherthala, is also less than 75% for the said period.

51. As laid down in the decisions referred to hereinbefore, before granting affiliation to a nursing college for conducting nursing courses, on the strength of the permission granted by the State Nursing Council, the affiliating University has to conduct inspection in order to satisfy the availability of infrastructure, clinical facilities, etc. The granting of affiliation is not an empty formality. Therefore, the respondent University is well within its powers in limiting the annual intake for B.Sc nursing course in the petitioner college for the academic year 2019-20, as 30 as against the intake of 60 granted by KNMC, for the reasons stated in Ext.P29 order and in holding that the college is not entitled for continuation of provisional affiliation for other courses. In that view of the matter, no interference is warranted on Ext.P29 order dated 09.10.2019 of the respondent University and the challenge made in this writ petition against that order fails and the writ petition is accordingly, dismissed.

52. As already noticed hereinbefore, the petitioner never disclosed before this Court, till it was detected in the inspection conducted by the respondent University, that it had undertaken

and completed admission process in seats in excess of the intake of 30 sanctioned in Ext.P18 order for B.Sc Nursing course. In view of the law laid down in the decisions referred to hereinbefore, dismissal of this writ petition imposing exemplary cost is inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practiced in our country, there is no premium on the truth. In that view of the matter, W.P.(C).No.28745 of 2019 is dismissed imposing a cost of Rs.1,00,000/- (Rupees One Lakh only) payable by the petitioners to the 2nd respondent University, which shall be paid within a period of one month from the date of receipt of a copy of this judgment.”

It is thus challenging the legality and correctness of the said judgment, these appeals are preferred.

4. Basic material facts for the disposal of the writ appeals are as under:

W.A. No. 1508 of 2020

The appellant College has filed W.P.(C) No. 16974 of 2020 seeking to quash Ext. P16 order dated 11.08.2020 of the third respondent i.e., Kerala University of Health Sciences, rejecting its application for continuation of the provisional affiliation for B.Sc Nursing course for the academic year 2020-2021. The appellant has also sought for a declaration that the college is entitled to admit and conduct classes for students for the academic year 2020-2021 in accordance with the intake permitted by the Kerala Nurses and Midwives Council. Ext.P16 order issued by the University shows that applications were invited for continuation of

provisional affiliation for the academic year 2020-2021 as per the notification issued by the University dated 23.07.2019, from colleges for courses affiliated to the University. Accordingly, the Principal of the appellant college, as per application dated 07.09.2019, sought for provisional affiliation along with the requisite fee with an intake mentioned against each for the following courses.

Name of College	Applied Intake for the year 2020-21
KVM College of Nursing	B.Sc Nursing course – 60 seats PB B.Sc Nursing course-30 M.Sc Psychiatric Nursing -5 M.Sc Medical surgical -5 M.Sc OBG Nursing-5 M.Sc paediatric Nursing -5 M.Sc Community Health Nursing -5

5. The University conducted inspections in the college and the reports submitted by the Inspection Commission on 18.12.2019 and 17.02.2020 were verified by the Scrutiny Committee. The Scrutiny Committee, as per its reports dated 09.01.2020 and 03.06.2020, pointed out various deficiencies in the college and they are as follows:

- i) Bed occupancy on the day of inspection in the parent hospital is 77 only. The sanctioned intake of students for all courses is 115. Bed occupancy is insufficient to train students.
- ii) Number of 1st Year B.S.c Nursing students present was 60, but in the Register and Admission record entry is only for 34 students. The sanctioned strength by KUHS is 30 only.
- iii) Hostel rooms are congested.
- iv) Affiliated to five hospitals for clinical training of students.

v) University exam of Child Health Nursing, Mental Health Nursing, OBG and Surgical nursing are conducted in affiliated hospitals.

Hence the Committee recommended only BSc Nursing Course with an intake of 25 students for the year 2020-2021 subject to ratification of deficiencies.

3. To verify the finding of the inspection commission that excess students over the permitted intake were attending 1st year BSc Nursing class, university conducted a re-inspection on 17-02-2020. After scrutinising this report Scrutiny Committee observed that;

- a) The college has admitted 60 students for B.Sc.Nursing against 30 seats sanctioned by KUHS vide order read 3 above.
- b) The college has done the registration of 30 students only to the KUHS website.
- c) IP strength of the parent hospital remains the same.
- d) The deficiencies pointed out in the 1st inspection were not found to be rectified.

Hence the Committee recommended only to place the issue before Governing Council for appropriate decision.

4. The matter was placed in the 60th Governing Council held on 25.07.2020. The Government Council vide paper read (6) above decided to reject Continuation of Provisional Affiliation for conducting nursing courses in KVM College of Nursing for the year 2020-21 in line with the Governing Council decision 60.36 (ii) that the minimum intake the grant of continuation of provisional affiliation for 2020-21 shall be 30 seats and since the intake recommended by the scrutiny committee for B.Sc Nursing courses for

the year 2020-21 is only 25.

5. The Hon'ble Vice Chancellor has accorded sanction to implement the decision of the Governing Council read (6) above.

6. In the circumstance the application of KVM College of Nursing, Alappuzha for continuation of Provisional Affiliation to conduct B.Sc Nursing, Post Basic B.Sc Nursing and MSc Nursing courses for the year 2020-21 is rejected.”

It is, thus, aggrieved by the said order, the writ petition was preferred.

W.A. No. 1509 of 2020

6. The first appellant is the K.V.M. College of Nursing and the second appellant is its Director. The first appellant is a Nursing College administered by a Trust namely K.V.M Trust, Cherthala. The college is offering various courses namely, General Nursing, B. Sc Nursing, Post Basic Nursing, M. Sc Nursing, B.Sc MLT, B. Pharm, Pharm-D, D-Pharm, DMLT, Special Education for Physically impaired children etc. from the year 2002. The college is conducting B.Sc Nursing course with an intake of 50 seats on the strength of the permission granted by the Indian Nursing Council, the third respondent, and the recognition granted by the Kerala Nurses and Midwives Council, the additional 4th respondent in the writ petition. After the formation of the second respondent i.e., the Kerala University of Health Sciences, the college is having affiliation with that

University for conducting B. Sc Nursing course.

7. The appellants have filed the writ petition seeking to quash Ext. P29 order dated 09.10.2019 issued by the Kerala University of Health Sciences, whereby the University, while granting continuation of provisional affiliation to B. Sc Nursing course for the academic year 2019-2020, regulated the intake as 30 as against the intake of 60 granted by the Kerala Nurses and Midwives Council and found that the appellant college is not entitled for continuation of provisional affiliation for seats in other courses, such as Post Basic BSc Nursing and 5 specialities in M.Sc Nursing for the academic year 2019-2020.

8. The appellants have also sought for a writ of mandamus commanding the second respondent University to issue an order of affiliation with an intake of 60 students for the B. Sc Nursing course, 50 students for Post Basic Nursing course and 5 seats each for 5 Postgraduate programmes, as sanctioned and permitted by the Indian Nursing Council and the Kerala Nurses and Midwives Council and for a declaration that the appellant college is entitled to get permanent affiliation in terms of Section 53(3) of the Kerala University of Health Sciences Act, 2010 ('Act, 2010' for short) r/w University Grants Commission Act and the Regulations, as applicable and also for a declaration that the provision made in Chapter XXI of the Kerala University of Health Sciences First Statute prescribing conditional affiliation as

contained in Statute 9 of Chapter XXI is repugnant to Section 53(3) of the Act, 2010 and the University Grants Commission Act, 1956 ('Act, 1956' for short) and the Regulations thereto, as it does not provide provision for grant of permanent affiliation as provided in sub-Section (3) of Section 53 of the Act, 2010 and as mandated under the University Grants Commission Regulations.

