

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16541 of 2018

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1. Vihar Private Unani Medical Colleges, Maulabagh (Maryam Masjid Gali), Phulwari Sharif, P.S.- Phulwari Sharif, District- Patna through its Secretary, Syed Ismail Khurram, Son of Dr. Syed Abdul Aziz Salfi, Resident of Farid House, G.N. Ganj, Laheriasarai, P.S.- Laheriasarai, District- Darbhanga.
 2. Md. Shafiur Rahman, Son of Late Haji Mohammad Jaam, Resident of Maulabagh, Phulwari Sharif, District- Patna.

... .. Petitioners

Versus

1. The Union of India through the Secretary, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy, Government of India, New Delhi.
2. Director, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy
3. Central Council of Indian Medicine, 61-65, Institutional Area, Janakpuri- 'D' Block, New Delhi- 110058 through its Secretary.
4. President, Central Council of Indian Medicine, New Delhi.
5. The State of Bihar through the Principal Secretary, Health Department, Bihar, Patna.
6. Principal Secretary, Health Department, Bihar, Patna.
7. Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, Patna through its Secretary.
8. Controller of Examinations, Bihar Combined Entrance Competitive Examination Board, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Abhinav Srivastava, Advocate Mr. Raushan, Advocate Mr. Ujjawal Bhushan, Advocate
For the Respondent UoI :		Mr. S.D.Sanjay, Add. Solicitor General Mrs. Kanak Verma, C.G.C.
For the Respondent State:		Mr. Mujtabul Haque , GP-12 Mr. Manish Kumar, AC to GP-12
For the BCECEB	:	Mr. Prasoon Sinha, Advocate
For the CCIM	:	Mr. Ashok Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 10-10-2018

Heard learned counsel for the parties.

This writ application has been filed by the Association
of Private Unani Medical Colleges in the State of Bihar through
its Secretary Md. Shafiur Rahman.



The petitioners have a grievance against the press communique dated 23.03.2018 issued by the State Government of Bihar (Annexure-11), which prescribes that from the Academic Year 2018-19, admission to Ayurvedic, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH) Courses shall be allowed only through National Eligibility-cum-Entrance Test (NEET) and only such candidates shall be allowed to be admitted in such course, who have qualified in NEET.

It is evident from the press communique dated 23.03.2018, issued by the Health Department, Government of Bihar, that it is in compliance of a letter issued by the Ministry of AYUSH, Government of India, dated 12.02.2018. The said letter dated 12.02.2018 has also, accordingly, been put to challenge in the present application.

Since the communique is based on a direction issued by the Central Government, the Union of India was asked to file a counter affidavit and accordingly a counter affidavit has been filed.

It is the plea in the counter affidavit that in the light of the Supreme Court's decision on the question of requirement of NEET as compulsory for admission to MBBS and BDS courses,



the Ministry of AYUSH decided to admit students through Combined and National Level Test in order to bring meritorious students in AYUSH System. It is their case that the State Governments were informed in advance that the admissions should be offered in AYUSH (UG) Courses only through NEET. It has also been stated that for the purpose of ensuring that only meritorious students are admitted, the said decision has been taken by the Ministry of AYUSH to allow only such candidates admission to AYUSH (UG) Courses, who have qualified in NEET. It has also been stated in the affidavit that the Lucknow Bench of the Allahabad High Court has granted relief for the Academic Year 2017-18 exempting the requirement of NEET based admission to AYUSH Courses, but for subsequent sessions commencing from 2018-19 on wards, the NEET qualification is essential for admission to AYUSH (UG) Courses.

Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioners has submitted that the admission notice through NEET (UG-2018) was issued for admission to MBBS and BDS courses only and it did not stipulate that admission in other courses, namely, Ayurvedic, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH) shall also be undertaken on



