**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 9TH OF JULY, 2022

WRIT PETITION No. 15293 OF 2022

Between:-

OMKAR COLLEGE OF NURSING SCIENCES RUNS BY SOCIETY NAMELY OMKAR MEMORIAL CHARITABLE SOCIETY, OLD HIGH COURT KHOOBI KI BAJARIYA GWALIOR (MADHYA PRADESH) THROUGH ITS PRESIDENT DR. SANDEEP SARAF, AGED ABOUT 52 YEARS, S/O SHRI DR. K.L. SARAF, OCCUPATION PRESIDENT, R/O OLD HIGH COURT KHOOBI KI BAJARIYA GWALIOR (MADHYA PRADESH).

…....PETITIONER

(BY SHRI DS RAGHUVANSHI - ADVOCATE)

AND

1. **THE M.P. NURSES REGISTRATION COUNCIL, GOMANTIKA PREMISES, 3RD FLOOR, 12 DAFTAR ROAD JAWAHAR CHOWK, BHOPAL (MADHYA PRADESH) THROUGH ITS REGISTRAR.**

2. THE CHAIRMAN, M.P. NURSES REGISTRATION COUNCIL, GOMANTIKA PREMISES, 3RD FLOOR, 12 DAFTAR ROAD JAWAHAR CHOWK, BHOPAL (MADHYA PRADESH).

……..RESPONDENTS

(BY SHRI MAHESH GOYAL– ADVOCATE)

This writ petition coming on for hearing this day, ***Hon'ble Shri Justice G.S. Ahluwalia,*** *passed the following:*

ORDER

1. This petition under Article 226 of the Constitution of India has been filed seeking following relief(s):

> (i) That, the impugned order dated 16.06.2022 (Annexure P/1) be quashed.
> (ii) That, it may be held that the Chairman has no power to cancel the recognition granted to the petitioner and, therefore, the impugned order be set aside.
> (iii) That, other relief which is just and proper in the facts and circumstances of the case may also be granted.

2. The necessary facts for disposal of the present petition in short is that the petitioner has claimed that it is running a GNM course since 2020-21. The petitioner was fulfilling all the criteria for running nursing courses, however, under the orders of the High Court, passed in W.P. No. 9872/2021 (PIL), the respondent Council conducted the inspection of various colleges including the petitioner's institution. The inspection was conducted on 21-4-2022. A show cause notice dated 30-5-2022 was

issued to the Petitioner, mentioning that there are certain deficiencies and 3 days time was granted to file response. A detailed reply/explanation was filed by the petitioner, thereby denying the allegation of deficiencies. However, without considering the reply submitted by the petitioner, the impugned order Annexure P/1 has been issued, thereby canceling the recognition for the year 2021-2022 to run GNM Courses, on the ground that the petitioner/institute doesnot fulfill the requirements as laid down in Rule 4 of Madhya Pradesh Nursing Shikshan Sanstha Manyata Niyam, 2018 (In short Niyam, 2018).

3. Challenging the order passed by the respondents, it is submitted by the Counsel for the Petitioner, that the Registrar, Madhya Pradesh Nurses Registration Council, has no jurisdiction to pass the impugned order as such power can be exercised by the Council Only. It is submitted that it is clear from the impugned order that it has not been passed on the decision taken by the Council, but it has been passed after approval by the President, who is not competent person. It is further submitted that the order under challenge is a vague order, no reasons have been assigned for canceling the recognition. It is further submitted that initially recognition was granted accordingly, admissions to the students have been given and the decision to cancel recognition in the mid-session is bad. There is nothing to show that the petitioner had obtained recognition by furnishing false information.

4. Per contra, the Counsel for the Respondents have vehemently opposed the writ petition. It is submitted that one W.P. 9872 of 2021 (PIL) was filed complaining that several nursing Colleges, which are being run in Distt. Morena, Shivpur, Datia, Gwalior, Bhind and Sheopur,

donot have essential infrastructure. Accordingly, by order dated 18-8-2021, following Committees were constituted for inspection of Colleges :

For Gwalior District

1. Shri Hitendra Dwivedi, OSD, M.P. High Court, Bench at Gwalior.

2. Shri Sanjay Dwivedi, Advocate, M.P. High Court

3. Shri Vijay Dutt Sharma, Advocate.

For Districts of Shivpuri, Sheopur, Morena, Bhind and Datia

1. District Judge, of the district concerned or her/his delegatee not below the rank of Additional District Judge to be nominated by the District Judge.