9. On a reading of Ext. P29 impugned order, it is evident that as per letter dated 03.09.2019, the appellant college was intimated to submit the list of affiliated hospitals and to furnish documents showing necessary permissions from the relevant authorities of such hospitals to use them as affiliated hospitals of the appellant college. As per letter dated 05.09.2019 of the Principal of the appellant college, list of 5 affiliated hospitals consisting of 3 Government hospitals namely (1) Government Hospital, Alappuzha (2) Taluk Head Quarters Hospital, Cherthala and (3) Women and Children Hospital, Alappuzha and two private hospitals, namely Lakeshore Hospital, Netoor, Ernakulam and St. Rita's Hospital, Thankey, Alappuzha were furnished.

10. On verification, it was found that permissions submitted by the appellant college in respect of two private hospitals mentioned above were not based on the legally executed memorandum of understanding (MOU) for the academic year 2019-2020, as required by the University. Thereupon, as per letter dated 25.09.2019, a request was sent to the

appellant college. However, the appellant college failed to submit the required legally executed MOU with the affiliated hospitals. Hence, as per letter dated 28.09.2019, the appellants were informed that the aforesaid private hospitals cannot be considered and no further time could be granted to submit the legally valid documents proving those hospitals as affiliated. However, in order to take a decision in accordance with the directions issued by this Court in Ext. P22 judgment in W.P.(C) No. 20040 of 2019 dated 24.09.2019, the University deputed Inspectors to the above specified Government hospitals to conduct inspection.

11. In the meanwhile, the appellants submitted copies of letters from the above said two private hospitals on 28.09.2019 to show that they are affiliated hospitals. However, they have not submitted the legally executed MOU with the above hospitals for the academic year in question. According to the University, as per University Order No. 677/AcD/2013/kuhs dated 12.12.2013 a college can be affiliated to a maximum of 3 hospitals and a hospital can give affiliation to a maximum of 3 colleges for speciality postings, which appears to have been intimated to the appellants. The University has a case that the list of 5 affiliated hospitals submitted by the appellants are not in par with the norms of the University. Therefore, it was communicated that if the affiliated hospital is shown as a substitute for a parent hospital, the affiliation should be limited to the one hospital.

12. Anyhow, as per University Order dated 27.09.2019, the University conducted inspection in Government hospital, Alappuzha, Taluk Head Quarters Hospital, Cherthala and Women and Children Hospital, Alappuzha. The Scrutiny Committee, after verification of the inspection report, has recommended that those three affiliated hospitals cannot be considered for granting continuation of provisional affiliation for the academic year 2019-2020 for the intake applied by the institution due to the following deficiencies pointed out in the inspection report:

a) The three affiliated hospitals are not having 75% bed occupancy in total on the day of inspection as detailed below nor having 75% bed occupancy in speciality Departments for which affiliation is sought. As per the norms of Indian Nursing Council, an affiliated hospital should have a minimum of 75% bed occupancy.

Sl. No.	Name of Hospital	Total Bed strength	Bed Occupancy on the day of inspection (%) * Required Bed Strength is 75% as per INC norms
1	General Hospital, Alappuzha	400	159 (39.75%)
2	Taluk Headquarters Hospital, Cherthala	251	180 (71.71%)
3	W&C Hospital, Alappuzha	308	167 (54.22%)

b) The following Staff strength in these three hospitals is not sufficient to meet the requirement of staffing norms mandated by Indian Nursing Council in the affiliated hospitals as shown in brackets.

Sl. No.	Name of post	Present strength on the day of inspection (Required)
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		General Hospital, Alappuzha	Taluk Headquarters Hospital, Cherthala	W& C Hospital, Alappuzha
1	Nursing Superintendent	1(2)	2(2)	2(2)
2	Asst. Nursing Superintendent	0(2)	0(2)	0(2)
3	Head Nurse	14(16)	12(10)	18(12)
4	Staff Nurse	62(133)	35(83)	63(102)
5	Others if any	19	8	3

13. Moreover, it was stated by the University that orders of the District Medical Officer, Alappuzha permitting these 3 Government hospitals for the specialities stated by the college for the academic year 2019-2020 was also not submitted to the University. It was also found that the said three hospitals are affiliated to the other Nursing Colleges/schools also and among them, the Government Hospital, Alappuzha is the parent hospital of Government School of Nursing, Alappuzha. Therefore, if the students from various institutions are posted in a single affiliated hospital for the clinical practices, the students may not get the required experiences from there and it will ultimately affect the educational standards.

14. It was also informed that the college has sought affiliation for the specialities, which are not permitted by the guidelines/norms of Indian Nursing Council. Therefore, it was informed that Government Hospital,

Alappuzha, Taluk Head Quarters Hospital, Cherthala and Women and Children Hospital, Alappuzha cannot be considered for the purpose of granting continuation of provisional affiliation for seats in excess to the sanctioned intake of 30 in B. Sc Nursing course and 4 seats in other courses, such as Post Basic B. Sc Nursing and M.Sc Nursing for the academic year 2019-2020.

15. The paramount contention advanced by the appellant, insofar as W.A. No. 1508 of 2020 is concerned, was that as per the provisions of the Act, 2010, the power of the University is limited providing affiliation to the new colleges and additional courses and therefore, even going by the Act, 2010, it is clear that the number of students to be admitted in a course of study is dependent on the limits prescribed by the competent authority, that recognition or approval of nursing institutions is essentially the function of the State Nursing Council as per Section 26 of the Nurses and Midwives Act, 1953 ('Act, 1953' for short).

16. So also, it was contended that Section 36(c) of Act, 1953 authorizes the State Nursing Council to frame regulations for approval of institutions imparting training in Nursing. Rules 83 and 84 of the Kerala Nurses and Midwives Rules, 1972 ('Rules, 1972' for short) deal with recognition of institutions and withdrawal of approval and recognition of institutions and therefore, going by the scheme of the Central and State Acts, the power/authority to approve/recognition of an institution is

essentially conferred on the State Nursing Council.

17. The paramount contention advanced on the basis of the same was that the Kerala Nurses and Midwives Council alone enjoys the powers under the Act, 1953 to prescribe the procedure for opening of the Nursing colleges. It was further submitted that a Full Bench of this Court in ***K. Velayudhan Memorial Trust v. State of Kerala*** [2010 (3) KHC 23=2010 (3) KLT 367] has unequivocally held that it is the duty of the State Nursing Council to sanction intake as per the requirements fixed by the Indian Nursing Council. Therefore, it was pointed out that as per Exts. P3 and P4 orders dated 04.04.2019 the Indian Nursing Council has allowed an intake of 100 students in B. Sc Nursing, 50 in Post basic B. Sc Nursing and 25 in M.Sc Nursing.

18. So also, as per Exts. P5 and P5(b), the Kerala Nurses and Midwives Council has allowed an intake of 16 BSc Nursing, 15 Post Basic BSc Nursing and 25 M.Sc Nursing students. It was, accordingly, contended that in the instant case, the Indian Nursing Council and State Nursing Council are the competent statutory authorities satisfying the prescriptions in Section 50(2)(iii) of the Act, 2010 to prescribe the limits of the intake. Therefore, according to the appellant, the proper statutory authority has exercised its power and issued an order and therefore, the University cannot sit in appeal over the same and indirectly attempt to control the intake by denying affiliation.

19. It was also the contention of the appellants that Ext. P16 impugned order is violative of the Full Bench judgment of this Court in **K. Velayudhan Memorial Trust** (supra) and there is a clear interference with the authority of the Kerala Nurses and Midwives Council. Therefore, it was contended that Ext. P16 order is without jurisdiction, and illegal and arbitrary. Other contentions are also raised relying upon the provisions of Act, 2010, the statutes and the Rules thereto. Contentions are also raised by the appellants in regard to the deficiencies noted as extracted above and it was submitted that the appellant college has been conducting practical exams in the aforesaid institutions as the clinical facilities are available there and the University has been sending examiners till date to conduct the said examinations without demur and even though in Ext. P13 reply the facts were clearly presented before the University, without even making a reference to the same, the University has declined provisional affiliation.