the basis of the said NEET. He has accordingly contended that students seeking admission to various AYUSH Courses could not have applied in response to the admission notice through NEET (UG-2018), which was issued only for MBBS/BDS courses. His second submission is that the last date for submission of application in pursuance of admission notice through NEET (UG-2018) was 09.03.2018, whereas the State Government came out with the press communique on 19.03.2018. He has contended that though the Ministry of AYUSH had written letter to the State Governments on 12.02.2018 containing revised guidelines for admission into various courses including Bachelor of Unani Medicine and Surgery, according to which NEET (UG) was to be an eligibility criteria for admission to AYUSH Courses, there was no such stipulation in the admission notice issued by the Central Board of Secondary Education for National Eligibility-cum-Entrance Test (UG), 2018. He contends that it was clearly mentioned in the said admission notice, which has been brought on record by way of Annexure-7, that it stipulated admission to all seats in MBBS/BDS courses only through NEET (UG), 2018. He accordingly contends that the institutions offering Unani courses cannot be forced now to admit only such students who have



qualified in NEET (UG) 2018. He has also contended that in any view of the matter, in the absence of any amendment in the Act/Regulations governing education for Indian Medicine, prescribing NEET qualification as eligibility criteria by the executive instructions is impermissible. His next submission is that the NEET is structured for admission to MBBS and BDS courses only and since eligibility criteria for admission to Unani (UG) course is substantially different, as prescribed in the Regulations, it is inappropriate for the respondents to prescribe NEET as the criteria for admission in Unani (UG) Medical Courses.

Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India has contended that it is only for the purpose that meritorious candidates are allowed admission to AYUSH Courses, the Central Government taking cue from the Supreme Court's decision, in case of *Mihir Abhijat Pathak & Ors. Vs. Medical Council of India & Anr.*, which is reported with *Sankalp Charitable Trust v. Union of India*, (2016) 7 SCC 487 (at Page 496), that there should be a common entrance test for admission to medical courses, a decision was taken making NEET to be an essential qualification for admission to these courses. He contends that even in the



absence of any amendment in the Regulation, in larger public interest, the Central Government has taken this decision by issuing guidelines allowing admission to AYUSH (UG) Courses only through NEET.

He has drawn my attention to the information bulletin issued by the Central Board of Secondary Education in respect of National Eligibility-cum-Entrance Test. Clause 12 of which reads thus :

“The result of the NEET (UG) may be utilized by other entities of Central/State Governments for admission purpose in accordance with their rules.”

Referring to the said clauses he has contended that the NEET result can be validly used for admission to courses other than MBBS/BDS courses. He contends that the executive instructions issued by the Central Government laying down the guidelines for admission to AYUSH courses cannot be said to be violating any provisions of law.

He has also contended that to maintain uniformity in admission to UG Course in AYUSH system of medicines, a decision was taken by the Ministry of AYUSH on 15.02.2017 that All Indian Institute of Ayurveda will conduct an All India Level Common Entrance Test and accordingly for admission in



AYUSH Post Graduate Courses, admission shall be undertaken on the basis of AYUSH NPGET. He also contends that upon representations made by some of the States, the Central Government exempted requirement of admission through NEET for the Academic Session 2017-18, but from the Academic Session 2018-19, it has been made compulsory that the admissions shall be allowed on the basis of merit list of NEET.

This is to be noted that when the matter was taken up on 26.09.2018, the Court has found following questions arising in the case to be adjudicated upon :

(I) Whether without introducing any amendment in the eligibility criteria in Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016 (hereinafter referred to as ‘the Regulations’), NEET qualification could be prescribed as an eligibility criteria for admission to Bachelor of Unani Medicine Course?

(II) Whether in view of the minimum qualification, as prescribed in the Regulations above, NEET can be considered to be an appropriate and adequate test for admission to Bachelor of Unani Medicine Course?

(III) Whether the institutions conducting Bachelor in Unani Medicine courses can be compelled to admit the students on the basis of NEET only, in the absence of any such stipulation in the notice inviting application for NEET?



The education in Indian Medicine, including Unani, is governed by Indian Medicine Central Council Act, 1970, under which the Central Council of Indian Medicine has been duly constituted by the competent authority, which has been empowered to take steps towards granting permission to the medical colleges and institutions for imparting different instructions. This is not in dispute that the Central Council has been empowered, *inter alia*, to lay down the Regulations for prescribing minimum qualification and eligibility criteria to be fulfilled by different candidates for being offered admission to courses of Indian Medicines, i.e., Ayurvedic, Yoga & Naturopathy, Unani, Siddha and Homeopathy.

