

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3424 OF 2015**

Association of Management of Ayurvedic
Medical Colleges Maharashtra,
through autho0rized signatory,
A society registered under Bombay
Societies Act, 1860 bearing
Registration No.1150/2006 dated 04.05.2006
Having office at Loknete Rajarambapu
Patil, Ayurvedic Medical College,
Islampur, Taluka : Walwa, District-Sangli
Through its authorized signatory
Dr. Sanjay Shamrao Jadhav, Age : 45 years. Petitioner

Vs.

- 1 State of Maharashtra,
through its Department of
Medical Education & Drugs,
Mantralaya, Mumbai
- 2 Maharashtra University of Health
Sciences, Nashik, through its
Assistant / Deputy Registrar
having regional office at
St. Georges Hospital Campus,
Mumbai – 400 001
- 3 Pravesh Niyantran Samiti
305, Govt. Polytechnic Building,
49, Kherwadi, Ali Yawar Jung Marg,
Bandra (E), Mumbai 400 051
- 4 Central Council of Indian Medicine
A statutory body, constituted under
Section 3 of the Indian Medicine Central
Council Act 1970 having its office at
61-65 Institutional Area, Opposite D-Block

Janakpuri, New Delhi – 110058

- 5 Association of Managements of Unaided
Private Medical & Dental Colleges
Maharashtra, having office at 268/270,
Chandresh Bhavan, Ground floor,
Room No. 9, Shahid Bhagatsing
Road, Fort, Mumbai 400 001 Respondents

Mr. V. M. Thorat i/by Mr. M. V. Thorat for the petitioner.

Mr. C. P. Yadav, AGP for respondent No.1.

Mr. S.P. Khedekar for respondent No.3.

Mr. R.A. Rodrigues i/by Mr. Y. R. Singh for respondent No.4.

Ms. Chandana Salgaonkar for respondent No.5.

**CORAM: ANOOP V. MOHTA AND
K. R. SHRIRAM, JJ.**

DATE : May 07, 2015

ORAL JUDGMENT (Per Anoop V. Mohta, J.):

Rule. Rule is made returnable forthwith. In view of
urgency, heard finally by consent of parties.

2 The Petitioner is Association of Management of Ayurvedic
Medical Colleges of Maharashtra. The said Association is registered
under Bombay Societies Act 1860 bearing Registration No.
1150/Mah/4.5.2006. Total 44 Private Unaided Ayurvedic Colleges are
members of Petitioner Association. In the meeting of the affiliated

colleges decision was taken to join Common Entrance Test of Association of Management of Unaided Private Medical and Dental Colleges (for short, "AMUPMDC") for admission to undergraduate and postgraduate courses available in various unaided Ayurvedic Colleges. Respondent No.1 is State of Maharashtra through its Department of Medical Education & Drugs, Mantralaya, Mumbai. Respondent No.2 is Maharashtra University of Health Sciences and all the Ayurvedic Colleges who are members of Petitioner Association are affiliated to the said University. Respondent No.3 is Pravesh Niyamtran Samiti (PNS). The impugned orders are passed by Respondent nos. 2 and 3. Respondent no.4 is Central Council of Indian Medicine, a statutory body, constituted under Section 3 of the Indian Medicine Central Council Act 1970.

3 The basic events are as under :

 The Petitioner conducts Common Entrance Test for postgraduate courses, however, for undergraduate course i.e. BAMS, all the colleges and Association is affiliated to AMUPMDC. AMUPMDC for the purpose of Common Entrance Test published brochure and under the brochure for admission to BAMS course

AMUPMDC conducts only one round of admission and the seats vacant thereafter are allowed to be filled in either by Association of Ayurvedic Medical Colleges (petitioner) or by the Colleges at College level. For the academic year 2014-15 as per the Rules, AMUPMDC conducted first round of admission for total 2140 BAMS seats available in all 41 Ayurvedic Medical Colleges in Maharashtra.

