IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12563 of 2022
WITH
CIVIL APPLICATION NO. 527 OF 2023
WITH
CIVIL APPLICATION NO. 10719 OF 2024

. Smt. Anusaya Narayanrao Sawargave
Age: 43 years, Occu: Service
R/o Flat No.5, Arav Apartment,
Plot No.A/54, Survey No.32/2
Uttara Nagari, Brijwadi,
Aurangabad, District Aurangabad. ...PETITIONER

VERSUS

1] The State of Maharashtra
Through the Secretary for
Medical Education and Drugs Department,
Mantralaya Mumbai.

2] Maharashtra Nursing Council
Fort, Mumbai, Through its President.

3] Mrs. Archana Marotrao Badhe,
Age: 39 years, Occu: Service,
St. S. Georges Hospital, Mumbai,
and State Government Appointed/
Deputed as the Additional charge of
Registrar of the Maharashtra Nursing Council.

4] Dnyaneshwar Raut
Age: 42 years Occu: Service,
A/p. Serving as Lecturer/Professor,
Nursing Education Institution Mumbai. ...RESPONDENTS

WITH
WRIT PETITION NO.1800 OF 2023

. Dr. Balasaheb S/o. Laxman Ghule
Age: 39 years, Occu: Service,
R/o. At Post Tisgaonwadi,
Near Dongre Wasti, Post Babhleshwar
Tq. Rahata, Dist. Ahmadnagar. **...PETITIONER**

VERSUS

1] The State of Maharashtra
Through the Secretary for
Medical Education and Drugs Department,
Mantralaya Mumbai.

2] Maharashtra Nursing Council
5th Floor, Bombay Mutual Annex,
D. N. Road, Fort, Mumbai,
Through its President/Registrar. **...RESPONDENTS**

...

Mr. V. D. Hon, Senior Advocate i/by Mr. A. D. Sonkawade, Advocate for the Petitioner in WP/12563/2022.

Mr. N. D. Sonawane h/f Mr. S. S. Kote, Advocate for Petitioner in WP/1800/2023.

Mr. A. R. Kale, AGP for Respondent Nos. 1, 3 and 4/State.

Mr. C. A. Jadhav, Advocate for Respondent No.2.

CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.

RESERVED ON : 10th JUNE 2026.
PRONOUNCED ON : 1st JULY 2026.

JUDGMENT :- [PER- KISHORE C. SANT, J.]

1. Since both the writ petitions are in respect of appointment to the post of Registrar and Deputy Registrar to the Maharashtra Nursing Council (hereinafter referred to as ***"Council"***), both are being taken up together for final disposal. For the purpose of deciding these writ petitions, the facts as stated in Writ Petition No.12563/2022 are given.

2. Heard the parties. Rule. Rule made returnable forthwith by consent of the parties.

3. The petitioner, in WP/12563/2022, happens to be an elected member of the Council, and therefore, is concerned with the affairs of the said Council. By way of amendment, the petitioner has prayed for setting aside the impugned order dated 02.01.2023 issued by Respondent No.1/State, thereby appointing the Respondent No.4 to the post of Deputy Registrar of the Council. The prayer is also made seeking a writ of *quo warranto* against Respondent Nos.3 and 4.

4. The petitioner, as stated above, is an elected Member of the Council. She is further elected as a Member of Executive Committee of the Council. The respondent No.1 is the State. Respondent No.2 is the President of Council. Respondent No.3 who has been given the additional charge of the post of Registrar of the Council, and Respondent No.4 is appointed as Deputy Registrar of the Council.

5. The Maharashtra Nursing Council is a body corporate established under the Maharashtra Nurses Act, 1966 (hereinafter referred to as *"1966 Act"*). Section 15 of 1966 Act requires that there shall be a full-time Registrar appointed by the Council with previous sanction of the State Government.