This is also not in dispute that in furtherance to the provisions under Clause (i) and (j) of Section 36(1) of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as 'the Act'), the Central Council of Indian Medicine has framed Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986. Schedule-III of the said Regulations, as amended through Notification Dated 07.11.2016, issued by the Central Council of Indian Medicine, prescribes minimum standards for *Kamile Tib O Jarahat* (i.e., Bachelor of Unani Medicine and Surgery) Course, which lays



down, *inter alia*, the eligibility for admission to the said course.

The eligibility for admission, as prescribed in Schedule-III, is as under :-

- 2. Eligibility for admission.-** To seek admission in the respective course of Bachelor of Unani Medicine are as under-
- (A) Admission to Kamile Tib o Jarahat course:** A candidate seeking admission to main Kamile Tib o Jarahat (Bachelor of Unani Medicine and Surgery-B.U.M.S.) Course must have passed-
- (a) intermediate (10+2) or its equivalent examination with at least fifty per cent. aggregate marks in the subjects of Physics, Chemistry and Biology and the candidate shall have passed 10th standard with Urdu or Arabic or Persian language as a subject, or clear the test of Urdu of 10th standard (wherever there is provision to conduct of such test) in the entrance examination conducted by the University or Board or registered Society or Associations authorized by the Government to conduct such examination;
 - (b) for reserved category or special category like physically handicapped students in 10+2, they shall be given relaxation in of Physics, Chemistry and Biology marks for admission in BUMS as per concerned State and Central rules;
 - (c) for foreign students any other equivalent qualification to be approved by the University shall be allowed; or
 - (d) the Pre-Tib examination of one-year duration
- (B) Admission to Pre Tib course** A candidate seeking admission to one year Pre-Tib course must have passed-
- (a) the Oriental qualification equivalent to Intermediate Examination (10+2) as specified in the Table below; or

TABLE

List of oriental qualifications in Arabic/Persian equivalent to Higher Secondary or Intermediate or 12th Standard for the purpose of admission to Pre-Tib course of the Unani degree course

Sl. No.	Name of Institution	Qualification
1.	Lucknow University	Fazil e-Adab or Fazil-e-Tafseer
2.	Darul Uloom Nadvatul-Ulma, Lucknow	Fazil
3.	Darul-Uloom, Deoband, Distt. Saharanpur	Fazil
4.	Al-Jameat-ul Salfiah, Markazi Darul-Uloom, Varanasi	Fazil
5.	Board of Arabic and Persian Examination, Uttar Pradesh Allahbad or Uttar Pradesh Madarsa Shiksha Parishad, Lucknow	Fazil
6.	Madarsa Faize Aam, Mau Nath Bhanjan, Azamgarh (U.P)	Fazil
7.	Darul Hadees, Mau Nath Bhanjan, Azamgarh (Uttar Pradesh)	Fazil
8.	Jameat-ul-Falah, Bilaria Ganj, Azamgarh (Uttar Pradesh)	Fazil
9.	Darul Uloom Ashrafia Misbahul Uloom, Mubarakpur, Azamgarh (Uttar Pradesh)	Fazil
10.	Jamia Sirajul Uloom, Bondhiyar, Gonda (Uttar Pradesh)	Fazil
11.	Jamia Farooquia, Sabrabad, via Shahganj, Distt. Jaunpur (Uttar Pradesh)	Fazil
12.	Madras University	Adeeb-e- Fazil
13.	Darul Uloom Arabic College, Meerut City (Uttar Pradesh)	Fazil
14.	Madarsa Mazahir Uloom, Saharanpur (Uttar Pradesh)	Fazil
15.	Government Madrasa-e- Alia, Rampur	Fazil
16.	Al-Jamiatul Islamiya, Noor Bagh, Thane, Mumbai	Fazil
17.	Al-Jamiat-ul Mohammadiya, Mansoor, Malegaon	Fazil
18.	Al-Jamiatul Islamia Is-hat-ul-Uloom, Akalkuan, Distt. Dhulia	Fazil
19.	Bihar Rajya Madarsa Shiksha Board, Patna	Fazil
20.	Jamia-us-Salehat, Rampur (Uttar Pradesh)	Fazil
21.	Madarsa-tul-Islah, Saraimir, Azamgarh (Uttar Pradesh)	Fazil
22.	Jamia Darus Salam, Malerkotla (Punjab)	Fazil
23.	Khairul Uloom, Al-Jamiatul Islamia, Domaria Ganj, Distt. Siddharth Nagar (Uttar Pradesh)	Fazil
24.	Madarsa Darul Huda, Yusufpur, via Naugarh, Distt. Siddharth Nagar (Uttar Pradesh)	Fazil
25.	Jamia Islamia Aimahad Okhla, New Delhi or Jamia Islamia Sanabil, Abul Fazal Enclave - II, New Delhi	Fazil
26.	Darul Uloom Arabiyyah Islamia, post Kantharia, Bharuch (Gujarat)	Fazil
27.	Darul Uloom Rashidia, Nagpur	Fazil