20. The University in turn, in its statement reiterated the stand adopted in the impugned order. It was also contended that the appellant college is not entitled to get any benefit on the basis of the judgment of the Full Bench of this Court in **K. Velayudhan Memorial Trust** (supra). It was also pointed out that orders were issued by the State Nursing Council permitting the intake with the condition that the appellant college should obtain affiliation from the University.

21. The basic contention advanced was that the specific conditions provided in the orders of the State Nursing Council distinguishes the permission of the State Nursing Council and the affiliation from the examining body like the University. The sum and substance of the contention was that the appellant cannot equate permission and affiliation and contend that affiliation is automatic on the basis of the permissions issued by the State Nursing Council.

22. It was also submitted that even though the appellant college asserts that the Indian Nursing Council and State Nursing Council found the college fit to conduct training in different courses with a higher intake capacity, it casts doubt on the findings entered by the two authorities as in the words of the appellant "effectively the Nursing College alone functioned in the hospital premises, wherein the college is functioning". It was also pointed out that the University addressed the Indian Nursing Council and sought for details regarding the inspections conducted in the appellant's college as per Annexure R3(a) letter; but that was not responded to. In those circumstances, the University was constrained to finalise the minimum standard requirement for the Nursing course and therefore, the University has framed and published the minimum standard requirement so as to bring in clarity to the confusions existed.

23. University also asserted that there is lack of clinical facilities in the college and it varied during inspections, since inspections were

conducted when the hospital was remaining closed earlier due to strike and subsequently due to the construction activities which resulted in the partial closure of the hospital. Therefore, according to the University, it permitted 30 admissions applying the student-patient ratio fixed by the Indian Nursing Council and the reduced intake was permitted only to help the appellant to avoid the closure of the institution. The University sought the details of the affiliated institutions from the appellant only to cause inspections; but, the appellant was aggrieved by the same and further that the bed strength of the parent hospital was given differently at different points of time. It was also submitted that the inspections conducted by the University revealed several deficiencies and as a result, a minimum intake was permitted only to see that the college is not closed down.

24. It is also the case of the University that the appellant college is not entitled to get the affiliated institutions reckoned for the purpose of calculating the bed occupancy, since the appellant institution was having a parent hospital of its own and the purpose of affiliated hospitals was never contemplated as a substitute to the parent hospital. However, this Court, as per the judgment in W.P.(C) No. 20040 of 2019 dated 24.08.2019, directed the University to consider the affiliated hospital also for the purpose of reckoning the bed occupancy. It was, thereafter, that the University required the appellant to produce the list of affiliated hospitals

as well as the authority showing that the institutions were affiliated hospitals.

25. The paramount contention advanced by the University is that a parent hospital is contemplated in the regulations with the sole intention to provide bedside training to the nursing students and therefore, when an affiliated institution is cited, the willingness of the institution to act as a parent hospital and to provide bedside training to the students are to be ensured. So also, it was submitted that the INC norms also laid down a criteria required in an affiliated institution and the standards so prescribed are to be met by the affiliated institutions also. Anyhow, the University conducted inspection in the three Government hospitals specified above and it was revealed that the bed occupancy was not sufficient to permit affiliation. It was also found that the staff pattern was also not in tune with the norms of the Indian Nursing Council. The said findings rendered by the University persuaded the petitioner to file W.P.(C) No. 28745 of 2019, which is the subject matter of the connected Writ Appeal.

26. The significant contention advanced by the University was that the appellant is not entitled to get any relief exercising the discretionary jurisdiction of the writ court, since the appellant suppressed a material fact that the college made 60 admissions overlooking the affiliated intake of 30 seats, which was later modified to 34 to accommodate the candidates allotted by the Government agency, namely the LBS centre for

Science and Technology, Thiruvananthapuram. According to the University, the appellant has suppressed the said aspect, which was detected in an inspection conducted by the University. Therefore, the sum and substance of the contention advanced by the University in that regard was that even in the writ petition leading to Writ Appeal No. 1509 of 2020, the appellants have not explained or answered the findings made by the inspection team regarding the excess admissions made. Therefore, it was submitted that the appellant has not approached this Court with clean hands and further that it has given least regard to the statutes and regulations putting the future of those students in peril and such actions may not be permitted to continue.

27. That apart, it was submitted that in the said background facts, the students who were admitted in excess of the affiliated seats in the college for the B.Sc nursing course, were necessary parties. It is significant to note that the University has rejected the application submitted by the college for the continuation of the affiliation for the academic year 2020-2021. Anyhow, it was stated that in order to protect the interest of the four students, who were allotted in excess of the affiliated strength by the LBS, additional seats have been affiliated by the University. The inspection team of the University was deputed in order to consider the request for the continuation of affiliation for the next academic year and on inspection conducted in the college on 18.12.2019,

it was found that 60 students are attending the first year B.Sc Nursing classes in the college, which was in excess of the 34 students in accordance with the affiliation made by the University. The inspectors also noted that in none of the records produced for their verification, the student details of the 24 students, who were admitted without any authority, have been mentioned.

28. Matters being so, the University issued a show cause notice to the Principal of the institution demanding to furnish explanation for not withdrawing the affiliation. Therefore, it was the request of the University before the writ court that in the background facts it was necessary to consider the fate of those students, who were admitted to the course illegally and without affiliation from the University and with a further request that the appellant should be directed to place the real facts relating to the admissions made to the B. Sc Nursing during the previous academic year before the writ court.

29. With respect to the benefits sought for by the appellant from the judgment of the Full Bench in ***K. Velayudhan Memorial Trust*** (supra), it was submitted that it is the settled legal position that affiliation and recognition are distinct and different and it was the University's contention that the affiliation process is not mere rubber stamping and the affiliating authority has every right to ensure that the standards laid down by the statutory Councils are fully complied with by the institutions and in

addition to the same, the affiliating body can also prescribe additional standards. University has also pointed out that in the field of Health Sciences, utmost care is to be given to ensure that the institutions are having the necessary infrastructure to impart proper training to the students. So also, it was submitted that the Indian Nursing Council has not issued any regulations governing the minimum requirements and what is issued is only a guideline.

30. That apart, when an affiliated hospital is treated as a parent hospital, it should have the minimum standards contemplated in the guidelines fixed by the Indian Nursing Council. So also, it was stated that when the University fixes a higher norm to ensure higher standards in the field of health training, the college is bound to follow the same. It was also submitted that the deterioration of the standards of education in nursing in the State was a matter of concern for the last several years and through stringent actions initiated by the University, the further deterioration could be curbed to a large extent. Bearing in mind the said aspect, it was submitted that the University has brought in the minimum standards required to run a Nursing College and the guidelines issued by Indian Nursing Council has to be viewed accordingly.

31. The minimum standards required as per the guidelines dated 14.01.2020 is that in a Nursing college, it is mandatory to have a 300 bedded hospital to start a new Nursing College. Other parameters are also

prescribed, including that it stresses the need to have a ratio of 1:3 to be maintained between the students and the patients. The same guidelines prescribe that the staff pattern in the affiliated hospital is to be as fixed by the Indian Nursing Council. Therefore, in the case of the appellant, the problem remains with the parent hospital. If an affiliated hospital has to be treated as a parent hospital, the affiliated hospital should be willing to serve the college as its parent hospital, which norm has a very vital role to play in the training of the students.

32. The prime case put forth by the University was that the attempt of the appellants to use a number of affiliated hospitals as its parent hospital was not in contemplation even prior to 2013-2014. Therefore, when the ratio of 1:3 between the students and the patients are applied, it was found that the hospitals are not having sufficient beds to maintain the above ratio. Apart from the other deficiencies of non production of valid permission given by the competent authority of the Government Hospitals to treat the same as a parent hospital, the certificates issued by the hospital authority that showing the facility in a particular branch for clinical training was cited as the permission. So also, it was submitted that the University has the data to hold that a minimum of 30 students is required to run a nursing institution, failing which the feasibility of conducting the course would be bleak and the students admitted would be the real sufferers.

