

**The High Court of Madhya Pradesh Bench at Indore**

Case Number	<b>W.P.No. 12502/2021</b>
Parties Name	Sapphire Institute of Nursing and Science Vs. State of M.P. & Anr.
Date of Order	<b>12/08/2021</b>
Bench	<b><u>Division Bench:</u></b> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri Siddharth Gupta, learned counsel for the petitioner.  Shri Aditya Garg, learned Govt. Advocate for the respondent No.1/ State.  Shri Sunil Jain, learned Senior Counsel with Shri Kushagra Jain, learned counsel for the respondent No.2.
Law laid down	* <b>Madhya Pradesh Ayurvedic Vishwavidyalaya (Eligibility and Enrolment of Students for Under Graduate Courses) Ordinance, 2014-</b> Clause-9 of the Madhya Pradesh Ayurvedic Vishwavidyalaya (Eligibility and Enrolment of Students for Under Graduate Courses) Ordinance, 2014 is independent to other clauses of the Ordinance. Clause – 5 to 8 of the said Ordinance deals with admission of students and relating to supply of certified list of such admitted students whereas Clause-9 independently deals with “enrolment”. Thus, contention of petitioner is repelled that once students’ names are mentioned in web portal of respondent No.2, they are not required to be separately enrolled.  * <b>(A) Interpretation of Statute-</b> Clause-9 of Ordinance – The language is clear and unambiguous. When statute is clear, it has to be given effecto irrespective of consequences.  * <b>(B) Interpretation of Statute –</b> If statute prescribes a thing to be done in a particular manner, it has to be done in the same manner.

	<p>Clause-9 is couched with a mandatory language and, therefore, must be complied with.</p> <p><b>* Discrimination and Prejudice</b> – Petitioner-institution’s application for enrollment was not accepted after cut-off-date whereas similar requests of three medical colleges was accepted. Examinations are re-scheduled after more than one month. Thus, in peculiar facts situation, Court directed to permit the college to complete the formality of enrollment subject to payment of cost.</p> <p><b>*Practice and Procedure-</b> The list of judgments are supplied by counsel for petitioner after conclusion of arguments to the whatsapp number of Court Reader. The list does not include the relevant paragraph number and the proposition for which the judgment is cited. The opposite side had no opportunity to meet the same. The Court also had no occasion to go through it during the course of argument and put relevant questions etc. Thus, judgments are not relied upon.</p> <p><b>*Pleadings-</b> If categorical pleadings of petition are not denied in the return, it shall be treated to be admitted.</p>
Significant paragraph numbers	<b>11 to 19</b>

**ORDER**  
**(12<sup>th</sup> August, 2021)**

This petition filed by a nursing institute seeks a writ of mandamus for respondent No.2 to enroll the students studying in 1<sup>st</sup> Year batch (2019-20) of B.Sc. Nursing Programme within a time frame. In turn, said students be permitted to appear in the examination of the said course.

2) Briefly stated, the case of the petitioner is that the petitioner is admittedly a recognized and affiliated nursing college with the respondent No.2. The students of 1<sup>st</sup> Year of B.Sc. Nursing Programme (2019-20) were admitted and registered with the nursing

college before the last date of admission i.e. 31/10/2020. Shri Siddharth Gupta, learned counsel for the petitioner by placing heavy reliance on the web portal of respondent No.2 (Annexure P/3) submits that the enrollment/admission/registration for the session of 2019-20 shows that all such students were duly enrolled by respondent No.2 and accordingly their names were reflected in the web portal.

3) The Madhya Pradesh Ayurvigyan Vishwavidyalay (Eligibility and Enrollment of Students for Under Graduate Courses) Ordinance, 2014 (hereinafter called “ordinance”) is referred to contend that a conjoint reading of various clauses of said ordinance shows that it contemplates only one registration/enrollment. After having registered the students aforesaid, which is reflected in the web portal (Annexure P/3), it was no more open to respondent No.2 to ask for a further enrollment as per Clause-9 of the said Ordinance. To bolster this point, reliance is placed on Clause-3, 4, 5 & 6 of the said Ordinance. In Clause-5, it is mentioned that the “*student shall pay the registration/enrollment and various other fees as prescribed .....*” Thus, enrollment and registration is one and the same. Once students are registered and their names are reflected in the web portal (Annexure P/3), the students cannot be deprived to participate in the examination for want of application of the college for enrolment of said students. The second point raised by Shri Gupta is that on the one hand the students of the petitioner-college were not permitted to be enrolled after 30/10/2020 and on the other hand, students of three medical colleges were permitted to get themselves enrolled through their colleges. The attention of this Court is drawn on the aspect of parity and on the point of alleged discrimination by pointing out the averments of para-5.11 of the petition.