4 On 5 June 2014, AMUPMDC declared the result of Common Entrance Test. The Common Entrance Test was conducted for all health sciences courses in private unaided medical, dental, ayurvedic physiotherapy occupational and nursing courses. (i.e. MBBS, BDS, BAMS, BPTH, BOTH, BASLP, B Sc. Nursing).

5 On 25 July, 2014, Respondent No.3-Pravesh Niyantaran Samiti (for short, "PNS") by its Minutes permitted the colleges to admit the students from another CET provided the list of students of the Common Entrance Test to which the college belongs was exhausted.

6 On 26 September 2014, the merit list of first round was

declared by AMUPMDC and in pursuance of the list only 34 students of Association took admission. AMUPMDC by their brochure allowed the vacant seats to be filled in by the Petitioner Association or by the College by holding subsequent round. Petitioner Association thereafter issued advertisement and invited applications from eligible students and conducted two rounds upto 13.10.2014. In the two rounds 1164 students were admitted in all 44 colleges who have passed Association CET.

7 After 18.10.2014, total 180 seats were increased by Central Government and these seats alongwith earlier vacancy of 1067 seats thus were allowed to be filled in by the Colleges at College level as the authorization was given by the Petitioner Association to the colleges. The Petitioner Association proceeded CET as the list of association was exhausted, as till two rounds which were held, no student approached from another CET.

8 After 18.10.2014, the total vacancy was 1067 seats which is inclusive of 180 increased seats by the Central Government and for filling up the said vacancy the colleges issued advertisement at their

level indicating that the first preference will be given to the students passing Association CET and thereafter MH-CET. In pursuance of advertisement issued by the Colleges total 495 seats were filled in by the students of Association CET and 552 seats came to be filled in by the students who have passed MH-CET and 20 seats remained vacant. By letter dated 21.10.2014, Petitioner Association already informed PNS that due to vacancy the colleges and the Association be permitted to fill up the seats by another CET. The said letter was not replied.

9 On 16 January 2015, PNS because of inaction of AMUPMDC withdrew the permission granted earlier by letter dated 25.7.2014 of filling up the seats by another CET.

10 On 27 March 2015, PNS however, despite the withdrawal of order by decision dated 16.01.2015 permitted students of BPTh and B.Sc nursing courses taken from another CET to appear for examination by directing the University to accept eligibility and examination forms, however, the same benefit was not extended to BAMS students. The University on the basis of decision of PNS dated 16.1.2015 and by letter dated 9.2.2015 refused to issue eligibility

certificate.

11 The Petitioner has prayed as under :-

“(a) call for the relevant records and proceeding from the office of the Respondent Authorities and after going into the legality of the same, quash and set aside the communication dated 16.12.2014 and 9.2.2015 issued by Respondent University and for that purpose issue appropriate writ and/or order.

(b) quash and set aside the decision dated 16.1.2015 taken by Respondent – Pravesh Niyantran Samiti.

(c) hold and declare that private unaided professional colleges conducting BAMS courses have every right to admit the students either from Association CET or CET conducted by the State of Maharashtra and as per the eligibility criteria prescribed by the CCIM.

(d) direct the Respondent University to forthwith issue eligibility certificate in favour of students who are admitted to BAMS course on the basis of MH-CET marks and allow them to appear for annual examination of BAMS course.”

12 Respondent No.2-University and Respondent No.3-PNS has resisted the case of the Petitioner mainly on the allegations that the Petitioner failed to follow the prescribed procedure and acted contrary to the Rules including of the Common Entrance Test for the professional courses by referring to the Minutes of Meeting dated

6.1.2015 by clarifying the minutes of earlier meeting dated 25 July 2014.

13 Respondent No.3 on 28.04.2015 during the course of hearing has placed on record pursis which is as under :-

“The present Pursis is filed on behalf of Respondent No.3 to place on record the letter received from the AMUPMDC (Association of Management of Unaided Private Medical and Dental College of Maharashtra) dated 30th March 2015 which shows that AMUPMDC is issued the said letter to Pravesh Niyantran Samiti confirming therein that list of the Asso-CET 2014 student list was exhausted and as per the said letter, Pravesh Niyantran Samiti by their Minutes of Meeting dated 27th March 2015 accepted the eligibility and exam forms of student on the basis of said letter.”