33. Above all, it was contended that the history of the appellant college shows that it has failed to put in place the minimum requirements in the institution, despite the fact that during the past several years, leniency was shown to the institution to avoid its closure. Even though assurances were made by the appellant college that defects would be rectified, the same were not adhered to and at present, there is nothing available to permit the appellant college to make new admissions during the present academic year. It was also undertaken that the denial of continuation of affiliation would not affect the studies of the students, who were legally admitted till the last academic year and the question of permitting fresh admissions would be considered once the college rectifies the defects noted in the inspections, which are well founded on the basis of the inspection reports drawn by the University.

34. Though the writ petition leading to Writ Appeal No. 1508 of 2020 is a later one, we thought of discussing the issues raised by the parties therein, since it is having the entire facts and figures, including the allegation made by the University with regard to the material suppression of admitting 26 students illegally by the appellant college. The paramount contentions advanced by the appellant in the Writ Appeals are that the University has not made any independent regulation or requirements governing affiliation of Nursing Colleges and it has merely adopted the minimum requirements of the Indian Nursing Council and therefore, it

cannot impose any conditions on the requirements formulated by the Indian Nursing Council and implemented by the State Nursing Council. So also, it is contended that when it is the statutory duty of the Indian Nursing Council to fix minimum requirements to be implemented by the State Nursing Council, the University has no statutory role in either fixing or enforcing the minimum requirements.

35. Relying upon the provisions of the Act, 1953 and the Rules thereto, it was predominantly contended that, since the order dated 04.04.2019 of the State Nursing Council permitted intake of the students, the appellant had the authority for an intake of 60 students in B.Sc Nursing and in other disciplines. The learned counsel for the State Nursing Council has submitted that the State Nursing Council has issued the necessary permissions taking into account the reports as per the inspection conducted by it on the basis of the provisions of the Act, 1953 and the Rules thereto.

36. The Standing Counsel for the Indian Nursing Council submitted that by virtue of the Act, 1947, it is vested with ample powers to grant recognition after conducting necessary inspection and therefore, the reports and the recognition of the Indian Nursing Council is binding on the University in the matter of granting affiliation. State Government has filed a statement as per the direction issued by the learned Single Judge on 29-10-2019 basically furnishing the details of the colleges attached to

the Government Hospitals referred to above, which would be discussed hereafter.

37. We have heard learned Senior counsel for the appellants Sri. George Poonthotam assisted by Adv. Riji Rajendran, Sri. M.A. Asif, learned Special Government Pleader, Sri. P. Sreekumar for the Kerala University of Health Sciences, Sri. N. Raghuraj for the Kerala Nurses and Midwives Council, Dr. Abraham P. Meachinkara for the Indian Nursing Council, and perused the pleadings and materials on record.

38. The facts narrated above would make it clear that there was a material irregularity on the part of the appellant college to have admitted additional 26 students for B.Sc Nursing course. As we have pointed out earlier, the said aspect has come to the notice of the University, when inspection was conducted in the college premises for the purpose of continuation of provisional affiliation for the academic year 2020-2021. In fact, when the matter was posted before the learned single Judge on 29.10.2019, the learned single Judge directed the Government Pleader to get instructions with respect to the statistics provided in Ext. P29 impugned order in W.P.(C) No. 28745 of 2019 passed by the Kerala University of Health Sciences in respect of the patient strength and staff pattern and also as to whether the Government has any objection in permitting the appellants to facilitate training of nursing students in the Government hospitals concerned.

39. Accordingly, a statement was filed on 30.10.2019 after obtaining instructions from the District Medical Officer, Alappuzha in regard to the average inpatient bed occupancy at Taluk Headquarters Hospital, Cherthala, General Hospital, Alappuzha and Women and Children Hospital, Alappuzha for a period of one year immediately preceding the inspection conducted by the University.

40. In the order dated 29.10.2019, learned special Government Pleader was also directed to ascertain the number of colleges permitted to utilise the above hospitals as attached hospitals and accordingly, in the statement six colleges, including the appellant college, were shown. The District Medical Officer has instructed therein that as per the instructions received from the Department of Health services, the number of students that can be permitted to undergo training in a hospital at a time is restricted to 20 to 30 and that there is no restriction in the number of colleges to be permitted as affiliated colleges. The tabulated inpatient and staff details were also furnished by the District Medical Officer, Alapuzha, from where the daily inpatient bed occupancy was discernible in regard to the Government Hospitals in question. In fact, the declining of the interim order sought for by the appellants in W.P. (C) No. 28745 of 2019 and the withdrawal of the Writ Appeal filed against the same were also taken note of by the learned single Judge.

41. Periodical interim orders were being passed with the objective of

collecting relevant details in regard to the contentions put forth by the appellants so as to identify the truth for adjudication after understanding the true facts. On 25.08.2020, the writ court has passed an interim order, which reads thus:

“The issue in these writ petitions is revolved around bed occupancy in the General Hospital, Alappuzha, Taluk Government Hospital, Cherthala and Women and Children Hospital, Alappuzha. The petitioner – K.V.M. College of Nursing, Cherthala, claims that they have affiliation with the aforesaid hospitals to run B.Sc. Nursing Programme. The inspection report of the University would show that the bed capacity in the aforesaid hospitals being 400, 251 and 308 respectively, the occupancy is much less than 75%.

2. The learned Senior Counsel appearing for the petitioner objected to the manner in which the bed occupancy is calculated.

3. The object of an affiliated hospital is to have practical exposure to the students in the nursing programme. What is the manner for inspection and how the inspection has to be carried out will have to be decided at later stage of this case after hearing the Nursing Council.

4. This Court, at threshold, is of the view that one day inspection and finding out the bed occupancy on that particular day will not be sufficient. Anyhow, it is appropriate to place on record the details of the bed occupancy of the aforesaid hospitals at least of a year preceding to the date of inspection, i.e., 28.09.2019. That may be made available before this Court by the learned Government Pleader. The learned Government Pleader shall communicate this order to the Nursing Superintendent of the General Hospital, Alappuzha, Taluk Government Hospital, Cherthala and Women and Children

Hospital, Alappuzha, and file a report before this Court along with a memo by the next posting.

5. The learned Standing Counsel for the University submitted that the petitioner admitted 60 students in the last year without any permission from the University while the University had granted registration only for 34 students. The petitioner shall state before this Court how they admitted the students beyond 34 intake.”

42. Pursuant to the said order, the learned Special Government Pleader has filed a statement dated 11.09.2020 producing therewith the records relating to bed occupancy in the 3 Government Hospitals for the period from 09/2018 to 09/2019. Thereafter, the appellants have filed additional affidavits on 12.09.2020 and 14.09.2020 producing certain additional documents, and the University, in response to the same, on 29.09.2020 filed an additional statement, which was again followed by an additional affidavit by the appellants on 05.10.2020. It is apparent that on 13.10.2020, when W.P.(C) No. 28745 of 2017 was posted along with other connected writ petitions, the Kerala Nurses and Midwives Council was *suo motu* impleaded as the additional 4th respondent and directed the learned Standing Counsel to make available for the perusal of the writ court the files relating to the permissions granted by it evident from Ext. P5 series in W.P.(C) No. 16974 of 2020, which is the subject matter of Writ Appeal No. 1508 of 2020 along with the inspection report dated 20.03.2019 of the State Council.

43. It was in the above background that the learned single Judge considered the issues also taking into account the requirements of various statutes and guidelines, including that of the Act, 2010. As per the guidelines and minimum requirements prescribed by the Indian Nursing Council, a Nursing College should have a 100 bedded parent hospital; the bed occupancy of the hospital should be minimum 75%; student patient ratio of 1:3 has to be maintained by the Nursing College, if the institution is having both General Nursing and Midwifery and B.Sc Nursing course; and it would require 240 bedded/parent/affiliated hospital for 40 annual intake in each programme so as to maintain 1:3 student patient ratio.