4) Shri Siddharth Gupta, learned counsel for the petitioner urged that the alternative submission without prejudice to the legal submission is that the concern officer of petitioner-college who was obliged to submit application for enrollment online could not undertake the said exercise because she suffered from corona virus

twice. The representation dated 17/03/2021 and 28/06/2021 were relied upon for this purpose.

5) Furthermore, it is submitted that Clause-9 is a procedural provision and, therefore, must be treated as directory in nature. This provision cannot take away the substantive right of the petitioner/students.

6) Lastly, it is submitted that exams which were previously scheduled from 07/08/2021 are now postponed and likely to take place from 09/9/2021. When admission of students in question is not in dispute, the students cannot be made to suffer for any mistake of the petitioner-college. No prejudice will be caused to the respondents if enrollment still takes place. The respondents have permitted three medical colleges who were governed by the same ordinance to complete the formality of enrollment after the cut-off date. The petitioner may be treated similarly. Petitioner is willing to pay the fine/cost for the same.

7) Shri Sunil Jain, learned Senior Counsel for the respondent No.2 opposed the prayer by contending that the Ordinance cannot be read in the manner suggested by Shri Gupta. The Clauses of the Ordinance are differently worded and deals with different situations. The enrollment is a separate activity than the admission of students. Petitioner's representations are clear and candid which shows that it was a fault on the part of the petitioner in not undertaking the exercise of filling up the enrollment form in time.

8) On the question of discrimination, it is submitted that no doubt certain medical colleges were permitted to complete the formality of enrollment after the cut-off date, but same was done as per the orders of Director, Medical Education (D.M.E.). It is a case of negligence on the part of the college. Learned Senior Counsel has not disputed that now exams are rescheduled and likely to take place w.e.f. 09/09/2021. He did not dispute that if petitioner is permitted to fulfill the formality of enrollment, it will not cause any prejudice to respondent No.2. He urged that it is the discrimination of this Court to decide as to what

should be the fine/cost in the event Court permits the college to fill up the enrollment form.

9) No other point is pressed by the parties.

10) We have heard the learned counsel for the parties at length and perused the record.

11) After completion of arguments, learned counsel for petitioner supplied a list of judgments on whatsapp number of Reader of the Court. List of judgments does not include relevant paragraph numbers and the proposition for which the judgments are sought to be relied upon. Thus, the judgments cannot be taken into account. Apart from this, in our opinion, if a party intends to rely on judgments, they should rely on them during the course of argument, so that not only Court can parallelly see the relevance of the judgment, the other side can also put forth his/their point regarding the said judgment.

12) Before dealing with the rival contention, it is apposite to reproduce the relevant Clauses of the Ordinance.

“3. The student passing (10+2) Higher Secondary School Certificate Examination with Physics, Chemistry, Biology and English subject conducted by the Board of Higher Secondary of Madhya Pradesh State or Equivalent Examination from outside Madhya Pradesh State, recognized by the appropriate Authority of Central Government or the Council or Board of School Examination in India shall be eligible for admission to the first year of Undergraduate courses as per eligibility rules framed from time to time by the University and by the respective Central Councils.

4. The candidates, who have passed the Examination as given in aforesaid Ordinance shall be required to appear at Common Entrance Test (CET) Examination if any, conducted by the Government of Madhya Pradesh or Authorised Competent Authority, to be eligible to seek admission. The Non-CET candidate shall also be eligible for admission as per norms of respective Apex Council.