2. Collector of the district concerned or her/his delegatee not below the rank of Dy. Collector to be nominated by Collector.

5. The aforesaid order was challenged before the Supreme Court and accordingly, by order dated 10th-December-2021, passed in C.A. No. 7602 of 2022, the order dated 18-8-2021 was modified with a direction that High Court to consider the matter afresh and appoint such Commissions which will be in conformity with the Madhya Pradesh Nursing Shikshan Sansthan Manyata Niyam, 2018.

6. Accordingly, a Committee of 10 members was constituted by Council for inspection of 271 Nursing Colleges. 200 Nursing Colleges were inspected by the Committee which submitted its report and W.P.No. 9872/2021 was disposed of by this Court by order dated 29-6-2022, which reads as under :

> This is a Public Interest Litigation preferred at the instance of the resident of District Bhind (M.P.) with the

complaint that in Gwalior-Chambal Division illegal nursing colleges are being run detrimental to public health and safety. Therefore, a direction is sought to constitute a committee for inspection of such 2 illegally running nursing colleges by the regulatory authority i.e. M.P. Nursing Council.

Upon perusal of series of orders passed by this Court and also the Hon'ble Supreme Court, it appears that Nursing Council constituted a committee as per rules for inspection of about 200 nursing colleges throughout State of Madhya Pradesh under the orders of this Court.

A comprehensive report with annexures has been produced before this Court in a sealed cover.

Report has been perused by this Court.

As pointed out by Shri Khedkar, learned counsel appearing on behalf of respondent No.6/M.P. Nursing Council that 70 nursing colleges were found to be lacking in maintenance of standard norms to run such nursing colleges. Therefore, recognition of those colleges has been cancelled. A list of such colleges passed on board is taken on record.

At this Stage Shri Jitendra Kumar Sharma and Shri RBS Tomar, learned counsel appearing on behalf of intervenors, tried to prick holes in the report of the committee disputing conclusions on facts in respect of some of the nursing colleges who are not found to have been meeting criteria to run the same.

We refrain from commenting upon the contentions so advanced. However, intervenors if so advised may approach the competent forum assailing the report prepared, so far as their respective institutions are concerned. Suffice it to say that the M.P. Nursing Council has undertaken a comprehensive exercise in the matter of inspection of about 200 colleges and has taken strict action for cancellation of recognition of such institutions not meeting the standards so fixed, besides proposing action against the concerning Registrar and other committee members responsible for conferring recognition to such institutions at the initial stage. The same is well appreciated as it was indeed necessary in wider public interest.

In view of the aforesaid facts and circumstances, now, no further indulgence is warranted in the instant writ petition;

hence, stands disposed of.

The Court Reader is directed to return the inspection report received in this Court, in a sealed covered to Shri Khedkar, learned counsel appearing on behalf of respondent No.6/M.P.Nursing Council for transmission to the concerned authority.

7. It is submitted that show cause notice was issued to the Petitioner, pointing out the deficiencies, and only thereafter, the impugned order was passed. Furthermore, it is not the case of the Petitioner that deficiencies pointed out by the respondents are not correct. In fact, on earlier occasion, a fraudulent report was submitted by the Committee to the effect that there is no deficiency and when re-inspection was conducted under the orders of the Court, then it was found that the earlier report was factually incorrect, and therefore, the then Registrar and the members of the Committee who had conducted inspection and had submitted false report, have been placed under suspension.