6. The brief facts giving rise to the present writ petitions are as under:

. Prior to 2021, the Council was functioning under an Administrator appointed by the State Government. A writ petition was filed bearing Writ Petition No.2005 of 2012 before this Court at principle seat

Mumbai challenging continuation of the Administrator. There was also a prayer that an election be conducted to the Council as prescribed under the Act. Notice of Motion No.613/2018 was also filed. This Court, at principle seat, by order dated 12.12.2018, had directed the State Government to take steps to conduct the election of the Council. The State Government was also directed to complete election process within stipulated period. On 27.07.2021, the State Government passed a resolution and appointed one Dr. Dilip Mhaisekar as Administrator of the Council, after the earlier Administrator had retired. In the resolution, the Government specifically directed that the election process be completed before 18.12.2021. The Government also appointed Returning Officer and declared the election programme. Accordingly, the election programme was published on 06.09.2021. The last date for scrutiny, objection and consideration of names in the electoral roll was 17.09.2021. The election process was conducted by the Returning Officer. The results were declared on 10.12.2021. The petitioner was declared elected as a Member. The election process was to be completed by 13.12.2021. However, the State Government did not publish the

names of the elected members in the official gazette as required. It is for this reason, the elected body could not take charge. The Council was thus functioning through an Administrator. The petitioner, therefore, filed WP/4204/2022 seeking direction to publish the names of elected members in the Government Gazette. By order dated 18.04.2022, this Court directed the Government to publish the names of elected members. However, inspite of said order, the Government did not publish the names of the elected members. Those names were finally published on 28.06.2022 only upon filing of Contempt Petition by the petitioner. First meeting of newly constituted members was held on 05.08.2022. On taking charge, certain irregularities, including financial irregularities and violations were noticed. Review Committee was, therefore, constituted to review all these issues. A non-Senior Officer of the Council was directed to look after the duties of Registrar. The Council requested the Government to accord the sanction to the appointment of Senior Officer, namely, Ms. Swati Bhalerao as required under Section 15 of 1966 Act. The State Government sought an explanation on 04.11.2022 regarding handing over the charge to Ms.

Swati Bhalerao. On 07.11.2022, the State Government issued an order directing Respondent No.3, who was working as Matron with St. George's Hospital, to hold additional charge as Registrar of the Council. Respondent No.3 is not in a position to attend the scheduled meeting of the Council, though it is a statutory obligation upon the Registrar. The Government, therefore, again appointed Respondent No.4 as Deputy Registrar by order dated 28.11.2022. The Council raised an objection that the State Government does not have any authority to appoint Registrar and Deputy Registrar. The petitioner, therefore, approached this Court.

7. It is the case of the petitioner that since the post of Registrar became vacant, the Council issued an advertisement to fill-up the said post. However, in the meantime, the State Government directed to stay the proceeding of recruitment. The State Government, thereafter, handed over the charge to Respondent No.3, and thereafter, also appointed Respondent No.4 to the said post. The petitioner, therefore, has filed the petition stating that the respondent No.3 could not have been handed over the charge as she is not eligible. Secondly, the post is

full time post, and therefore, the charge cannot be handed over to any other person. Thirdly, it is the case of the petitioner that the role of the Government is very limited to grant sanction to the selection/appointment of the Registrar made by the Council. The State Government does not have any power to appoint any person to the post of Registrar. The State Government also does not have any power to hand over the charge to any other person outside the Council. On these main grounds, the petitioner has approached this Court.

8. Mr. Hon, the learned Senior Counsel, vehemently argued that Section 15 of 1966 Act requires the Council to make appointment of the Registrar with the previous sanction of the Government. Respondent No.3 does not possess the requisite qualifications required for the post of Registrar. The office of Registrar is a full-time office of the Council. The power to appoint the Officers, servants etc. is with the Council. By giving charge to Respondent No.3, the State Government has acted against the law. The Respondent No.3 also lacks the requisite qualifications. The action of the Government is therefore illegal on that count as well.

9. Learned Senior Advocate submits that, the qualification for the post of Registrar is R.N.R.M., M.Sc.(N) from a recognized university. Such a person needs to have 8-10 years experience in Nursing Education and Administration, out of which at least five years experience is required in teaching. For the said post, experience of working in the Indian Nursing Council or a State Nursing Council will be preferred. Publication in nursing journal or other health journal/magazine, experience in planning, conducting and writing of nursing project/research reports and membership of any nursing professional body are also required.

10. Learned Senior Advocate further submits that, for the post of Deputy Registrar, the qualification is R.N.R.M., M.Sc.(N) from a recognized university and 5-8 years experience in teaching and Administration. There should be some work published in a nursing journal or health related magazine. It is a required qualification for the post of Registrar. The experience in planning, conducting and writing nursing project/research reports and membership of any nursing

professional body are also required. As per communication issued by the Indian Nursing Council vide communication dated 24.04.2000, the learned Senior Advocate thus submits that, this is a fit case to issue a writ of *quo warranto* and to quash and set aside the appointments giving charge to respondent Nos.3 and 4 as a Registrar and Deputy Registrar.