44. As per Ext. P7 guidelines issued by the Indian Nursing Council, the Trust which has established the Nursing institution has to establish the hospital and then only it would be considered as the parent hospital of that institution. That apart, as per gazette notification dated 12.07.2017, the respondent University published academic regulations and course regulations of 124 courses and Ext. P8 is a copy of the Regulations for B.Sc Nursing course for the academic year 2016-2017. Paragraph 1.4 deals with 'minimum academic requirements for the conduct of the B.Sc Nursing course', as per which the minimum standard requirements for offering undergraduate nursing courses in terms of land, infrastructure, equipment, clinical cases/materials, teaching faculty and other human resources etc. shall be in compliance with the minimum standards

specified by Indian Nursing Council as per the sanctioned students strength in addition to the norms fixed by the Kerala University of Health Sciences and the Government from time to time. Learned single Judge has taken note of the aforesaid aspects as also the provisions of the Act, 2010.

45. Chapter VII of Act, 2010 deals with 'permission, affiliation and recognition of colleges' and Section 50 thereto reads thus:

"50. Affiliation and recognition. - (1) The University shall affiliate all the professional medical or other colleges or Institutions imparting education in Modern Medicine, Dental, Ayurveda, Homoeopathy, Siddha, Unani, Yoga, Naturopathy, Nursing, Pharmacy and other paramedical and allied subjects, owned by Government of Kerala or Government controlled societies, private aided and private unaided self-financing educational agencies, which, before the date of commencement of this Act remained affiliated to the different Universities (except Deemed Universities) in the State of Kerala. The affiliation of the above mentioned institutions to other Universities in the State (except Deemed Universities), shall stand transferred to the University on and from the date of commencement of this Act, subject to the conditions that the affiliation of these colleges or institutions in respect of the students admitted to the courses in health sciences and allied subjects shall continue till those batches of students complete their courses, the examinations of all such students shall be conducted by the Universities to which they were attached, degrees or diplomas or other distinctions shall be awarded by such Universities and admission to these colleges for the academic year 2009-2010 shall continue in such Universities. The admission to the course or courses to be started, in the above institutions, from the academic year 2010-2011 onwards and the examinations for the new batches of students admitted or to be admitted during 2010-2011, shall be conducted by the University and degrees or diplomas be awarded by the University. The professional Medical Colleges or teaching

institutions under the Deemed Universities and the National Institutes established by Central Government shall not come under the jurisdiction of the University.

(2) The Educational Agency applying for affiliation or recognition and whose college or institution has been granted affiliation or recognition, shall give and comply with the following undertaking:

(i) that the provisions of this Act, or any other Acts passed by the State Legislature related to Medical Education or Higher Education field in the State, rules made thereunder and Statutes. Ordinances, Regulations, Standing Orders and directions of the University shall be observed;

(ii) that there shall be a separate Governing Body or Managing Council provided for an affiliated college or group of colleges, receiving aid from the Government or the University, as provided by section 52;

(iii) that the number of students admitted for courses of study shall not exceed the limits prescribed from time to time, by the University, the Government, Central or State Councils or authorities in the concerned discipline as the case maybe;

(iv) that there shall be suitable and adequate physical facilities such as building, laboratories, libraries, equipments required for teaching and research, hostel and other infrastructure facilities as the case may be, prescribed by Statutes, Ordinances and Regulations;

(v) that the financial resources of the college or institution shall be such as to make due provision for its continued maintenance and working,

(vi) that the strength and qualifications of teaching and non-teaching staff of the affiliated colleges and the emoluments and the terms and conditions of service of the staff of affiliated colleges shall be such as may be prescribed by the University and which shall be sufficient to make due provision for courses of study, teaching or training or research, efficiently;

(vii) that the services of all teaching and non-teaching

employees and the facilities of the college to be affiliated shall be made available for conducting examinations and for promoting other activities of the University;

(viii) that the directions and orders issued by the Chancellor, Vice-Chancellor and other officers of the University in exercise of the powers conferred on them under the provisions of this Act, Statutes, Ordinances and Regulations or any other Acts passed by the State Legislature in this regard, shall be complied with;

(ix) that there shall be no transfer of the management or ownership of the college without previous sanction of the University;

(x) that the college or institution shall not be closed without previous sanction of the University;

(xi) that in the event of disaffiliation or de-recognition or closure of the college or institution, all the assets of the college or institution including building and equipment which have been constructed or created out of the amount paid as a grant-in-aid by the Government or the University Grants Commission shall vest in the Government."

46. Clause (iii) of Section 50(2) specifies that the number of students admitted for courses of study shall not exceed the limits prescribed from time to time, by the University, the Government, the Central and State Councils or authorities in the concerned discipline as the case may be. Even though learned Senior Counsel for the appellants submitted that by virtue of the said provision, only the State Nursing Council is vested with powers to prescribe the standards with respect to clinical training and the number of students admitted to each courses. In our considered opinion, when the University is given the power for

granting affiliation, mere permission granted by the State Nursing Council would not suffice the situation, because the Nursing Council only deals with permission/recognition and rest of the entire aspects in regard to the educational curriculum, maintenance of standards, imparting training, conduct of classes and examinations etc. are all to be undertaken by the University.

47. True, the State Nursing Council would be vested with powers to prescribe the number of students, which doesn't mean that that is binding on the University in the matter of granting affiliation and in that process the University is vested with powers to undertake necessary methods of evaluation to assimilate the infrastructure and other aspects, to understand the standard expected to be maintained by the institution regarding the training of the students so as to have recognition and efficacy to the degree granted by the University. It was clearly bearing in mind the said aspects that the Central as well as the State councils are provided with co-equal powers by incorporating such a clear provision in the statute and regulated by adding the phraseology/paraphrase "as the case may be". Which thus means, the power conferred on the respective statutory authority as per the relevant laws is never expected to be interfered with by the provisions of Act, 2010, but in effect, with the intention to function in tandem or harmoniously. This would be more exemplified on a reading of the provisions of Section 51 of Act, 2010,

which reads thus:

“51. Procedure for permission. - (1) The University shall prepare a perspective plan for educational development for the location of institutions of higher learning in a manner ensuring equitable distribution of facilities for higher education in Medical and Allied Sciences having due regard, in particular, to the needs of unserved and underdeveloped areas within, the jurisdiction of the University. Such plan shall be prepared by the Academic Council and got approved by the Governing Council and shall be placed before the Senate. It shall be updated every five years.

(2) No application for opening a new college or institution of higher learning which is not in conformity with such plan, shall be considered by the University.

(3) No students shall be admitted by the college or institution unless the first time affiliation has been granted by the University to the college or institution.

(4) The rules and procedure for affiliation of a college to the University shall be as prescribed by the Statutes.”

48. Sub-Sections (3) and (4) of Section 51 make it clear that the admission of students shall not be made without first time affiliation and rules and procedure for affiliation of a college to the University shall be as prescribed by the statutes. Section 55 deals with ‘submission of reports and inspection’ and sub-Section (1) specifies that every affiliated college and recognized institution shall furnish such reports, returns and other particulars as the University may require for enabling it to judge the academic standards and standards of academic administration of the college or recognised institution.

49. It was taking note of the aforesaid aspects that the learned single Judge has found that the appellant college would require 240

bedded parents/affiliated hospitals for 40 annual intake in each programme to maintain 1:3 student-patient ratio. As per Ext. P6 letter dated 19.02.2019, produced in W.P.(C) No. 28745 of 2019, the appellant college was informed by the University that on verification of the inspection report, the appellant college is having various major deficiencies in respect of inpatient strength only to the extent of 108, wide disparity in total bed strength when compared with 2018-2019, wherein on routine inspection, it was 257 and on reinspection, it was 326. However, the total bed strength noted in the current year inspection report is only 151. Moreover, faculty deficiency, deficiency in physical facility etc. were noted and accordingly, it was informed that reinspection would be conducted with a fine of Rs. 20,000/-.