8. Heard the learned Counsel for the Parties.

9. One writ petition **Hariom Vs. Government of Health and Family Welfare Mantralaya and others (W.P. No. 9872 of 2021)** was filed complaining that various Nursing Colleges, which donot have basic amenities are functional in the District of Gwalior, Morena, Bhind, Sheopur and Datia. Accordingly, a Committee was constituted by order dated 18-8-2021. The said order was challenged by Private Nursing College Association by filing C.A. No. 7602 of 2021 mainly on the ground that the members of the Committee have no expertise in the field and accordingly, by order dated 10-10-2021 passed in C.A. No.7602 of 2021, the order of the High Court was modified and it was directed as under :

> Without going into the question whether the circumstances called for any urgent and extraordinary orders, we deem it appropriate to set-aside the directions quoted hereinabove and request the High Court to consider the matter afresh and appoint such Commissions which will be in conformity with the Madhya Pradesh Nursing Shikshan Sansthan Manyata Niyam, 2018.
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> All the learned counsel for the concerned respondents submit that every possible assistance shall be rendered in disposal of the pending writ petition and if the Commissions are appointed, the same shall be completed within the shortest possible time so as to enable the High Court to have complete picture before it for disposing of the pending writ petition.

10. Accordingly, the Council constituted a Committee which carried out inspection of more than 200 Nursing Colleges, and submitted its report. Accordingly, the Writ Petition No. 9872 of 2021) was finally disposed of in the light of the fact that M.P. Nursing Council has already undertaken a comprehensive exercise in the matter of inspection of about 200 colleges and has taken strict action for cancellation of recognition of such institutions not meeting the standards so fixed, besides proposing action against the concerning Registrar and other committee members responsible for conferring recognition to such institutions at the initial stage.

Whether the Impugned Order is vague and has been issued in violation of Natural Justice ?

11. One of the contention of the Petitioner is that the impugned order doesnot specify the deficiencies and the recognition has been cancelled merely on the ground that the infrastructure of the Petitioner College is not in accordance with Rule 4 of Niyam, 2018.

12. A show cause notice dated 30-5-2022 was issued to the petitioner

pointing out the following deficiencies :

(i) The size of building of Academy is not in accordance with Rules.

(ii) The size of Hostel is not in accordance with Rules.

(iii) The size of class room is not in accordance with Rules.

(iv) The size of Labs is not in accordance with Rules.

(v) Labs were not found in accordance with Rules.

13. By referring to the reply, it is submitted that the Committee had not measured the building. The building is being run in a rented premises. The size of building is in accordance with law. Even otherwise, a Bank Guarantee of Rs. 10 lakh was also given at the time of recognition. The Society has taken a building on rent and the construction work on third floor is going on. The Society has maintained every lab in accordance with Rules.

14. Considered the submissions made by the Counsel for the Petitioner.

15. From the reply submitted by the Petitioner, it is clear that the entire college was being run in a rented premises. Even in the writ petition, it has been admitted by the Petitioner that there are deficiencies, although it has been claimed by the petitioner that they are of minor in nature.

16. However, the petition is completely silent with regard to the fact that whether the petitioner is having infrastructure as per the Niyam, 2018 or not. The copy of rent agreement, Photographs of Laboratories, drawing of the building etc. have not been placed on record. On the contrary it has been pleaded in para 6.3 that **"That for minor discrepancies,** the institute cannot be permitted to be closed because the institute is functioning in the interest of State and it is discharging the

functions of the State with respect to catering of education....”

17. Rule 4 of Niyam, 2018 reads as under :

अनुसूची–1

(नियम 4(1) देखिए)

अकादमी भवन

(प्रारूप)

स. क.	विवरण	कुल आवश्यकता			
	लेक्चर	लेक्चर हॉल	बी.एस.सी. नर्सिंग हेतु	पेस्ट बेसिक नर्सिंग हेतु	एम.एस.सी. नर्सिंग हेतु
1		न्यूनतम 600 (30 या कम विद्यार्थियों के लिये) अतिरक्त 18 वर्गफीट प्रति विद्यार्थी			
2	नर्सिंग फाउंडेशन प्रयोगशाला	1500 वर्गफीट			
3	सी.एच.एन.और न्यूट्रीशन प्रयोगशाला	900 वर्गफीट			
4	एडवांस नर्सिंग स्किल प्रयोगशाला	900 वर्गफीट			
5	ओ.बी.जी. और पीडियाट्रिक्स प्रयोगशाला	900 वर्गफीट			
6	प्री–क्लिनिकल सांइस प्रयोगशाला	900 वर्गफीट			
7	कम्प्यूटर प्रयोगशाला + ऑडियोविजुअल कक्ष	1500 वर्गफीट			
8	मल्टीपरपज हॉल	3000 वर्गफीट (किराये पर व्यवस्था की जा सकेगी।)			
9	कॉमन कक्ष (मेल और फीमेल)	1000 वर्गफीट			
10	प्रशासकीय स्टाफ कक्ष	न्यूनतम 400 वर्गफीट (30 या कम विद्यार्थियों के लिये) अतिरिक्त 50 वर्गफीट प्रति व्यक्ति			
11	प्राचार्य कक्ष	300 वर्गफीट			
12	उपप्राचार्य कक्ष (जी.एन.एम के लिये आवश्यक नही)	200 वर्गफीट			
13	लाइब्रेरी	1800 वर्गफीट			
14	डिपार्टमेंट हेड कक्ष एवं फेकल्टी कक्ष	न्यूनतम 600 वर्गफीट (10 या कम शिक्षकों के लिये) अतिरिक्त 50 वर्गफीट प्रति शिक्षक			
15	शौचालय, (मेल)	प्रति 15 विद्यार्थी एक			
16	शौचालय, (फीमेल)	प्रति 15 विद्यार्थी एक			