(b) the Oriental qualification equivalent to Intermediate Examination (10+2) recognised by State Government or State Education Board concerned.

3. Admission through Pre-Tib Course.- Admission may be made on a maximum of ten seats per year out of the total number of intake capacity permitted for Kamile Tib o Jarahat (Bachelor of Unani Medicine and Surgery-B.U.M.S.) to main course through Pre-Tib course. Rest of the seats may be filled up by following the eligibility criteria mentioned at clause 2(a).



The Supreme Court's decision in case of *Mihir Abhijat Pathak & Ors. Vs. Medical Council of India & Anr.* (supra), indisputably relates to MBBS/BDS courses, which reiterated qualification of NEET to be compulsory qualification to the said courses. The admission in MBBS and BDS courses are regulated by the provisions of Indian Medical Council Act, 1956 and Rules and Regulations framed thereunder. In the light of the Supreme Court's decision requiring common entrance examination as compulsory for these courses, amendments have been incorporated in the Indian Medical Council Act, 1956 by incorporating Section 10D in 2016. Similar amendments have been made in the Dentists Act, 1948 by adding Section 10D therein. However, in respect of AYUSH (UG) Courses, no amendment has been introduced either in the Indian Medical Central Council Act, 1970 or under any Regulations requiring common entrance test, as contemplated under the Indian Medical Council Act, 1956 and the Dentists Act, 1948, to be compulsory for admission to these courses. The NEET is held for admission in MBBS and BDS courses in the light of the provisions under Section 10D of the Indian Medical Council Act, 1956 and Section 10D of the Dentists Act, 1948. In the absence of any amendment in the Act or the Regulations



governing admissions to AYUSG (UG) Courses, in my view the NEET qualification could not be thrust upon either the institutions or the candidates to be an essential qualification eligibility condition for admission.

This is also significant that in case of *Mihir Abhijat Pathak & Ors. Vs. Medical Council of India & Anr.* (supra), the Supreme Court, in the order dated 09.05.2016, noted the amendments introduced in the existing statutory Regulations to provide for a single National Eligibility-cum-Entrance Test for admission to MBBS/BDS Course, which was earlier struck down by the Supreme Court, in case of *Christian Medical College, Vellore v. Union of India*, reported in (2014) 2 SCC 305, which judgment was recalled subsequently by order dated 11.04.2016 of the Supreme Court in case of *Medical Council of India v. Christian Medical College, Vellore*, reported in (2016) 4 SCC 342.

I cannot lose sight of the fact that the provisions under Section 10A, 10B, 10C and Section 10A, 10B, 10C of the Indian Medical Council Act, 1956 and the Dentists Act, 1948 are almost identical. Similar provisions are there in Sections 13A, 13B and 13C of the Indian Medicine Central Council Act, 1970. Whereas, in 2016, 'Sections 10D' was introduced in



Indian Medical Council Act, 1956 and the Dentists Act, 1948, through Act 39 of 2016 and Act 40 of 2016 respectively with effect from 24.05.2016, no such amendment was made by the Parliament in the Indian Medicine Central Council Act, 1970. Relevant portion of Section 10D of both the enactments read thus :

“Section 10-D of Indian Medical Council Act, 1956

[10-D. Uniform entrance examination for undergraduate and postgraduate level. - There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

Section 10D of The Dentists Act, 1948

10D. Uniform entrance examination for undergraduate and post-graduate level. - There shall be conducted a uniform entrance examination to all dental educational institutions at the undergraduate level and post-graduate level



through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:”

It is in the light of the amendments introduced in the Indian Medical Council Act, 1956 and the Dentists Act, 1948 that uniform entrance examination in the form of NEET is held for all “Medical Educational Institutions” and all “Dental Educational Institutions” at under graduate level. The said amendments are in respect of medical courses and dental courses regulated by the Indian Medical Council Act, 1956 and the Dentists Act, 1948, and understandably, therefore, the test has been structured accordingly.