5. The student who has been admitted to the Undergraduate course by the College / Institution shall apply in the prescribed form to the University through the Dean / Principal of the respective College / Institution for eligibility and registration on or before the prescribed

date, relevant original documents and a set of attested photo copies of the documents to be submitted to the University. The student shall pay the Registration/ Enrollment and various other fees as prescribed from time to time by the University. Enrollment and Eligibility fee once paid shall not be transferable or refundable.

6. It shall be the responsibility of the Dean/Principal of the college / Institution to report, the status of the enrollment before the end of the first term to the University.

7. It shall be the responsibility of the Dean / Principal of the College / Institution, to ensure that, no student is admitted after the cut-off-date declared by the concerned Competent Authority / Apex Council. The enrollment and eligibility shall not be granted by the University to such students, if any, admitted after the cut-off-date.

8. It shall be the responsibility of the Dean / Principal of the college / Institution, to submit the certified list of admitted students on the cut-off-date up to 5.00 PM to the Registrar of the University by Fax or by E-mail or through a Special Messenger of the College / Institution.

9. It shall be the responsibility of the Dean /Principal / Director to obtain the enrollment, prior to the submission of examination form. The student shall not be allowed to appear for the examination unless the menthol is issued to him/ her by the University.”

***(Emphasis Supplied)***

13) In Clause-5 of the Ordinance, the word registration/enrollment is employed. However, a careful reading of this Clause makes it clear that the students, who have been admitted to the institution are required to apply in prescribed form to the University through the institution for registration. The students of the petitioner-institution have admittedly done it on or before 27/10/2021. Thus, they were treated to be admitted/registered and consequently their names were reflected in the web portal of University (Annexure P/3).

14) Clause-8 makes it obligatory on the part of the institution to submit certified list of admitted students before the cut-off-date up to 5 pm through permissible mode. A conjoint reading of Clause-7 & 8

leaves no room for any doubt that students are required to be admitted before the cut-off-date declared by Competent Authority. Certified list of such admitted students were required to be supplied before cut-off-date to the Registrar of the University as per Clause-8 of the Ordinance.

15) A bare perusal of Clause-9 makes it clear that it is couched in a mandatory language and makes it imperative/obligatory for the institution to obtain enrollment prior to the submission of exam form. Clause-9 is independent to other clauses and conjoint reading of all these clauses do not lead us to the consequence suggested by Shri Gupta. Putting it differently, Clause-9 deals with a separate enrollment which is different than the exercise of admission of students and submission of certified list of such admitted students mentioned in Clause-8.

16) We are unable to hold that Clause-9 is directory in nature. On the contrary, Clause-9 in no uncertain terms makes it obligatory for the institution to obtain enrollment prior to submission of examination form. Thus, on the strength of registration of students/admission list which is mentioned in Annexure P/3, petitioner cannot be permitted to escape from the responsibility of completing the formality of enrollment.

17) This is trite if a statute prescribes a thing to be done in a particular manner it has to be done in the same manner. (See: *AIR 1959 SC 93 (Baru Ram (Shri) vs. Shrimati Prasanni & Ors)*, (2001) 4 SCC 9 (*Dhanajaya Reddy vs. State of Karnataka*), (2002) 1 SCC 633 (*Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors.*), (2011) 2 MPLJ 690 (*Satyanjay Tripathi & Anr. Vs. Banarsi Devi*).

18) Clause-9 of the Ordinance is clear and unambiguous in nature. The Apex Court in (1992) 4 SCC 711 (*Nelson Motis vs. Union of India & Anr.*) opined that if language of a statute is clear, it should be given effect irrespective of consequences. Thus, we find no merit in

the contention that petitioner was not required to fulfill the formality of enrollment.

19) It is apposite to quote the relevant portion of representation of petitioner dated 17/03/2021.