टीपः–
1. एक लेक्चर हॉल की क्षमता 60 विद्यार्थियों से अधिक नहीं हो सकेगी।
2. पाली (Shift) की संख्या पर कोई प्रतिबंध नहीं रहेगा।
3. मल्टीपरपज हॉल को लेक्चर हॉल के रूप में उपयोग किया जा सकता है।

4. सम्बद्ध चिकित्सालय का ऑडीटोरियम अथवा मल्टीपरपज हॉल है तो उसे नर्सिंग पाठ्यक्रम के लिये मान्य किया जायेगा

18. The Supreme Court in the case of **Natwar Singh v. Director of Enforcement,** reported in **(2010) 13 SCC 255** has held as under :

> **26**.** Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.
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> **27.** In *Lloyd* v. *McMahon*, Lord Bridge observed: (AC pp. 702 H-703 B)
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> > "My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."
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> **28.** As Lord Reid said in *Wiseman* v. *Borneman*: (AC p. 308 C)
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> > "… For a long time the courts have, without objection from Parliament, supplemented procedure laid down in

> legislation where they have found that to be necessary for this purpose."
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> **29.** It is thus clear that the extent of applicability of the principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry.
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> * * * *
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> **48.** On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the adjudicating authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one-way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.
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> **49.** Hegde, J. speaking for the Supreme Court propounded: "In other words, they (principles of natural justice) do not supplant the law of the land but supplement it" (see *A.K. Kraipak* v. *Union of India*). Its essence is good conscience in a given situation; nothing more but nothing less (see *Mohinder Singh Gill* v. *Chief Election Commr.*.

19. The Supreme Court in the case of **Indu Bhushan Dwivedi v. State of Jharkhand,** reported in **(2010) 11 SCC 278** has held as under :

> **24.** However, every violation of the rules of natural justice may not be sufficient for invalidating the action taken by the competent authority/employer and the Court may refuse to interfere if it is convinced that such violation has not caused prejudice to the affected person/employee.

20. The Supreme Court in the case of **Dharampal Satyapal Ltd. v. CCE,** reported in **(2015) 8 SCC 519** has held as under :

> **40.** In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "*prejudice*". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

21. The Supreme Court in the case of **Haryana Financial Corpn. v. Kailash Chandra Ahuja,** reported in **(2008) 9 SCC 31** has held as under:

> **36.** The recent trend, however, is of "prejudice". Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.
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> **37.** In *Malloch* v. *Aberdeen Corpn.*, Lord Reid said: (All ER p. 1283*a-b*)
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> > "… it was argued that to have afforded a hearing to the appellant before dismissing him would have been a useless formality because whatever he might have said could have made no difference. *If that could be clearly demonstrated it might be a good answer.*"
> >
> > (emphasis supplied)
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> Lord Guest agreed with the above statement, went further and stated: (All ER p. 1291*b-c*)
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> > "… A great many arguments might have been put forward *but if none of them had any chance of success then I can see no good reason why the respondents should have given the appellant a hearing, nor can I see that he was prejudiced in any way.*"

(emphasis supplied)

38. In *Jankinath Sarangi* v. *State of Orissa* it was contended that natural justice was violated inasmuch as the petitioner was not allowed to lead evidence and the material gathered behind his back was used in determining his guilt. Dealing with the contention, the Court stated: (SCC p. 394, para 5)

> "*5*. … We have to look to *what actual prejudice has been caused* to a person by the supposed denial to him of a particular right."