50. On receipt of Ext. P6, the college submitted a compliance report dated 27.02.2019 stating that the parent hospital of the appellant college is having a bed strength of 151 with an average daily occupancy of 115 beds with 360 outpatients; on the day of inspection, the inpatient bed strength was 110, which was only 73% of the total bed strength, and it was due to the year long strike by the staff during 2017 and that the after effect of the same was still hunting the institution. Explanations were offered also for the wide disparity in the bed strength as noted in the inspection report.

51. It was also found out by the learned single Judge that in the

affidavit submitted, the Principal of College admitted that on the day of inspection, the inpatient strength in the parent hospital is only 110. That apart, as per order dated 30.05.2019 of the State Nursing Council, sanction has been accorded to the appellant college for admission to B.Sc nursing for the academic year 2019-2020 with an intake of 60 students. The said order contains that the Inspection Commission of the State Medical Council inspected the appellant college on 20.03.2019 and submitted a report. The said report was placed before the Council on 27.04.2019 and the Council resolved to admit B.Sc Nursing students during 2019-2020 after rectifying the deficiencies. The Principal of the college, accordingly, submitted a compliance report dated 18.05.2019, which was placed before the Council in its meeting held on 28.05.2019 and resolved to accord sanction to admit B.Sc nursing students during 2019-2020 with an intake of 60 students. While according sanction, it was made clear that the management should strictly follow the norms prescribed by the Indian Nursing Council and State Nursing Council for conducting the programme. And further that the Management should obtain affiliation from the University among other conditions.

52. The State Nursing Council, as per order dated 30.05.2019, accorded sanction to the appellant college to admission to M. Sc Nursing during the year 2019-2020 with an intake of 5 students each in 5 specialities and by yet another order dated 30.05.2019, it accorded

sanction for admission to Post Basic B.Sc nursing for the year 2019-2020 with an intake of 50 students.

53. The State Government, as per order dated 22.06.2019o, approved the prospectus for admission to B.Sc nursing and paramedical courses for the academic year 2019-2020 for allotment in Government seats. It is evident from Ext.P15 Government Order that the said order is one issued by the Government taking into consideration the list furnished by the Registrar of the University in regard to the Nursing Colleges affiliated to the University and eligible for allotment of students for the academic year 2019-2020. As per the list of the institutions annexed to the Government order namely Ext. P16 in W.P. (C) No. 28745 of 2019 for B.Sc Nursing course, number of seats in the appellant college was 15 seats each under the Government quota and management quota for the academic year 2019-2020.

54. By Ext. P18 order dated 09.07.2019, the University granted continuation of affiliation to the appellant college for B.Sc nursing with an intake of 30 students after reducing the intake for B.Sc nursing from 60 to 30 during the academic year 2019-2020, and rejected the application made by the appellant college for continuation of provisional affiliation of Post Basic B.Sc nursing and M. Sc Nursing courses, subject to ratification of the Governing Council, as the parent hospital of the college lacks inpatient strength for conducting the courses. It is clearly discernible from

Ext. P18 that on a surprise re-inspection conducted by the Inspection Commission and on verification of the Scrutiny Committee of the same, it recommended only to grant continuation of provisional affiliation to the appellant college for conducting B.Sc Nursing course with 30 seats during the academic year 2019-2020, as the inpatient strength of the parent hospital on the date of re-inspection was only 80, which was low and the strength of the faculty was inadequate, since the teacher-student ratio of 1:10 could not be satisfied.

55. On receipt of Ext. P18, Ext. P19 reply was submitted by the appellant college on 10.07.2019, in which it is admitted that during the first inspection on 04.12.2019, the inpatient strength was 110, which was about 73% of the total bed strength. It is also clear from the said reply that when the second surprise inspection was done on 31.05.2019, reconstruction was going on in the hospital and the second floor of the hospital with a total bed strength of 32 was closed on 27.05.2019. it is also discernible that the Inspectors verified this matter in person as well as from the register. They verified the said aspect with the Nursing Superintendent also. Therefore, admittedly during the inspection on 31.05.2019, the total bed strength in the parent hospital was 119 and the inpatient strength was only 89, which is 74.78% of the total bed strength. However, it is stated that on that day, the outpatient strength was 256 and the contention advanced by the learned Senior counsel for the appellant

was that what is to be looked into by the University is the experience that could be gained by the nursing students and therefore, while calculating the strength of the patients, the outpatient strength also is to be taken into account and if calculated so, the patient strength was sufficient enough to have granted affiliation to the 60 students.

56. In our considered opinion, there is a criteria prescribed as per the guidelines of the Indian Nursing Council as well as the University in order to grant the provisional affiliation. In that process, the outpatient strength is never a criteria for the grant of provisional affiliation, which is an admitted fact. No manner of interpretation as is argued can be given to the criteria fixed by the Indian Nursing Council as well as the University at any stretch of imagination, since the requirement is the bed strength and the inpatient strength.

57. The appellant college has also filed W.P.(C) No. 20040 of 2019 challenging Exts. P11 and P18 orders of the University produced in WP (C) 28745 of 2019 and by Ext. P22 judgment, the said writ petition was disposed of directing the University to take necessary decisions to grant continuation of affiliation after adverting to the bed strength of the affiliated hospital within a week. The said direction was issued by the learned single Judge after taking note of the guidelines of the Indian Nursing Council produced as Ext. P7 in W.P.(C) No. 28745 of 2019 for granting recognition to Nursing programmes from the academic year

2013-2014.

58. As per the guidelines, it is unequivocal that all Nursing colleges must have 100 beds in the parent hospital and therefore, undoubtedly the bed occupancy of the parent hospital must be 75%. It is also clear from the guidelines that 300 bed occupancy is required for admission ranging from 60-100 students. it is also an admitted fact that due to strike, the parent hospital was partially closed and the appellant college appears to have associated with Taluk Headquarters Hospital, Cherthala, General Hospital, Alappuzha, Women and Children hospital, Alappuzha, Lakeshore Hospital, Nettoor etc. for continuation of provisional affiliation for B.Sc nursing for the academic year 2019-2020. Therefore, it can be seen that it was taking into account all the required guidelines that the University has issued Ext. P29 order confining the provisional affiliation to 30 intake and declined continuation of provisional affiliation in excess of the sanctioned intake of 30 students for B.Sc nursing.

59. The learned single Judge, in fact, has taken note of the judgments of the Apex Court as well as the Full Bench of this Court in **K. Velayudhan Memorial Trust** (supra) and has arrived at the definite conclusion that the appellant college was not entitled to continuation of provisional affiliation in excess of 30 students for B.Sc nursing. Even though learned counsel very strenuously submitted that the University is not entitled to take into account the clinical aspect, in view of the power

conferred for that purpose in the State Nursing Council so as to act in accordance with the guidelines issued by the Indian Nursing Council, we are not satisfied with the said contention, since on a perusal of the provisions of the Act, 1947 and the Act, 1953, we are satisfied that the provisions thereunder are for the purpose of granting recognition and approval.

60. As we have discussed earlier, the University is to grant affiliation in accordance with the provisions of the Act, 2010 and the statutes thereto and for the said purpose, the University is empowered to carry out necessary inspection in order to be satisfied for carrying out its duty of granting affiliation and the said exercise to be undertaken is never a casual affair, since the University is duty bound to protect the interests of the students in all respects and no manner of laxity can be shown in that regard. In sum and substance, the provisions contained under the aforesaid Statutes have to be taken into account and read together so as to have a meaningful idea in the matter of granting recognition/approval/affiliation. So also, we are satisfied that there is no repugnancy by and between the provisions of the statutes so as to call for any interference on the basis of the same especially due to the fact that the exercise undertaken by the authorities are for different purposes, and therefore one authority is not encroaching into the other. That apart, the

Kerala Nurses and Midwives Rules, 1972 is constituted under the Act and Rule 83 is relevant to the context, which reads thus:

"Recognition of institutions for training Nurses, Midwives, Auxiliary Nurse-Midwives, Health visitors

83. (1) The Council shall from time to time, approve and recognise institutions which in its opinion are competent to train nurses, midwives, auxiliary nurse-midwives and health visitors and to grant degrees, diplomas, or certificate to them for the purpose of admission to the register under these rules and report the fact to the Government.