This approach should be made available to all other courses, is the submission, as there is no legal bar. PNS is empowered to do so.

14 The Petitioner by affidavit dated 7.4.2015 submitted as under :

“Therefore, Petitioner Association issued advertisement and invited applications at college level and through the colleges conducted second and third round. At the end of third round all the Ayurvedic Unaided Colleges could get only 1198 seats from their own CET i.e. CET conducted by AMUPMDC and 887 seats remaining vacant. Petitioner Association thereafter allowed the colleges to issue further advertisement at college level and filled in

the seats in following order.

(1) First preference should be given to the students passing AMUPMDC and

(2) Seats remaining thereafter should be filled in by the students passing MH-CET.”

15 The respective colleges accordingly issued advertisement and admitted students by giving preference to the students passing AMUPMDC-CET and remaining seats by students passing MH-CET. After the third round was over, the Petitioner Association even informed on 21.10.2014 to PNS, but there was no reply. The Petitioner, therefore, proceeded as the list of students of AMUPMDC were completely exhausted and, therefore, students from MH-CET were admitted.

16 Even as per the information brochure of Association CET 2014 [AMUPMDC] it is already declared that in selection process for BAMS, DPTH, both B.Sc. Nursing, there would be only one round of central admission. Thereafter the respective Association or such colleges will fill in the unfilled seats at their own level on the basis of merit of Association CET 2014 (clause 12.2).

17 Respondent no.5 by affidavit dated 7th May 2015 clarified their position and role specifically with regard to no objection from them as insisted by PNS. The relevant paragraphs of the affidavit are reproduced below :-

- “3 As per the scheme framed by this Hon'ble Court (Coram: Chandrachud and Mohite JJ) in Review Petition No. 120 of 2006 in Writ Petition No. 6332 of 2005 dated 10th August 2006, the Respondent No.5 conducts 3 rounds of admission for medical and dental colleges; and only one round of admission for BAMS, BPT^h and Bsc Nursing. Thereafter the respective association or individual colleges fill in the unfilled seats at their own level on the basis of merit. After the first round, the Respondent No.5 has no role to play in the admission process for BAMS, BPT^h and Bsc Nursing.
- 4 The Respondent No.5 conducted one round of admission to ayurvedic colleges. Thereafter the 2nd and 3rd rounds of admission were conducted by the Petitioner association. When the 1st round of admission was to be made, the Ayurvedic colleges had not received permission from their Central Council, the Respondent No.4 herein, and therefore allotment was made only for MBBS, BDS, Bsc Dental and Bsc Nursing and Bpth (Physiotherapy). After obtaining permissions from the respective Council, notice was displayed on the web site calling for fresh preference forms from eligible candidates from 14th September, 2014 to 19th September 2014. Thereafter the first round of admission was carried out for Ayurvedic colleges on 20th September 2014 with instructions to report to the allotted college by 26th September 2014. The Petitioner association conducted the 2nd and 3rd rounds of admission.

- 5 *In the case of Bsc Nursing Courses, the individual colleges filled in the seats lying vacant after the 1st round on the basis of advertisements issued by them at their level; but all seats could not be filled by Asso-CET candidates. The Respondent No.5 displayed on website, that if seats still remain vacant, the Nursing Colleges may fill the seats from MH-CET-2014. The nursing colleges filled some of the seats from MH-CET. However, the Respondent No.3 did not approve the admissions of students from the MH-CET stating that the Respondent No.5 Association does not have any right or power to issue permission to admit candidates from MH-CET. Thereafter Respondent No.5 displayed the vacancies available in Nursing Colleges on its web site and called for Asso-CET candidates to apply for the vacant seats. However, there was little response and many seats remained vacant. Therefore, the Respondent No.5 requested the Respondent No.3 to permit the nursing colleges to fill in the vacancies from other CET's. Even after the cut of date, the colleges could not fill in the seats. Therefore, this Respondent wrote to the Respondent No.3 on 20th March 2015 to grant post facto permission for the admission for Bsc Nursing and Bpth (Physiotherapy) Courses from Asso-CET 2014 and other CET's 2014 for the Academic year 2014-2015.*
- 6 *In the case of the Ayurvedic colleges, it is the Petitioner association which conducts the 2nd and 3rd round, and therefore the Respondent No.5 is not in a position to give its no objection to the Petitioner Association; or furnish proof to the Respondent No.3 that the list of qualified students in ASSO-CET 2013 has been fully exhausted for AY 2014-15."*