(emphasis supplied)

39. In *B. Karunakar* this Court considered several cases and held that it was only if the court/tribunal finds that the furnishing of the report "would have made a difference" to the result in the case that it should set aside the order of punishment. The law laid down in *B. Karunakar* was reiterated and followed in subsequent cases also (vide *State Bank of Patiala* v. *S.K. Sharma*, *M.C. Mehta* v. *Union of India*).

40. In *Aligarh Muslim University* v. *Mansoor Ali Khan* the relevant rule provided automatic termination of service of an employee on unauthorised absence for certain period. *M* remained absent for more than five years and, hence, the post was deemed to have been vacated by him. *M* challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to *M*. Referring to several cases, considering the theory of "useless" or "empty" formality and noting "admitted or undisputed" facts, the Court held that the *only conclusion* which could be drawn was that had *M* been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to *M*.

41. In *Ajit Kumar Nag* v. *Indian Oil Corpn. Ltd.*, speaking for a three-Judge Bench, one of us (C.K. Thakker, J.) stated: (SCC pp. 785-86, para 44)

> "*44*. We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are

> also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of audi alteram partem. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten the forbidden fruit. (See *R.* v. *University of Cambridge*.) But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: ' "To do a great right" after all, it is permissible sometimes "to do a little wrong".' [Per Mukharji, C.J. in *Charan Lal Sahu* v. *Union of India* (*Bhopal Gas Disaster*), SCC p. 705, para 124.] *While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'*."
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> (emphasis supplied)
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> **42.** Recently, in *P.D. Agrawal* v. *SBI* this Court restated the principles of natural justice and indicated that they are flexible and in the recent times, they had undergone a "sea change". If there is no prejudice to the employee, an action cannot be set aside merely on the ground that no hearing was afforded before taking a decision by the authority.

22. In view of the fact that certain admissions regarding deficiencies have been made by the Petitioner in the writ petition and further the entire writ petition is completely silent with regard to the measurement of the Lecture Hall, Nursing Foundation Lab, C.H.N. and Nutrition Lab, O..B.G and Pediatrics Lab, Pre-clinical

Science Lab, Computer Lab and Audio visual room, Multipurpose Hal, Common room (Male and Female), Administrative Staff room, Principal Chamber, Vice-Principal Chamber, Library, Room for Department Head and Faculty room as well as Hostel, this Court is of the considered opinion, that there is nothing to draw an inference that the deficiencies pointed out by the inspection team are not correct. The petitioner has not claimed that the building is in accordance with Schedule 1 and 2 of Niyam, 2018 as required under Rule 4 of Niyam, 2018. Further, certain allegations of malafides have been alleged against the inspection team. No member of inspection team has been impleaded in the writ petition. It is well established principle of law that the allegations of malafides cannot be considered, unless and until the person against whom allegations have been made is impleaded. The Supreme Court in the case of **State of Bihar Vs. P.P. Sharma,** reported in **1992 Supp (1) SCC 222** has held as under :

> **55.** It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them.....

23. The Supreme Court in the case of **Federation of Railway Officers Association Vs. Union of India** reported in **AIR 2003 SC 1344** has held as under :

> 20.....Allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.

24. The Supreme Court in the case of **J.N. Banavalikar Vs. Municipal Corporation of Delhi,** reported in **AIR 1996 SC 326** has held as under :

> **21.....**Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.

25. The Supreme Court in the case of **A.I.S.B. Officers Federation and others Vs. Union of India and others,** reported in **JT 1996 (8) S.C. 550** in para 23, has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court relevant are reproduced as under: -

> "The person against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit." (Emphasis Added) this Court is of the considered opinion, that the submissions made by the Counsel for the Petitioner, that the impugned order has been passed on vague grounds resulting in denial of opportunity to the petitioner to rebut the same is misconceived.

26. Further more, it is the case of the respondents, that the Petitioner doesnot have the infrastructure as per the requirement of Rule 4 of Niyam, 2018 and the previous committee had given a false report and accordingly, the Registrar and members of the previous team have been placed under Suspension.

