

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 10665 OF 2018

Association of Management of Homeopathic]
Medical Colleges of Maharashtra, through its]
authorised signatory, Dr. Dhanji Govind Bagal]]
having office at Flat No.902, Vainganga]
Building, Worli Sagar Co-op. Housing Society]
Sir Pochkhanwala Road, Worli, Mumbai-25.]... Petitioner

Versus

1 The Union of India, Through the Director,]
Ministry of Ayurveda, Yoga & Naturopathy]
Unani, Siddha and Homeopathy (AYUSH)]
Ayush Bhavan, B-Block, GOP Complex,]
INA, New Delhi - 110 023.]

2 The State of Maharashtra, through the]
Secretary for Medical Education and Drugs]
Department, Mantralaya, Mumbai-400001]

3 The Competent Authority and The]
Commissionerate, State Common Entrance]
Test Cell, Maharashtra State, 8th Floor,]
New Excelsior Building, A.K. Nair Marg,]
Fort, Mumbai - 400 001.]

4 The Maharashtra University of Health]
Sciences, Through its Registrar, having]
office at Mhasrul, Vanio Dindori Road,]
Nashik - 422 004]...Respondents

WITH
CIVIL APPLICATION NO. 2441 OF 2018
IN
WRIT PETITION NO. 10665 OF 2018

Association of Managements of Homeopathic]
Medical Colleges of Maharashtra]...Applicant

Vs

1 The Union of India & Ors.]...Respondents

WITH
WRIT PETITION NO. 10666 OF 2018

Vinod Jagatbahadur Patel, age 19 years,]
Room No.8, Plot NO.125/127, Sarve No.192,]
Rukhamini Apartments, Ahilaybai Holkar]
Chowk, Shivajinagar, Nashik,]
Maharashtra - 422 012]... Petitioner

Versus

1 The Union of India, Through the Director,]
Ministry of Ayurveda, Yoga & Naturopathy]
Unani, Siddha and Homeopathy (AYUSH)]
Ayush Bhavan, B-Block, GOP Complex,]
INA, New Delhi - 110 023.]

2 The State of Maharashtra, through the]
Secretary for Medical Education and Drugs]
Department, Mantralaya, Mumbai-400001]

3 The Competent Authority and The]
Commissionerate, State Common Entrance]
Test Cell, Maharashtra State, 8th Floor,]
New Excelsior Building, A.K. Nair Marg,]
Fort, Mumbai - 400 001.]...Respondents

WITH
WRIT PETITION (ST) NO. 24833 OF 2018

1 Ms. Aiman Fatema Ishaque Shaikh]
Age 17 yeas, Occ: Student, (Minor u/g of her]
natural guardian, Mother) Mrs.Tarannum]
Anwar Inamdar, Age 42 years, Occ:]

- Homemaker R/o Flat No.3, Ayesha]
 Residency, Wadala Road, Opp. Nagji]
 Hospital, Mirzkar Nagar, Nashik-422001]
- 2 Miss Kashaf Shafeeqe Shaikh, Age 17 yrs;]
 Occ: Student, (Minor u/g of her natural]
 guardian, Mother Mrs. Shaheen Shafeeqe]
 Shaikh, Age: 51 years, Occ: Homemaker, R/o]
 Flat No.18, Sai Baba Darshan Apartment]
 Wadala Road, Behind Life Line Hospital,]
 Dwarka Corner, Nashik - 422 011]
- 3 Miss Shireesha Cheena Reddy, Age 18 yrs,]
 Occ: Student, R/o Bhisegaon (Post) Near Old]
 Bus Stand, Taluka-Karjat, District Raigad]
- 4 Miss Calista Ronald Lobo, Age 17 years,]
 Occ: Student, (Minor u/g of her natural]
 guardian, Father) Mr. Ronald Lobo, R/o.]
 Koli Samaj Bhuvan, 3/36, 79th Dr. Mesheri]
 Road, Dongri, Mumbai 400 009.]... Petitioners

Versus

- 1 The Union of India, Through the Director,]
 Ministry of Ayurveda, Yoga & Naturopathy]
 Unani, Siddha and Homeopathy (AYUSH)]
 Ayush Bhavan, B-Block, GOP Complex,]
 INA, New Delhi - 110 023.]
- 2 The State of Maharashtra, through the]
 Secretary for Medical Education and Drugs]
 Department, Mantralaya, Mumbai-400001]
- 3 The Competent Authority and The]
 Commissionerate, State Common Entrance]
 Test Cell, Maharashtra State, 8th Floor,]
 New Excelsior Building, A.K. Nair Marg,]
 Fort, Mumbai - 400 001.]... Respondents

Mr. Vijay M. Thorat with Ms. Pooja Thorat, Mr. Anukul B. Seth and Mr. Aditya Bhagat i/b Saliya Kalaimangal Mogili for the Petitioner in WP No.10665 of 2018 and for the Applicant in CAW 2441 of 2018.