18 Respondent No.1/State Government has no objection if the
Petition is allowed as prayed. The learned counsel appearing for

Respondent No.5 also conceded to the position as the Petitioner has followed the procedure so prescribed and in view of earlier scheme so declared by this Court with regard to the conduct of examinations/Association CET by referring to judgment of this Court in Association of Managements of Unaided Private Medical & Dental Colleges Vs. Parents' Association of Medical Students and ors. (Review Petition No.120 of 2006 in Writ Petition No.6332 of 2005) dated 10.08.2006. There was no case of issuing of no objection from Respondent No.5 as there were under obligation to wait only upto first round. Thereafter, they have no jurisdiction.

19 Respondent No.4-Central Council of Indian Medicine has also no objection if the relief so prayed is granted to the Petitioner.

20 AMUPMDC by letter dated 26 December 2014, as recorded above, in view of large vacancies, requested to grant permission for the admission for BPTH and B.Sc. Nursing courses from Association CET 2014 and MH-CET 2014 for academic year 2014-15. This Court in Dr. D.Y. Patil Vidyapeeth Deemed University Trust & Anr. Vs. Maharashtra University of Health Sciences & Ors. (Writ Petition

No.11281/2014) dated 21 April 2015, though it was related to no objection certificate from MH-CET as directed by PNS to obtain, and otherwise there was no objection to permit students to appear in the examination, by reasoned order, wherein it is observed that once the list is exhausted and the Petitioner-colleges, after due notice and intimation and advertisement and by following the procedure has filled the vacant seats, the students, therefore, who are otherwise eligible and to avoid their career loss, we have ordered as under :-

“a) Communication/minutes dated 29 September 2014 (Item No.7) is set aside, so also (Item No.12 (a)) dated 29 September 2014 only to the extent of rejecting Application of the Petitioners for other CET.

b) The Petitioners are permitted to approach PNS and file Application not later than 27 April 2015 and PNS to reconsider the said Application, as early as possible, preferably within one week from receiving the additional Application.

c) Communication of the Maharashtra University of Health Sciences, Nashik dated 1 November 2014 referring to 29 students of ASS-CET, is set aside.

d) The Maharashtra University of Health Sciences, Nashik to accept the forms without late fees, but with requisite examination fees and to issue necessary permission/hall tickets and allow the Petitioners' students to appear in the examination.

(e) Writ petition is accordingly allowed to the above extent.”

21 In view of above and even otherwise considering facts and circumstances of the present case and the reasons so provided in Dr. D.Y. Patil Vidyapeeth Deemed University Trust & Anr. (Supra), we are of the view that there is no question of any no objection. For the stated NOC there is no reason to deny the permission as sought by the Petitioners. PNS, therefore, is requested to consider the application filed by the petitioner again as early as possible preferably within seven days from today as examination is scheduled to be held on 28.05.2015. The petitioner is permitted to approach PNS within one week from today. PNS to pass order in accordance with law so that the University also can proceed. The petitioner is also permitted to file additional affidavit, if necessary. Therefore, taking overall view of the matter, we are inclined to allow this petition in terms of prayer clauses (a), (b) and (d).

The parties to act on the basis of authenticated copy of this order.

(K. R. SHRIRAM, J.)

(ANOOP V. MOHTA, J.)