11. During the course of hearing, the petitioner has also submitted the document compilation, including communication dated 09.09.2008 by the Maharashtra Nursing Council in respect of amendment of by-laws 1993. The communication dated 25.08.2000 with regard to amendment of by-laws of Maharashtra Nursing Council regarding amendment of by-laws, 1973.

12. Learned Senior Advocate in support of his submissions relied upon the following judgments:

(i) Prafulla Kumar Swain Vs. Prakash Chandra Mishra and Ors.[1];
(ii) Vijay Kumar Mishra and Anr. Vs. High Court of Judicature at Patna and Ors.[2];

1 1993 Supp (3) SCC 181
2 (2016) 9 SCC 313

(iii) Rajesh Awasthi Vs. Nan Lal Jaiswal and Ors.[3];

(iv) Gamhirdan K. Gadhvi Vs. State of Gujarat and Ors.[4];

(v) Dr. Ved Prakash Tyagi Vs. Union of India and Ors.[5];

(vi) Dr. Rakesh Gupta S/o. Shri. Sardari Lal Gupta Vs. The State of Chhattisgarh and Ors. passed by the High Court of Chhattisgarh at Bilaspur in WP/773/2025.

13. Mr. Kale, the learned AGP, at the outset, raised an objection to the maintainability of the petition on the ground of *locus standi*. He submits that the petitioner is not seeking appointment for herself to the post of Registrar or Deputy Registrar. She does not have locus to file the petition. Second serious objection is to territorial jurisdiction as the appointments are made at Mumbai. The office of the Council is situated at Mumbai. On merits, it is argued that the Government has supervisory control over the Nursing Council. It was found that the selection process was not being properly conducted by the Nursing Council, therefore, it was necessary to stay the said proceedings. Since the Nursing Council is an important statutory body of the State, it is required to function effectively. To see that the Nursing Council functions effectively, it is

3 (2013) 1 SCC 501
4 (2022) 5 SCC 179
5 2025 SCC OnLIne Del 4260

necessary to have a Registrar and it is in that view, the Respondent No.3 was given charge of the post of Registrar. The Act requires that the appointment be made with previous sanction of the State Government. This clearly shows that the Government has some role in the appointment of a person to the post of Registrar. He relied upon the judgments in the cases of ***Lt. Col. Khajoor Singh Vs. Union of India***[6]***, Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr***.[7] and ***Sachin Chhotu Pawar Vs. The Collector Raigad and Ors.***[8]. He also relied upon Section 45 of 1966 Act to show that, in case any difficulties arise in giving effect to the provisions of this Act, the State Government may do anything which is not inconsistent with the purpose of this Act which appears to it necessary or expedient for the purpose of removing the difficulties.

14. Writ Petition No.1800 of 2023 is filed by the another member as Principal of Educational Society's College of Nursing. It is his case that the petitioner possesses requisite qualification and experience and is

6 AIR 1961 SC 532
7 (2004) 6 SCC 254
8 WP/3719/2019 (Aurangabad Bench)

eligible to be appointed as Registrar of the Council. He possessed qualification of Msc.(N) and Ph.D(N) and has experience of 14 years. He has thus challenged the communication giving charge to the Respondent No.3 and appointment of Respondent No.4. His further prayer is to start the recruitment process afresh for the post of Registrar. It is seen from the record that the Respondent No.2/MNC has started recruitment process by issuing an advertisement dated 30.09.2022. The process pursuant to the advertisement came to be cancelled by communication dated 29.12.2022. It is stated that certain objections are received against the advertisement and is issued without previous sanction from the Government.

15. Civil Application No.527/2023 is filed seeking stay to the order dated 02.01.2023 appointing respondent No.4 to the post of Deputy Registrar and seeking directions to the Respondent/State not to interfere with day to day affairs of the Council. However, there is no stay granted till today.