27. Thus, the respondents have directly pleaded fraud. It is well established principle of law that in case of fraud, the principles of Natural Justice can be ignored and is not required to be complied. The Supreme Court in the case of **State of Chhattisgarh v. Dhirjo Kumar Sengar,** reported in **(2009) 13 SCC 600** has held as under :

> **17.** It is in the aforementioned premise, the contention in regard to the breach of audi alteram partem doctrine must be considered. The principle of natural justice although is required to be complied with, it, as is well known, has exceptions. (See *Banaras Hindu University* v. *Shrikant*.) One of the exceptions has also been laid down in *S.L. Kapoor* v. *Jagmohan* wherein it was held: (SCC p. 395, para 24)
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> > "*24*. … In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, *not because it is not necessary to observe natural justice but because courts do not issue futile writs*."
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> * * * *
>
> **19.** The respondent keeping in view the constitutional scheme

has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with.

* * * *

21. In these cases, requirement to comply with the principles of natural justice has been emphasised. The legal principles carved out therein are unexceptional. But, in this case, we are concerned with a case of fraud. Fraud, as is well known, vitiates all solemn acts. (See *Ram Chandra Singh* v. *Savitri Devi*, *Tanna & Modi* v. *CIT* and *Rani Aloka Dudhoria* v. *Goutam Dudhoria*.) The High Court, therefore, must be held to have committed a serious error in passing the impugned judgment.

28. The Supreme Court in the case of **A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar,** reported in **(2007) 13 SCC 352** has held as under :

7. The High Court on the basis of the erroneous view upset the well-merited judgment of the learned Single Judge. By now, it is well-settled principle of law that the principles of natural justice cannot be applied in a straitjacket formula. Their application depends upon the facts and circumstances of each case. To sustain the complaint of the violation of principles of natural justice one must establish that he was prejudiced for non-observance of the principles of natural justice. In the present case, the fact on which the appellant terminated the services of the respondent appointed on compassionate ground was admitted by the respondent himself that when he applied for the post on compassionate ground by his application dated 6-5-1996, his mother was in service. So also when he secured the appointment by an order dated 22-11-2002 his wife was in service since 3-8-1997 as Extension Officer in Rural Development and later on promoted as Mandal Parishad Development Officer at the time when he was appointed on compassionate ground. <u>These facts clearly disclose that the appointment on compassionate ground was secured by playing</u>

> fraud. Fraud cloaks everything. In such admitted facts, there was no necessity of issuing show-cause notice to him. The view of the High Court that termination suffers from the non-observance of the principles of natural justice is, therefore, clearly erroneous. In our view, in the given facts of this case, no prejudice whatsoever has been caused to the respondent. The respondent could not have improved his case even if a show-cause notice was issued to him.
>
> (Underline supplied)

29. Thus, the petitioner has failed to prove that it has infrastructure as per the requirements of Rule 4 of Niyam, 2018, therefore, no infirmity could be found in the impugned order.

Whether the impugned order has been passed by competent authority

30. It is submitted by the Counsel for the Petitioner, that rule 5 of Niyam, 2018 deals with process of recognition and Rule 7 of Niyam, 2018 deals with cancellation of recognition and the recognition can be cancelled under the circumstances embedded in Rule 7 of Niyam, 2018. It is the case of the petitioner, that in the present case, the impugned order dated 16-6-2022 has been issued by Registrar, Madhya Pradesh Nurses Registration Council with the approval of President, Nurses Council, whereas President alone has no authority to cancel/recall recognition and there is nothing on record to suggest that Council had ever taken any decision and thus, the impugned order is by an incompetent authority. The Counsel for the petitioner has also relied upon the judgment passed by the Supreme Court in the case of **Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation,** reported in **(2011) 5 SCC** to buttress his contention that an

authority vested with the power to act under the Statute alone should exercise its discretion.

31. Considered the submissions made by the Counsel for the petitioner.

32. This Court has already come to a conclusion that recognition was obtained on the basis of false report submitted by the earlier Committee and accordingly, the then Registrar and the member of the Committee have also been placed under suspension. Further, the re-inspection was conducted under the orders of the Supreme Court and the High Court. The only question for consideration is that whether the Petitioner is having its infrastructure as per the provisions of Niyam, 2018 or not?