“महोदय,  
उपरोक्त विषय में निवेदन है की, हमारे महाविद्यालय सफायर इंस्टिट्यूट ऑफ नर्सिंग एंड साइंस, ग्राम बोरखेडी पोस्ट हरसोला तहसील महु जिला इंदौर में अध्यनरत सत्र 2019-20 के विद्यार्थियों का महाविद्यालय बंद होने के कारण त्रुटिवश हमारे महाविद्यालय के कर्मचारी द्वारा सत्र 2019-20 के विद्यार्थियों के नामांकन नहीं करा पाए। अतः महोदय से निवेदन है की विद्यार्थियों के भविष्य को देखते हुए नामांकन (Enrollment) फॉर्म भरने हेतु की लिंक ओपन कराने की कृपा करे।  
महोदय हम आपको अस्वस्त करते है की भविष्य में इस प्रकार की त्रुटी नहीं दोहराई जावेगी। कृप्या हमारा निवेदन स्वीकार कर नामांकन (Enrollment) फॉर्म भरने की लिंक ओपन कराने की कृपा करे।  
धन्यवाद

प्रचार्य  
सफायर इंस्टिट्यूट ऑफ नर्सिंग एंड साइंस  
महु-इंदौर”

20) Yet another representation (relevant portion) of petitioner’s representation reads as under:-

“Respected Sir/Madam

With reference to above subject, on behalf of Sapphire Institute of Nursing and Science, Mhow, Indore (M.P.) would like to inform you that Institute had made registration of B.Sc. Nursing 1<sup>st</sup> Year (2019-20) on 27/10/2020 for enrollment process. Due to COVID positive because of which institute was unable to complete the enrollment process at that time which has not completed till present. We have already informed the issue earlier by mail dated 24<sup>th</sup> March 2021 & 4<sup>th</sup> May 2021. We were assured on phone it will be done once lockdown is opened & meeting is done but it hasn’t been done yet.

Take students future into consideration. Again, this is to bring to your kind notice these are not new enrolments we have already registered them on 27/10/2020 (list is enclosed). You are requested to kindly reopen the enrollment portal link for us to complete the Enrollment



process for B.Sc. Nursing 2019-20 batch and oblige us for the same. We assure you that this kind of mistake will never happen again. Registration report is attached with this letter.

Thanking you

Principal  
Sapphire Institute of Nursing and Science  
Indore M.P.”

*(Emphasis Supplied)*

21) The representations make it clear that petitioner was fully aware that enrollment is a necessary formality, but failed to do it in time for certain reasons.

22) Indisputably, the respondent No.2 permitted certain medical colleges to fulfill the enrollment forms after the cut-off-date. It was not disputed that said medical colleges were also governed with same Ordinance and same parameters. No para-wise reply was filed to rebut clause para 5.11 of the petition. In *1993 Supp (4) SCC 46 (Naseem Bano (Smt) vs. State of U.P. & Ors.)*, it was held that if a categorical pleading of petition is not clearly refuted/denied, it shall be treated to be admitted. Thus, ancillary question is whether the students studying in 1<sup>st</sup> Year batch (2019-20) of B.Sc. Nursing Programme should be deprived to undertake the examination. Moreso, when admittedly their admissions and registrations have taken place in accordance with law before the cut-off-date and their names were duly reflected in the web portal of respondent No.2 (Annexure P/3). In our opinion, this will be a travesty of justice if they are deprived to undertake the examination for a technical/clerical fault of the institution/petitioner. Moreso, when examinations are now rescheduled from 9.9.2021 and no prejudice will be caused to the respondent No.2 if such enrollment takes place.

23) Considering the aforesaid and by taking into account the impediment faced by petitioner-institution because of Covid-19 related problem, in the peculiar factual backdrop of this case, we deem it proper to direct the respondent No.2 to permit the petitioner to fulfill the formality of enrollment within 10 working days from today.

However, in view of lethargy/negligence on the part of the petitioner, we deem it proper to impose cost on the petitioner. The petitioner in addition to enrollment fees, shall deposit **Rs.50,000/- (Rs. Fifty Thousand)** as cost before the respondent No.2 within same time. The respondent No.2 shall utilize that amount of cost in welfare activities of the students. If aforesaid exercise is completed by petitioner within aforesaid time, the concern students be permitted to participate in the examination. The direction contained in this para is issued in the peculiar factual situation of this matter and, therefore, shall not be treated as a precedent in future.

24) The petition is **partly allowed**.

**(Sujoy Paul)**  
**Judge**

**(Anil Verma)**  
**Judge**

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