This makes me examine the scheme under the Regulations framed under the Indian Medicine Central Council Act, 1970, relevant portion of which has been brought on record by way of Annexure-1 to the writ application and has been reproduced in the foregoing paragraphs, which prescribes various qualifications as eligibility criteria for admission to Bachelor of Unani Medicine and Surgery Course. A question would arise as to whether NEET can be said to be structured for



admission to Bachelor of Unani Medicine and Surgery Course, which, *inter alia*, prescribes Pre-Tib examination of one year duration as one of the eligibility conditions. It also requires knowledge of a candidate of Urdu or Arabic or Persian language as a subject to be eligible for admission to the Course.

Oriental qualifications in Arabic Persian equivalent to Higher Secondary or Intermediate or 12th Standard for the purpose of admission to Pre-Tib course are given in the Regulations. The NEET on the other hand is held with Physics, Chemistry and Biology as subjects for admission to MBBS/BDS course. On careful comparison of the Regulations regulating admission to the Unani course and the information bulletin for NEET 2018, I am of the view that the NEET does not take into account the eligibility conditions of admission to Unani (UG) Courses and apparently not structured for admission to such courses.

The submissions advanced on behalf of the petitioners that the press communique was issued by the State Government after last date for application against the NEET was already over has also force since there was no occasion for the candidates to apply against NEET for admission to AYUSH (UG) Courses.

Further the Regulations provide admission through



entrance examinations conducted by the University or Board or registered Society or Associations authorised by the Government to conduct such examination.

In view of the discussions, as above, I am of the considered view that NEET could not be said to be compulsory for AYUSH (UG) Courses till necessary amendments are introduced in the Act and Regulations governing admission. The decision of the Union Government to provide NEET as compulsory for admission to AYUSH (UG) Courses, in my view, is unauthorised and contrary to the Regulations framed under Indian Medicine Central Council Act, 1970. Letter dated 12.02.2018 of the Central Government is accordingly set aside. The press communique dated 23.03.2018 issued by the State Government of Bihar (Annexure-11) is consequently not sustainable and is accordingly quashed.

After having held so, I must, however, note that the Course, which is being offered by the Colleges, i.e. Bachelor of Unani Medicine and Surgery Course, is undoubtedly a professional course. The institutions, therefore, cannot be allowed to admit students through a process, which is not fair and transparent and which does not promote merit and excellence to such courses. To curb malpractices, the Supreme



Court, in case of *Modern Dental College and Research Centre and Others vs. State of M.P.*, reported in (2016) 7 SCC 353, taking note of earlier decisions in case of *T.M.A. Pai Foundation v. State of Karnataka*, reported in (2002) 8 SCC 481, *Islamic Academy of Education v. State of Karnataka*, reported in (2003) 6 SCC 697, and *P.A. Inamdar v. State of Maharashtra*, reported in (2005) 6 SCC 537, has emphasized the need of common entrance test to be held for admission to professional courses. The common entrance test can be held either by the Central Government or the State Government or any other Agency/Association of Institutions, duly approved by the Central Government/State Government.

Accordingly, while allowing this writ application, it is observed that if the Central Government/State Government fail to organize any common entrance test for admission to the said course for Academic Session 2018-19, the Association of the Institutions, imparting course of Bachelor of Unani Medicine and Surgery, shall be at liberty arrange a combined entrance test for admission to such courses by adopting a fair and transparent procedure, giving merit and excellence utmost priority. Such combined entrance test so organized must have the approval of the State Government or the Central Government or even



Central Council of Indian Medicine.

It has been stated at the bar that some date in November is the last date for admission to the course in question. In that background, it is observed that parties should act with utmost expedition to meet the deadline for admission.

This application is allowed with the observations above.

(Chakradhari Sharan Singh, J)

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