33. As already pointed out, the Petitioner had not only admitted some of deficiencies in his reply to show cause notice dated 30-5-2022, but has also not uttered a single word in the writ petition, claiming that the petitioner's institution is having infrastructure in accordance with Niyam, 2018.

34. It is well established principle of law that **Fraud Vitiates Everything.** The false report submitted by the earlier committee is a glaring example of Fraud played by the Petitioner in connivance with the earlier committee and accordingly, the Petitioner also succeeded in obtaining recognition. Thus, it is clear that recognition was obtained by the Petitioner by playing fraud.

35. The Supreme Court in the case of **R. Ravindra Reddy v. H. Ramaiah Reddy,** reported in **(2010) 3 SCC 214** has held as under :

> **39.** As far as fraud is concerned, it is no doubt true, as submitted by Mr Ramachandran, that fraud vitiates all actions taken pursuant thereto and in Lord Denning's words "fraud

unravels everything".....

36. The Supreme Court in the case of **Uddar Gagan Properties Ltd. v. Sant Singh,** reported in **(2016) 11 SCC 378** has held as under :

> **19.** This apart, if the State is to be party to directly or indirectly select beneficiary of State largesse—which in present fact situation the State certainly is—objectivity and transparency are essential elements of exercise of public power which are required to be followed. It is patent that the State has enabled the builder to enter the field after initiation of acquisition to seek colonisation on the land covered by acquisition. In the absence of the State's action, it was not possible for the builder to enter into the transactions in question which was followed by withdrawal from acquisition. But for assurance from some quarters, the builder could not have made investment nor landowners could have executed the transactions in question. Such fraudulent and clandestine exercise of power by the State is not permitted by law. This is in violation of public trust doctrine laid down inter alia in *Reliance Natural Resources Ltd.* v. *Reliance Industries Ltd.*, *Centre for Public Interest Litigation* v. *Union of India*, *Natural Resources Allocation, In re, Special Reference No. 1 of 2012* and *Manohar Lal Sharma* v. *Union of India*.

37. The Supreme Court in the case of **K.D. Sharma v. SAIL,** reported in **(2008) 12 SCC 481** has held as under :

> **27.** Reference was also made to a recent decision of this Court in *A.V. Papayya Sastry* v. *Govt. of A.P.* Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para 22)
>
> "*22*. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

38. The Supreme Court in the case of **Express Newspapers (P) Ltd. v. Union of India,** reported in **(1986) 1 SCC 133** has held as under :

> **119.** Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh* v. *State of Punjab*. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland* v. *Overtown* "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in *Short* v. *Poole Corpn*. that:
>
> > "No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."
>
> In *Lazarus Estates Ltd.* v. *Beasley* Lord Denning, L.J. said:
>
> > "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."
>
> See also, in *Lazarus case* at p. 722 per Lord Parker, C.J.:
>
> > "Fraud' vitiates all transactions known to the law of

however high a degree of solemnity."

All these three English decisions have been cited with approval by this Court in *Pratap Singh case*.

120. In *Ram Manohar Lohia* v. *State of Bihar* it was laid down that the courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In *State of Punjab* v. *Ramjilal* it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, as held in *Barium Chemicals Ltd.* v. *Company Law Board* the abuse of authority must appear to be reasonably probable.

39. The Supreme Court in the case of **DDA v. Skipper Construction,** reported in **(2007) 15 SCC 601** has held as under :

1.There are some cases which at times strengthen the idea that existing laws may be inadequate to grant relief to persons whom, the court feels genuinely to be entitled to relief. Courts, more particularly, this Court will not abjure its duty to prevent violent miscarriage of justice by passing such orders as are necessary to uphold the rule of law and lift the veil of purported legality over such perfidious acts. In such cases the court should not allow itself to be deflected by red herrings drawn across the track. It has to pass such orders as the circumstances warrant, of course within the four corners of law, to secure the interest of justice and to appease its judicial conscience. The facts of the present case have some such unique features. In *Miller* v. *Minister of Pensions* it was observed that the law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. Technicalities should not stand in the way of courts doing

> substantive justice. Ultimately, it has to be remembered that justice has no favourite other than truth. Fraud vitiates all transactions known to the law, however high degree of solemnity may be attached to the transactions. In the present case, this Court took note of the massive fraud perpetuated by several persons including corporate bodies.....