(2) For purposes of recognition of a training institution under sub-rule (1) the institutions should satisfy the conditions specified in the regulations made by the council under section 36 for training and examination of nurses, midwives, auxiliary nurse-midwives and health visitors.

(3) Every training institution shall provide full facilities for inspection by the representative of the Council if and when so directed by the council.

(4) Every training institution that seeks recognition by the Council shall furnish in advance a sum of one hundred rupees per member of the Inspection Commission for every inspection. This amount shall be remitted to the Registrar in cash before sending of such commission."

61. Therefore, on a reading of the said Rule, it is clear that the relevance of the Act, 1953 in regard to the inspection was for the purpose of approval and recognition of institutions, which are competent to train Nurses, Midwives etc. and to grant degrees, diplomas or certificates to them for the purpose of admission to the register under the Rules, and report the fact to the Government. In our view, when the said provision was introduced, the matters referred to therein were expected to be carried out by the State Council, including the conduct of the examination and award of degrees/diplomas. But, now the entire scenario has changed

and substantial activities mentioned thereunder are carried out by the Health University.

62. Even though learned Senior Counsel for the appellants has relied upon Section 26 of Act, 1953 dealing with 'Institutions for training nurses and midwives', heavily to contend that the University has taken up the role of the State Nursing Council, we disagree with the said submission of the learned Senior Counsel, since sub-Section (1) thereto clearly stipulates that the Institutions, which are approved and recognised by the Council after inspection by its representatives, shall be competent to train nurses, midwives etc. and send them for examination for the qualifying certificates recognised by the Council. When the said provision is read in juxtaposition with the Rules quoted above, there can be no doubt that while the Act, 1953 was enacted, the framers had altogether a different intention in regard to the conduct of the courses and award of degree or diploma etc., which, according to us, no more in existence.

63. Therefore, in our view when the Act, 1953 was constituted, the institutions imparting training to nurses etc. were under the control of the authorities under the Act, 1953. So understood, the provisions of the Act, 1953 and the Act, 1947 will have to be viewed in a different manner at present, since the entire aspects other than the approval and recognition are entrusted to the University, which is the affiliating body dutiful to take care of the future of the students undergoing nursing and other allied

courses. Subsection (2) thereto makes it more clear that the power conferred on the State Council is to withdraw recognition alone of any such institution after an inspection by any representatives of the Council .

64. In that regard, learned Standing Counsel for the State Nursing Council Sri. N. Raghuraj has invited our attention to the judgment of a learned single Judge of this court in ***National Medical Educational Charitable Trust v. Kerala Nursing and Midwifery Council*** [2006 KHC 648 =2006(2) KLT 612]. However, we find that that was a case in which the repugnancy of the provisions of the Act, 1947 *vis-a-vis* the provisions of the Act, 1953 was considered and finally held that Sections 26, and 36 of Act, 1953 and Rules 83 and 84 are valid and they are not repugnant to the provisions of the Act, 1947. We do not think that it is an authority to consider the aspects put forth by the learned Senior counsel for the appellant in the issue at hand.

65. It is also clear that for the purpose of recognition of a training institution, the institution should satisfy the conditions specified in the Regulations made by the Council under Section 36 of the Act, for training and examination of nurses etc. It is an admitted fact that no such Regulation is framed under the Act, 1953 or or under the Act, 1947 and the only Regulation framed is for the selection of candidates for diploma in General Nursing and Midwifery course in Private Nursing Schools Regulation, 2005. It is also quite clear and evident from the provisions of

the Act, 1947 that it is only vested with powers to grant recognition and therefore, the guidelines are issued by it fixing criteria for the purpose of granting recognition. The same is clear from Section 16 of Act, 1947, dealing with power to make regulations. Clauses (g) and (h) reads thus:

“(g) prescribing the standard curricula 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;

(h) prescribing the conditions for admission to courses of training as aforesaid.”

66. It is also an admitted fact that even though power is conferred under the Act, 1947 and the Act, 1953 for making regulations for conducting examinations, there is no such regulation made for the purpose of conducting any examination. All these make it clear that the University is the sole agency expected to conduct admission to the Nursing schools, after carrying out inspection of the Nursing schools for ensuring maintenance of the required standards and specifications in the institutions for the purpose of conducting classes, training, examinations and awarding degree/diploma etc. Therefore, it can never be said that the University is not vested with powers to identify that the college is having sufficient infrastructure facilities, staff strength, bed strength and bed occupancy so as to maintain the ratio by and between the students and patients and the students and faculty. However, in the instant case, though the University did not grant affiliation in excess of 30 seats, the

appellant college admitted 26 additional students, which is against the provisions of the Act, 2010 and the Kerala University of Health Sciences First Statutes, 2013. Therefore, it was in the above backdrop that the learned single Judge considered the rival submissions and arrived at the conclusions extracted above in regard to the B.Sc Nursing course.

67. So also, we are of the considered opinion that though prior to the academic year 2013-2014, a Nursing college was permitted to have an affiliated hospital in the place of a parent hospital, the affiliated hospital should fulfil the norms fixed for a parent hospital. In Ext. P7 guidelines issued by the Nursing Council dated 20.04.2018, parent hospital was made mandatory and thereafter affiliated hospitals can only be meant as those hospitals to which students are sent for training in specialised branches, since they are utilised by the students only for a limited period to have training in a particular branch.

68. Therefore, what we mean to say is that the affiliated hospital /hospitals can never be said to be a substitute to a parent hospital. However, in the case at hand, the appellant college wants to substitute the parent hospital, which lacks insufficient bed occupancy. To put it otherwise, the appellant wants to secure the benefit that existed prior to the academic year 2013-2014. That apart, on understanding the inputs provided by the University, even at that period, one hospital alone could be considered as a substitute to the parent hospital and not a number of

affiliated hospitals to attain the requirements of the clinical guidelines.

69. We find force in the said contention advanced by the learned counsel for the University that the bed strength and the bed occupancy of all the affiliated hospitals cannot be taken into account, and which, according to us, would be detrimental to the interests of the students. We are also clear in our mind that contextually, the appellant college must have a parent hospital, which satisfies the requirements as per the provisions of the respective statutes discussed above and affiliated hospitals can only be utilised for the purpose of training in specialised branches. The requirements mandatorily to be followed are made in the respective statutes with the hopeful intention and avowed objective of ensuring avoidance of half baked nurses so as to cater to the needs of the general public in all respects.

70. Learned Senior counsel for the appellants Sri George Poonthottam has taken us through the judgment of the Full Bench of this Court in ***K. Velayudhan Memorial Trust*** (supra) and contended that the University has no manner of power while granting affiliation to inspect and verify the clinical requirements prescribed by the Indian Nursing Council. In our considered view, the said judgment was rendered by this Court while considering the repugnancy of the provisions of the Act, 1947 *vis-a-vis* the provisions of the Act, 1953, wherein it was held that only the State Council can decide whether an institution which proposes to impart

training in nursing and allied courses is to be granted recognition. To put it short, the subject issue with respect to the grant of affiliation was never a matter for consideration in the said judgment.

71. Learned Senior Counsel has also invited our attention to the judgment of the Apex Court in ***State of TN and another v. Adhiyaman Educational and Research Institute and others*** [(1995) 4 SCC 104], wherein the question considered was in respect of the All India Council for Technical Education Act, 1987 and the Tamilnadu Private Colleges (Regulation) Act, 1976 and Rules, and the Madras University Act, *vis-a-vis* the inconsistency of the provisions of the State Act, which, according to us, was specific consideration in respect of the relevant laws. Same is the case with the judgment of the Apex Court in ***State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others*** [(2006) 9 SCC 1], ***the Chairman, Bhartia Educational Society and another v. State of Himachal Pradesh and others*** [(2011) 4 SCC 527], ***Maa Vaishno Devi Mahila Mahavidyala v. State of uttar Pradesh and others*** [(2013) 2 SCC 617], ***Medical Council of India v. state of karnataka and others*** [(1998) 6 SCC 131], and the DB judgment of this court in ***P.N.N.M. Ayurveda College V Kerala University of Health Sciences*** [2018 (1) KLT 573].