Mr. S.B. Kalel, AGP, for the Respondent-State in WP No. 10665/ 2018 and WP (St) No.24833/2018.

Mrs. S.D. Vyas, 'B' Panel Counsel for the State in WP No. 10666 of 2018.

Mr. Mandar Limaye with Ms. Geetika Gandhi for Respondent No.1 in WP No.10665/2018 and WP (St) No.124388 of 2018.

Mr. S.S. Patwardhan for the CET Cell.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

TUESDAY, 04TH DECEMBER, 2018

ORAL JUDGMENT : [Per S.C. Dharmadhikari, J.]

1 Since a short point arises for consideration in these petitions under Article 226 of the Constitution of India and which can be conveniently disposed of by a common order, we issue Rule in each of these petitions. The respondents to these petitions waive service. With the consent of both sides, these writ petitions are disposed of finally.

2 The common issue that arises in these petitions pertains to the applicability of a stipulation and to be found in the Government of Maharashtra's communication dated 15th June, 2018, where the competent authority and Commissioner of State Common Entrance Test Cell informed all concerned that candidates who are interested in the Health Science Courses, particularly in Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathic Courses (for short "AYUSH") that the Ministry at New Delhi by its letter dated 11th July, 2018 has changed the National-Eligibility-cum-Entrance-Test (NEET) - Undergraduate (UG) - 2018 eligibility criteria. Now, the eligibility criteria mentioned in the Information Brochure of this NEET UG - 2018 of preference system for admission to Health Science Courses in the State reads as under :

"NOTICE

NEET UG - 2018

*Admission Process for Health Science Courses
(for AYUSH courses)*

It is hereby notify that all candidates who are interested in AYUSH courses i.e. BAMS, BHMS and BUMS courses that Ministry of AYUSH, New Delhi vide their letter

No.F No.R-13040/33/2016-HD (Tech) Part, dated 11-6-2018 has changed the NEET – UG – 2018 eligibility criteria. Hence the eligibility criteria mentioned in the Information Brochure NEET UG – 2018 of Preference System for admission to Health Science Courses in State as per following-

<i>Previous Rule</i>	<i>Changed / Updated Rule to read as under</i>
Rule No.4.10 - NEET UG marks for admission to BAMS/BHMS/BUMS : A candidate will be selected on the basis of merit in NEET UG-2018 to above stated courses	Rule No.4.10 - NEET UG marks for admission to BAMS/BHMS/BUMS : A candidate must secure following marks to above stated courses: (1) Candidate belonging to OPEN category must secure not less than 50 percentile marks in NEET UG-2018 (2) Candidates belonging to CONSTITUTIONAL RESERVATION category must secure not less than 40 percentile marks in NEET UG-2018. (3) Candidates belonging to CONSTITUTIONAL RESERVATION category with Person with Disability claim must secure not less than 40 percentile marks in NEET UG-2018. (4) Candidates belonging to OPEN category with Person with Disability claim must secure not less than 45 percentile marks in NEET UG-2018.

3 Now, the criteria mentioned in amended Rule 4.10(1) above is modified as under :

*“F.No. R-13040/33/2016-HD (Tech) Part
Government of India
Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and
Homoeopathy (AYUSH)*

*AYUSH BHAWAN,
‘B’ Block, GPO Complex,
New – 110 023
Dated : 01.11.2018*

*To,
All State Authorities
(As enclosed)*

*Sub: Admission in Under Graduate degree Courses in
ASU&H College-reg.*

Sir/Madam,

In continuation to this Ministry’s letter of even number dated 11.06.2018, it is further clarified that the Ministry has received various representations stating that seats are lying vacant due to less number of qualified students in the NEET-2018.

1 In this regard, the matter regarding qualifying criteria has been examined by the Ministry and decided in order to be eligible for admission, it shall be necessary for a candidate to obtain minimum marks at 35th percentile in NEET-2018. However, in respect of candidates belonging to Scheduled castes, Scheduled tribes, Other Backward castes, the minimum marks shall be at 25th percentile. In respect of the candidates with bench marked Disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 30th percentile for General Category candidates and 25th percentile for SC/ST/OBC candidates.

3. This clarification is applicable only for Academic Year 2018-19.

4. This issue with the approval of the competent authority.

*Yours faithfully,
Sd/-
(Dr. Shashi Ranjan Kumar Vidyarthi)
Director”*

4 Whether this change / updated criteria applies to admission process for the current Academic Year 2018-19 is, therefore, the core question. The ancillary question is really not pressed, but that is whether the regime of NEET UG-2018 applies to AYUSH courses, though they are termed as Health Science courses, would also have to be determined. Finally, the other issue arising and from the core issue is whether the communication of 11th June, 2018 / 15th June, 2018, is issued in exercise of the executive power and whether such power can be resorted to by the executive so as to amend the Rules in existence and applied for the examination / admission process. The argument is that such executive fiat cannot be issued to amend the existing Rules and that the existing Rules and Regulations, which are statutory in flavour and character, would have to be amended only in the manner provided by the statute and not otherwise.