16. So far as recruitment is concerned, Rule 103 of the MNC Rules, provides that recruitment of other employees of Council (excluding Registrar) shall be made by the Council. Sub-Rule 5 of Rule 103 is in respect of appointment of the Registrar. Sub-Rule 5 reads as under:

> "(5). The appointment to the post of Registrar shall be made either-
>
> (i) by promotion of a Deputy Registrar having not less than ten years experience as the Deputy Registrar of the Council; or
>
> (ii) from amongst the candidates who are not more than forty years of age and are post graduate in Nursing of any recognized University and possess at least seven years experience teaching student nurses or in administration in Government or Semi-Government or similar organisation;
>
> Provided that preference may be given to the candidates having exceptional qualifications and experience or both."

17. Civil Application No.10719/2024 is filed with a prayer to direct the Respondent/State to take appropriate steps for discharging the Respondent No.3 from the post of in-charge Registrar of the Council. However, no effective order yet to be passed in this application. Both these civil applications will be covered by judgment in the writ petitions. For considering these petitions, it is necessary to consider Section 15 of

the Maharashtra Nurses Act, 1966 which reads as under:

> "15. Registrar of the Council, and his duties and functions.-
>
> (1) The Council shall, with the previous sanction of the State Government, appoint a Registrar.
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> (2) The Executive may, from time to time, grant leave to the Registrar:
>
> Provided that, if the period of leave does not exceed one month, the leave may be granted by the President.
>
> (3) During any temporary vacancy in the office of the Registrar due to leave or any other reason, the Executive Committee may, with the previous sanction of the State Government appoint another person to act in his place; and any person so appointed shall, for the period of such appointment, be deemed to be the Registrar for the purposes of this Act:
>
> Provided that, when the period of such vacancy does not exceed one month, the appointment may be made by President, who shall forthwith report such appointment to the Executive Committee and the State Government.
>
> (4) The Council may, with the previous sanction of the State Government, suspend, dismiss or remove any person appointed as the Registrar, or impose any other penalty upon him.
>
> (5) Save as otherwise provided by this Act, the salary and allowances and other conditions of service of the Registrar shall be such as may be prescribed.
>
> (6) The Registrar shall be the Secretary and the Executive Officer of the Council. He shall attend all meetings of the Council, and of all its Committees and of the Examination Board, and shall keep minutes of the names of members present and of the proceedings at such meetings.
>
> (7) The accounts of the Council shall be kept by the Registrar, in the prescribed manner.

(8) The Registrar shall have such supervisory powers over the staff as may be prescribed, and may perform such other duties and discharge such other functions as may be specified in this Act or the rules or by-laws made thereunder.

(9) The Registrar appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

18. Section 40 of the 1966 Act, on which reliance is placed by the learned AGP, to show that the Government has overall control over the Council. The said Section reads as under:

"40. Control of State Government:-

(1) If at any time it appears to the State Government that the Council of its President or Vice-President has failed to exercise, or has exceeded or abused any of the powers conferred upon it or him by or under this Act, or has ceased to function, or has become incapable of functioning, the State Government may, if it considers such failure, excess, abuse or incapacity to be of a serious character, notify the particulars thereof to the Council or the President or the Vice-President, as the case may be. If the Council or the President or the Vice-President fails to remedy such failure, excess, abuse or incapacity within such reasonable time as the State Government may fix in this behalf, the State Government may remove the President or the Vice-President or dissolve the Council, as the case may be, and in case of dissolution of the Council cause all or any of the powers, duties and functions of the Council to be exercised, performed and discharged by such persons and for such period not exceeding two years, as it may think fit, and shall take steps to constitute, a new Council.

(2) Notwithstanding anything contained in this Act, or in the rules made thereunder, if at any time it appears to the State Government that the Council or any other authority empowered to exercise any of the powers or to perform any of the duties or functions under this Act, has not been validly constituted or appointed, the State

> Government may cause any of such powers, duties or functions to be exercised or performed by such persons, in such manner and **for such period not exceeding six months and subject to such conditions, as it may think fit.**
>
> (3) Notwithstanding anything contained in this Act, if for any reasons the Council cannot be constituted after expiry of the term of Members including President and Vice-President as specified in sub-section (2) of section 4 or after expiry of period of extension granted under the first proviso to the said sub-section (2) of Section 4, as the case may be, the Government may appoint an administrator or Board of administrators for exercising all the powers and performing duties and discharging the functions conferred and imposed upon the Council by or under this Act, initially for a period not exceeding one year and thereafter for such further period or periods so that the total period shall not exceed two years in the aggregate."

19. By reading Section 15, it is seen that it is the Council who has the authority to appoint the Registrar. What is required is only the previous sanction of the State Government for an appointment. This provision does not speak about any power or the authority with the State Government to undertake selection process. Till selection of a person to the post of Registrar, the Government has no role. During the temporary vacancies in the office of the Registrar, it is again for the Executive Committee with the previous sanction of the Government to appoint another person in his place. Even there, the State Government does not have any power to appoint any other officer or servant. It is clearly seen

that, other than Registrar also, it is for the Council to make appointment. Section 39 also vests power to make by-laws with the Council only subject to previous sanction of the Government. By reading sub-Section (2) of Section 39, it is clearly seen that on receipt of draft by-laws, the State Government has an authority to sanction or refuse to sanction the same. The State Government also has the authority to sanction the Rules with modification as thinks fit, or even to return the draft for further consideration. Secondly, the Act also does not give power to State Government to frame by-laws on its own. Section 40 states that the Government enjoys the power to remove the President or Vice-President or even to dissolve the Council in case of failure on their part to exercise their power, duties and function. The said power is vested with the Government only in cases where the powers are exceeded or abused by the President or Vice President of the Council. In such cases, the Government can cause all or any of the powers, duties and functions of the Council to be exercised, performed and discharged by such person to be appointed by the Government. However, this power does not exceed for more than two years. The Government has to take steps to constitute

new Council in such cases within two years.

20. By reading Rule 103, it is seen that the appointment to the post of Registrar is to be made by promotion of a Deputy Registrar not having less than 10 years experience as the Deputy Registrar or from amongst the candidate who are not more than 40 years of age and are having post graduate degree in Nursing by any recognized University and possess at least seven years experience of teaching.

21. Sub-Section (2) of Section 40 of the 1966 Act also gives power to the Government to appoint a person in case of failure of the Council or any other authority empowered to exercise any of the power or to perform any of the duties and functions under this Act. However, such period also shall not exceed six month. In the present case, assuming that the Government has passed the impugned order with the aid of Section 40, still it could not have exceeded for more than six months. It is now more than two years. The impugned order is in force.

22. Looking to all these Sections, those no where show that the Government has power to appoint or to give charge of the post of Registrar to any other person. Rule 95 of the Maharashtra Nursing Council Rules, 1971, (hereinafter referred to as ***"MNC Rules"***) shows that the post of Registrar is permanent post and shall be full-time officer of the Council. Such person shall not do any other work except of the Council.

23. In the present case, it is seen that the Respondent No.3 who is already working as Matron in St. George's Hospital is given the charge. This handing over charge is clearly against the spirit of Rule 95 of the MNC Rules. The State Government does not have any power to appoint such person or to give charge. It is not the case of the State Government that the Council has failed to discharge its function.

24. In the case of ***Prafulla Kumar Swain*** (supra), the Hon'ble Apex Court has considered the meaning of words "recruitment" and "appointment". Paragraph No.29 and 30 of this judgment reads as under:

> ***"29.*** *At this stage, we will proceed to decide as to the meaning and effect of the words "recruitment" and "appointment". The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word "appointment" means an actual act of posting a person to a particular office.*
>
> ***30.*** *Recruitment is just an initial process. That may lead to eventual appointment in the service. But, that cannot tantamount to an appointment. No doubt, Rule 5 talks of recruitment to Class II Service. We consider these are two sources of recruitment. Nowhere in the Recruitment Rules of 1959 it is specified that the services of a direct recruit under the Government shall be reckoned from the date of selection in the competitive examination. On the contrary, Regulation 12(c) is very clear that the period of training is not to be reckoned as Government service. It is admitted before us that after the successful completion of training when the appointment order is issued the direct recruits are put on probation. Similar is in the case of the promotees. Both of them undergo probation. Therefore, in the light of these provisions it is not possible for us to accept the contention advanced on behalf of the direct recruits that their seniority must be reckoned from the date of their recruitment."*

25. In the case of ***Vijay Kumar Mishra*** (supra), the Hon'ble Apex Court again considered the meaning of words, "appointment", "recruitment" and the distinction between the two. The Court also considered that while interpreting the provisions of the Act, a purposive construction/interpretation should be made to harmonize the provisions

with the object of the Act. This judgment considered the judgment in the case of ***Prafulla Kumar Swain*** (supra), which is discussed above. While considering the question of interpretation, it was held that regard needs to be given to the subject and object for which the Act is enacted.

26. In the case of ***Dr. Rakesh Gupta S/o. Shri. Sardari Lal Gupta Vs. The State of Chhattisgarh and Ors***. passed by the High Court of Chhattisgarh at Bilaspur in WP/773/2025. It was a case in respect of appointment to the Council. In the said case, the appointment of the Registrar, which was to be made by the Council, was made by the State Government. It was in respect of Chhattisgarh State Pharmacy Council Act, 1948. The Court considered Section 26 and held that the State Government could not have made the appointment. The wording of Section 26 is *in pari materia* in Section 15 of the Act. The provision states that a person is to be appointed by the Council "with previous sanction of the State Government". In the similar facts that the Court set aside the appointment of Respondent No.4 therein to the post of Registrar of the Chhattisgarh State Pharmacy Council.

27. So far as writ of *quo warranto* is concerned, the Hon'ble Apex Court has considered scope elaborately in the case of ***Rajesh Awasthi*** (supra). It is held that, any citizen can claim a writ of *quo- warranto,* as he stands in the position of a relater. The person need not have any special or personal interest. A test is laid down as to whether the person holding office is authorized to hold the same as per law. In the matter of writ of *quo warranto*, the delay and laches do no constitute any impediment to deal with the *lis* on merits. Paragraph No. 64 from the judgment in the case of ***R. K. Jain Vs. Union of India***[9] is also considered, wherein it is held that the Court can always examine as to whether the procedure adopted was fair, just and reasonable. Under judicial review, the Court can always see the lawfulness or legality of the decision taken by the Government.

28. In the case of ***Gambhirdan K. Gadhvi*** (supra), the question was about appointment of Chancellor/Vice Chancellor. It was held that the appointment of Vice-Chancellor cannot be made *dehors* the applicable UGC regulations. It is held that the said Act must be amended to bring it

9 (1993) 4 SCC 119

on par with the applicable UGC regulations, and till such time, the UGC regulations shall prevail. In this judgment, the Court also considered writ of *quo warranto.* Paragraph No.17 of the said judgment reads as under:

> *"17. In the case of Armed Forces Medical Association and Ors. Vs. Union of India & Ors., (2006) 11 SCC 731, it has been observed by this Court that strict rules of locus standi are relaxed to some extent in a quo warranto proceedings. It is further observed in the said decision that broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by a judicial order. It is further observed that in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect citizens from being deprived of public office to which they have a right. These proceedings also tend to protect the public from usurpers of public office. It is further observed that it will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry, as to, whether, the appointment of the alleged usurper has been made in accordance with law or not."*

29. In the case of ***Dr. Ved Prakash Tyagi*** (supra), it is held that for maintaining the writ petition under Article 226 of the Constitution of India, a person need not establish any special or personal interest in the matter. It was held that the petitioner therein had *locus standi* to file

Public Interest Litigation. In a writ of quo-warranto, the Court has to consider whether the appointment of a person to the post was made in accordance with statutory prescriptions.

30. So far as judgments relied upon by the Respondent/State are concerned, in the case of ***Kusum Ingots and Alloys Ltd.*** (supra), in the said judgment, the territorial jurisdiction of the High Court is considered *qua* the cause of action. In the case of ***Lt. Col. Khajoor Singh Vs. Union of India and Anr.***[10], the question of territorial jurisdiction had fallen for consideration. It was the contention of the parties that since the action was by the Government/UOI, every high Court would have jurisdiction. It was held that only the High Courts where the cause of action has arisen have jurisdiction to entertain the writ petition. The maintainability of the petition was doubted on the ground that the order was passed by the Union of India. The petition was, however, filed in the High Court at Jammu and Kashmir. The High Court dismissed the petition on the ground of territorial jurisdiction.

10 AIR 1961 SC 532

31. In the case of ***Sachin Chhotu Pawar*** (supra), this Court had considered Article 226 (2) of the Constitution of India. This Court also considered that the High Court which has the territorial jurisdiction over a person or the authority against whom relief is sought, resides or situated within it, will have the jurisdiction. In the second case, it is the High Court within whose jurisdiction the cause of action has arisen will also have the jurisdiction. It was held that to file proceedings before the particular Court, at least fraction of cause of action ought to have arisen within its territorial jurisdiction. In that case, the petitioner was seeking employment with Municipal Council Roha, District Raigad on compassionate grounds. The petition was filed before the Aurangabad Bench. It was held that this Bench has no territorial jurisdiction. The respondent Nos. 4 and 5 against whom the relief was sought, were residing at Pune, and it is in those facts, it was held that this Bench had no jurisdiction as neither cause of action arose within territorial jurisdiction of this Court, nor the person/authority against whom the relief was sought were residing within territorial jurisdiction of this Court.

32. The present case is the case where writ of *quo warranto* is sought by the petitioner. The first question, therefore, needs to see is as to whether the office of the Registrar, Nursing Council, is a public office. Whether the person discharges a public function. This Court has already discussed Section 15 which state the functions and powers. This Court hold that the office of the Registrar is a public office; therefore, a writ of *quo warranto* is perfectly maintainable.

33. So far as *locus standi* is concerned, in view of judgment in the case of ***Dr. Ved Prakash Tyagi*** (supra), there is no doubt the petitioner has every right to file writ petition seeking writ of *quo warranto*. Having held that the office of Registrar is the public office, the further question is as to whether the appointment is made as per law. The wording of Section 15 is very clear that the appointment is to be made with the previous sanction of the State Government. The wording in the Chhattisgarh State Pharmacy Council Act, 1948, considered by the Chhatisgadh High Court, is very same wording. Considering those wording, the Apex Court has held that this wording will not authorize

the State Government to make appointment. Thus, the appointment is to be made only by the Council. The power under which the appointment of Respondent No.3 is shown to have been made is through the aid of Section 40. On reading of Section 40 it clearly shows that it is only when the Council of its President or Vice President fails to exercise or exceeds or abuses any of the powers conferred upon it or him, the State Government can exercise the control. None of the situations as stated in Section 40 is made out by the State Government.

34. On the contrary, when the Council started the recruitment process, it is the Government, for no reason, directed respondent No.3 to take charge without undertaking any process. The appointment is totally against the object of the Act. Section 15 states that there shall be full-time Registrar whereas the Government has appointed a person not on a full-time basis but only as an in-charge. It is factually shown in this petition that the said person is not in a position to discharge functions and to give sufficient time to look after the post of Registrar. It is shown that she hardly attended meetings twice or thrice after the charge was

given to her.

35. This Court thus finds that the appointment made by the Government is totally against the object of the Act. It is an irony that by making the appointment, it is sought to be justified that it was for efficient management of the Council. In fact, the said order is counterproductive. There is absolutely no justification for the action of the Government. Had Government been really desirous to see that the Council functions properly, it would not have continued this position for more than two years without taking any steps. In the meantime, there was also a petition filed and directions were given to appoint full-time Registrar. It is already seen that the Council has started taking steps. However, it is the Government who in between stalled the proceeding without any reason.

36. It is pointed out that it is for more than two years, the Council is functioning, rather not in a position to properly function under this situation. It is also further clear from Section 40 itself that the State Government may appoint any person to perform or discharge the

functions of the Council for a period not exceeding two years. Sub-Section (2) of Section 40 also specifically states that in case the Government is of the opinion that the Council is not properly constituted or appointed, it may cause any of the powers, duties or functions to be exercised or performed by such person for a period not exceeding six months. Even on this aspect, Section 40 would not help the Government.

37. Letter/communication dated 29.12.2022 issued by State Government to the Maharashtra Nursing Council is totally misconceived. There is nothing in the Act showing that Council has to obtain previous sanction to publishing the advertisement. It is for the Council to undertake the selection process for the post of Registrar, only while making actual appointment previous sanction from the Government is required. Letter dated 29.12.2022 is thus required to be quashed and set aside.

38. Considering all above, this Court finds that the appointment of Respondent No.3 by the Government is totally against the provisions.

Even if the appointment of Respondent No.4 to the post of Deputy Registrar needs to be quashed by setting aside order dated 02.01.2023. Hence, following order.

ORDER

(i) Writ Petition No.12563 of 2022 stands allowed in terms of prayer clauses [B], [C] and [CC].

(ii) Writ Petition No.1800 of 2023 stands allowed in terms of prayer clauses [B] and [C].

(iii) In view of disposal of writ petition, pending civil applications do not survive and same also stand disposed off.

(iv) Rule made absolute in above terms.

[AJIT B. KADETHANKAR, J.] **[KISHORE C. SANT, J.]**

D.A.ETHAPE