72. However, since the learned single Judge has found that there is suppression of material facts on the part of the appellant so as to secure

any relief exercising the power of discretion conferred under Article 226 of the Constitution of India, the learned Senior counsel has invited our attention to the judgment of Apex Court in ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*** [(2004) 7 SCC 166] and submitted that the general rule of denial applies only when suppressed fact is a material one i.e., one which would have had an effect on the merits of the case. The sum and substance of the contention advanced by the learned Senior counsel was that by suppressing the fact of admitting the additional 26 students would not have weighed with the learned single Judge in the matter of the reliefs sought for by the appellant; but the learned counsel for the University has submitted that the suppression of the fact of admitting 26 students in excess of the affiliation granted is a material aspect in regard to an affiliation granted by the University taking into account the fate of the students and the trauma suffered by them, when it is made known that they are undergoing the courses without securing affiliation from the University. We find force in the said contention, since the admission, imparting education, sitting for examinations are all matters depending on the affiliation which is a material aspect that would have weighed with the court while taking a decision. Taking into account all the above vital aspects, we do not think, any interference is required in that regard to be made to the judgment of the learned single Judge.

73. Now the sole question remains to be considered is whether any

manner of interference is required to the findings rendered by the learned single Judge in W.P.(C) No. 16974 of 2020, which is the subject matter of writ appeal 1508 of 2020. In our considered view, after going through the documents produced and undertaking an in-depth analysis of the matter alone, the findings were rendered that the pleadings and materials on record would show that on 18.12.2019, the inspection team deputed by the University conducted inspection in the appellant college and submitted its report dated 18.12.2019 and on verification of the same by the Scrutiny committee, it was found that the bed occupancy on the day of inspection in the parent hospital is 77 only.

74. Accordingly, it was noted that the sanctioned intake of students for all courses together is 115; that the bed occupancy is insufficient to train students and that the number of first year B.Sc nursing students present was 60; but, in the register and admission record, entry is only for 34 students. It was also noted that the sanctioned strength is 30 only; hostel rooms are congested; affiliated to 5 hospitals for clinical training of students; and University Examination of Child Health Nursing, Mental Health Nursing, OBG and Surgical Nursing etc. are conducted in affiliated hospitals, and therefore, the Scrutiny Committee recommended only B.Sc Nursing course with an intake of 25 students for the academic year 2020-2021 and that too, subject to rectification of deficiencies.

75. That apart, in order to verify the conclusions of the Inspection

Commission that excess students were permitted against approved intake of the University, a reinspection was conducted on 17.02.2020. After the scrutiny of the report of the Inspection Commission, the Scrutiny Committee found that the college has admitted 60 students for B.Sc nursing against 30 seats sanctioned by the University as per order dated 9.07.2019, that the college has done registration of 30 students only in the University website, that the inpatient strength of the parent hospital remains the same, and that the deficiencies pointed out in the first inspection report are not rectified. It was, thereupon, that the Scrutiny Committee recommended to place the issue before the Governing Council of the University for appropriate decision.

76. In accordance with the said recommendation, it was placed in the 60th Governing Council of the University held on 25.07.2020 and it was the Governing Council, which decided to reject the request for continuation of provisional affiliation of the appellant college for conducting Nursing courses for the academic year 2020-2021. As per the decision of the Governing Council, the minimum intake for grant of continuation of provisional affiliation for the academic year 2020-2021 shall be 30 seats; but, the intake recommended by the Scrutiny Committee for B.Sc Nursing course for the academic year 2020-2021 is only 25.

77. The Governing Council decided on its meetings specified above

to reject the request for continuation of provisional affiliation, since 26 students in excess of permitted intake of 34 for B.Sc Nursing Course were given by the appellant and a show cause notice dated 13.07.2020 was issued to the Principal requesting to furnish reasons, if any, for not withdrawing the approval given to him to act as the Principal of the College on or before 16.07.2020, failing which, it was specified that University will take appropriate action, without further notice. It was clearly stated in the said notice that as per Section 50(2)(iii) of Act, 2010, the number of students admitted for courses of study shall not exceed the limits prescribed from time-to-time by the University. It was also stated that as per Clause (16) of Chapter XXI of the the First Statute of the University, as the Head of the college, the Principal is responsible for the internal management and administration of the college, to which a reply dated 15.07.2020 was given stating that the allegations are non-existing and unsubstantiated, and further that the college and the surrounding areas are under lock down from 11th July, 2020 onwards disabling the office to function and the classes are conducted online. Therefore, it was replied that until the lock down is shifted, the Principal will not be in a position to give a further explanation to the show cause notice dated 13.07.2020.

78. The appellant college also submitted a reply dated 06.08.2020 to the said show cause notice and explaining various circumstances,

including the origin of affiliation in the year 2002 and that the State Nursing Council has given permission for an intake of 60 seats for B.Sc nursing course, 50 seats for Post Basic Nursing and 25 seats for M. Sc Nursing in 5 branches following the approval of the Indian Nursing Council. Again, it was stated that all the sanctions given by the Indian Nursing Council and State Nursing Council were in variance with the order of affiliation granted by the University and therefore, when such a course was adopted by the respective Council permitting intake of 60 seats by the State Nursing Council after conducting inspection of the parent hospital and 5 affiliated hospitals, the conduct of the University restricting the intake at 30 for B.Sc Nursing and denying affiliation for Post Basic B.Sc Nursing as well as M. Sc Nursing cannot be legally sustained. Other aspects are also put forth, including the directions contained in the judgment in W.P.(C) No. 20040 of 2019.

79. Anyhow, on an analysis of the above facts and circumstances, it can be seen that the appellant college was attempting to justify its action of permitting excess students against the provisional affiliation granted by the University. It was thereafter that the University issued Ext. P16 impugned order dated 11.08.2020, whereby the request made for continuation of provisional affiliation for the academic year 2020-2021 was rejected assigning reasons, which is extracted in the earlier portions of this judgment. In our considered opinion, all the material and relevant

aspects were taken into account by the learned single Judge before arriving at the conclusion that no interference is required to the impugned Ext. P16 order rejecting the continuation of the provisional affiliation for the academic year 2020-2021.

80. On re-assimilation of the relevant materials on record, we can only arrive at a conclusion that the learned single Judge was right in holding that no interference is required to the action taken by the University to reject the continuation of provisional affiliation for the academic year in question.

81. Learned Senior counsel for the appellant though submitted that the feasibility of conducting the course with 25 students is a matter to be taken care of by the appellant college, learned counsel for the University submitted that by virtue of the powers conferred under clause (3) of the Chapter XXI of the Kerala University of Health Sciences First Statutes, 2013, such issues are taken care of and he has invited our attention to sub-clauses (i), (m) and (n) of Clause (3) which deals with 'form of application for affiliation of a new college', wherein in the application form as per the aforesaid sub-clauses, details of financial resources of the management for capital expenditure on buildings and equipments and for the continued maintenance of the college, fees proposed to be levied and the financial provision made for capital expenditure on buildings and equipments, and the financial resources of the college for its continued

maintenance, should be furnished, which would make it clear that the feasibility and viability of running a college continuously is a matter of concern of the University and the same can only be viewed and understood with the hopeful intention of protecting the best interests and future of the students securing admission to the institutions, and to ensure that they are not put to difficulties and inconveniences of any manner of whatsoever nature while undertaking the course of study.

82. Taking into account the aforesaid aspects, we have no doubt in our mind that the appellants have not made out any case for interference in the common judgment of the learned single Judge in an intra court appeal, there being no jurisdictional error or other legal infirmities justifying intervention of this court.

Needless to say, appeals fail, accordingly they are dismissed.

**S. MANIKUMAR,
CHIEF JUSTICE**

**SHAJI P. CHALY,
JUDGE**

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