40. The Supreme Court in the case of **Jai Narain Parasrampuria v. Pushpa Devi Saraf,** reported in **(2006) 7 SCC 756** has held as under :

> **55.** It is now well settled that fraud vitiates every solemn act. Any order or decree obtained by practising fraud is a nullity. [See (*1*) *Ram Chandra Singh* v. *Savitri Devi* followed in (*2*) *Vice Chairman, Kendriya Vidyalaya Sangathan* v. *Girdharilal Yadav*; (*3*) *State of A.P.* v. *T. Suryachandra Rao*; (*4*) *Ishwar Dutt* v. *Land Acquisition Collector*; (*5*) *Lillykutty* v. *Scrutiny Committee, SC & ST*; (*6*) *Chief Engineer, M.SEB.* v. *Suresh Raghunath Bhokare*; (*7*) *Satya* v. *Teja Singh*; (*8*) *Mahboob Sahab* v. *Syed Ismail*; and (*9*) *Asharfi Lal* v. *Koili*.]

41. This Court has already come to a conclusion that the petitioner has failed to prove that it is having infrastructure as per the requirements of Niyam, 2018. The earlier Committee, by deliberately ignoring deficiencies, gave a certificate that the Petitioner/institution is having all the facilities as provided under the Niyam, 2018. Thus, the action of the earlier Committee was a **fraud on power** which was not exercised in bonafide but it was exercised in bad faith, with a solitary intention to give undue-advantage to an Institution at the cost of the career of the students desirable to prosecute Nursing Courses. Not only that if proper Nursing teaching is not given to the students, then even the patients would not get proper proper treatment at the hands of inefficient nurses whether male or female. Malafide act of giving certificate to Nursing Colleges having insufficient amenities would render the impugned act or order ultra vires. It would be a case of fraud on powers. As held by Supreme Court in the

case of **Express Newspaper (P) Ltd. (Supra),** the misuse in bad faith arises when the power is exercised for an improper motive. In the present case, incorrect or false report was given by the earlier committee, thus, the recognition granted on the basis of false or incorrect report would also stand vitiated as having been obtained by fraud on power.

42. It is well established principle of law that technicalities should not be given importance in such case. Further more, in the present case, inspection was carried out on the orders of Supreme Court and High Court. Once, it has been found that the petitioner is not having sufficient amenities as per the provisions of Niyam, 2018, then the illegality cannot be perpetuated by adopting a technical view. The Supreme Court in the case of **DDA (Supra)** has held that Court will not abjure its duty to prevent violent miscarriage of justice by passing such orders as are necessary to uphold the rule of law and lift the veil of purported legality over such perfidious acts. In such cases the court should not allow itself to be deflected by red herrings drawn across the track. It has to pass such orders as the circumstances warrant, of course within the four corners of law, to secure the interest of justice and to appease its judicial conscience.

43. Therefore, the contention of competence is rejected as misconceived under the facts and circumstances of the case.

Whether recognition has been withdrawn in the mid-session

44. As already pointed out, Writ Petition No. 9872 of 2021 was filed, and the matter travelled upto Supreme Court and ultimately under the orders of the Supreme Court and the High Court, inspection of Nursing Colleges was carried out. Once, it has been found that the petitioner is

not having requisite amenities as required under Rule 4 of Niyam, 2018, then the petitioner cannot be allowed to play with the career of the students. Furthermore, the Petitioner was already aware of the litigation which was already going on. It is not a case, where the petitioner has been taken by surprise.

45. Accordingly, this submission made by the Counsel for the Petitioner is also rejected as misconceived.

46. No other argument is advanced by the Counsel for the Petitioner.

47. As the recognition was obtained by the Petitioner by playing fraud and even today, the petitioner has not claimed that it is having requisite amenities as required under Niyam, 2018 as well as in view of certain admissions made by the Petitioner in its reply to show-cause notice dated 30-5-2022, this Court is of the considered opinion, that the Petition sans merits and is **dismissed in limine.**

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE