



2025:UHC:11489-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

**HON'BLE JUSTICE SRI MANOJ KUMAR TIWARI AND
HON'BLE JUSTICE SRI SUBHASH UPADHYAY**

Writ Petition No. 1068 of 2025 (MB)

Uttaranchal Unani Medical College
and Hospital

--Petitioner

Versus

Union of India and others

--Respondents

Advocates:-

Mr. T.A. Khan, Senior Advocate assisted by Mohd. Shaify, Advocate for petitioner

Mr. Sachin Mohan Singh Mehta, Brief Holder for the State of Uttarakhand

Mr. Manoj Kumar, Standing Counsel for Union of India

Mr. Nishant Krishna Adhikari, Advocate with Mr. Gaurav Nagpal, Advocate holding brief of Mr. Ramji Shrivastava, Advocate for respondent No. 2

The Court made the following:

JUDGMENT: (per Hon'ble Justice Sri Manoj Kumar Tiwari)

1. Petitioner is running a Unani College in the name and style of "Uttaranchal Unani Medical College & Hospital, Mustafabad (Padartha), Dhanpura District Haridwar.

2. According to the petitioner, due to minimum cut off marks, fixed by National Commission for Indian System of Medicine for admission in BUMS Course i.e. 50 percentile in National Eligibility-cum-Entrance Test, sufficient number of students are not coming forward for taking admission during academic year 2025-2026 and as against total intake capacity of 42, so far only 5 students have taken admission.

3. Learned Senior Counsel for petitioner refers to Regulation 4(2) of National Commission for Indian System of Medicine (Minimum Standards of



Undergraduate Unani Education), Regulations 2022,
which is extracted below:

“(2) National Eligibility-cum-Entrance Test.- (i) There shall be a uniform entrance examination for all medical institutions at the under-graduate level, namely, the National Eligibility-cum-Entrance Test (NEET) for admission to under-graduate programme in each academic year and shall be conducted by an authority designed by the National Commission for Indian System of Medicine.

Provided that the NEET shall not be applicable to Pre-Tib candidates as per the clause (i) of sub-section (1) under section 14 of National Commission for Indian System of Medicine Act, 2020 (14 of 2020).

(ii) In order to consider for admission to under-graduate programme for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50 percentile in the National Eligibility-cum-Entrance Test for under-graduate programme held for the said academic year:

Provided that in respect of,-

(iii) candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, the minimum marks shall be at 40th percentile;

(iv) candidates with specified disabilities under the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the minimum marks shall be 45 percentile in the case of General category and 40 percentile in the case of the Scheduled Castes, Scheduled Tribes and Other Backward Classes:

Provided further that where sufficient number of candidates in the respective category fail to secure minimum marks in the National Eligibility-cum-Entrance Test held for any academic year for admission to under-graduate programme, the National Commission for Indian System of Medicine in consultation with the Central Government may at its discretion lower the minimum marks required for admission to under-graduate programme for candidates belonging to respective category and marks so lowered by the Central Government shall be applicable for that academic year only.

4. Learned Senior Counsel for petitioner submits that it is incumbent on National Commission for Indian System of Medicine to request the Central Government to lower the minimum marks required for admission to undergraduate programmes when sufficient number of candidates in their respective category fail to get admission in BUMS Course. He submits that National Commission for Indian System of Medicine is failing in its duty by not requesting Central Government to lower



the cut off marks specified in Regulation 4(2) of Regulations 2022.

5. Learned Senior Counsel for the petitioner relies upon a judgment rendered by Hon'ble Supreme Court in the case of **Harshit Agarwal & Ors. Vs. Union of India and Others**, reported as **2021 (2) SCC 710**.

Para 15 of the said judgment is extracted below:

“15. There are about 7000 seats available for admission to the first year BDS course during the year 2020-2021. We are not impressed by the argument of the learned Additional Solicitor General that there are sufficient number of Dentists in the country and, therefore, there is no harm in the seats being unfilled. However, we find force in the submission made by the learned Additional Solicitor General that the fee charged by the private dental colleges is a deterrent for the seats not being filled up. Only 265 out of 7000 seats are vacant in government colleges. All the other unfilled seats are in private dental colleges. The managements of private Dental Colleges shall consider reducing the fee charged by them to encourage students to join the colleges. Reliance was placed by the first respondent on an order passed by this Court in *Union of India v. Federation of Self-Financed Ayurvedic Colleges* [*Union of India v. Federation of Self-Financed Ayurvedic Colleges*, (2020) 12 SCC 115] to submit that non-availability of eligible candidates for admission to AYUSH (UG) courses cannot be a reason to lower the standards prescribed by the Central Council for admission. The facts of this case are entirely different as the Dental Council of India itself recommended for lowering the minimum marks and the Regulations provide for lowering the minimum marks. That apart, the first respondent has exercised its discretion and lowered the minimum marks for admission to first year BDS course for the year 2019-2020.”

6. Learned counsel appearing for National Commission for Indian System of Medicine, however, submits that counseling process is over; therefore, no useful purpose would be served by lowering the cut off marks. He further submits that 2nd proviso to Regulation 4(2) confers discretion upon National Commission for Indian System of Medicine and it does not create any right which can be enforced by writ of mandamus.



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7. Since the proviso enables the National Commission to lower the cut off marks in consultation with the Central Government, whenever found necessary, therefore it casts a duty upon National Commission to request the Central Government whenever educational institutions, recognized by National Commission face difficulty in getting sufficient number of students. The National Commission cannot remain oblivious to the problems of institution concerned.

8. In such view of the matter, the writ petition is disposed of with liberty to petitioner to make representation to National Commission for Indian System of Medicine. If petitioner makes representation within one week from today, National Commission shall examine the matter and refer the issue to Central Government for consultation and necessary order. This Court hopes and expects that the entire exercise shall be concluded as earliest as possible.

MANOJ KUMAR TIWARI, J.

SUBHASH UPADHYAY, J.

Dt: 23rd December, 2025
Mahinder