5 We will take the facts from Writ Petition No.10665 of 2018 as they are common in all Writ Petitions.

6 This is a Writ Petition by the Association of Managements of Homoeopathic Medical Colleges of Maharashtra. It claims to be an Association registered under the Societies Registration Act, 1860.

7 The first respondent to this writ petition is the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (for brevity's sake referred to as "Ministry of AYUSH"). The second respondent to this writ petition is the State of Maharashtra through the Secretary, Department of Medical Education and Drugs and the third respondent is the competent authority and Commissioner, State Common Entrance Test Cell which Cell was established so as to effectively and smoothly implement the policy of conducting a National level test so as to admit students to the Health Science courses. The fourth respondent is the Maharashtra University of Health Sciences, a University which grants affiliation to colleges imparting education in Health Sciences and also approved their academic courses and studies.

8 The writ petition proceeds on the footing that the Bachelor of Homoeopathic Medicine Science is the course in question. The member colleges of the petitioner-Association were ready and willing to admit students in terms of the Information Brochure published on 5th February, 2018, by the second respondent. It is stated that this Brochure is in tune with the provisions of the Regulations, copy of which is annexed to the petition at Exhibit-A styled as The Homoeopathy B.H.M.S. (Degree Course) Regulations, 1983. These Regulations are published after they have been made by the Central Council of Homoeopathy. This power to frame Regulations flows from the statute and that is already in the field. That statute is The Homoeopathy Central Council Act, 1973 (for short “HCC Act”). However, by a communication dated 15th June, 2018, of the third respondent, this admission process is adversely affected.

9 The impugned communication is already referred by us and relevant portion thereof is reproduced hereinabove. According to the petitioner-Management, by such a change affected and mid-way, the colleges are facing a

situation of wastage of seats. In other words, lot of seats would remain vacant. This serves no purpose and the larger public interest is affected adversely because the infrastructure and other facilities set up would be unutilised and would remain idle. The State Government now says and abruptly that the admission process is over by 15th November, 2018 and the seats which are lying vacant would not be allowed to be filled in. The result is that in the Academic Year 2018-19 (current Academic Year) around 1,77,358 candidates appeared for the NEET and out of that only 70184 candidates were qualified to take admissions into Health Science courses in the State of Maharashtra. It appears that only 59594 candidates registered with the third respondent within the prescribed online admission process time limits. The seats, accordingly, would remain unfilled.

10 The writ petition says that respondent No.3 has referred to clause 4.10 of the Information Brochure by loosely terming it as 'Rule'. In the past three Academic Years from 2014-15 to 2017-18, the admission to

Undergraduate BHMS and PG MD courses in Homoeopathy have been unduly delayed in all the Homoeopathic colleges in the entire country. This is because of the non adherence to the Schedule of grant of permissions / renewals. It is only when the permissions / renewals are granted to the existing colleges that more seats become available and the process is delayed not because of the fault of the colleges or Managements, then, these institutions qualify for the additional seats only when their names and details are included in the on-going admission process. The last date in that regard is 31st May, 2018, but new permissions are granted even thereafter by the first respondent necessitating extension of cut-off dates followed by grant of affiliation by the respondent No.4 and finally the Common Admission Process round for allotment of those news seats to aspiring students. After these hurdles and obstacles are crossed, now the situation is further complicated and compounded on account of the change in the Rules. After setting out the details of the admission process carried out for earlier Academic Years and the adverse effect on the institutions imparting education in Homoeopathy Degree

courses, it is stated that 612 seats remained vacant during the last Academic Year 2017-18. The situation is more grim. It is stated that the online admission process for Health Science courses was notified in terms of the Information Brochure that is dated 6th June, 2018 and is spread over two terms, namely from 1st August, 2018 to 31st January, 2019 and from 1st February, 2019 to 31st July, 2019. The admission process was already set in motion by the fourth respondent University by a Circular dated 5th July, 2018. After highlighting the position of vacant seats, it is stated that the process commenced by way of the Rules or stipulations in the Information Brochure. After inviting our attention to that Brochure and particularly its entire copy at Exhibit-B to the petition, it is alleged that though the NEET can be taken as a basis for admitting students to all Health Science courses and assuming that to be the legal position, but the eligibility criteria for admission to Health Science Degree courses is not uniform and identical. The Information Brochure makes a distinction between the eligibility criteria for MBBS / BDS courses and BAMS and BUMS courses. Though the eligibility criteria of qualifying examination to

various courses is that a candidate belonging to open category must have obtained not less than fifty per cent marks in Physics Chemistry and Biology subjects taken together at the HSC or equivalent examination and which category is relaxed for reserved category students, still, clause 4.6.1.3 says that for the subject course, namely, Bachelors Degree in Homoeopathic Medical Science, clause 4.6.1.1 is not applicable. Passing grade at HSC / 12th Standard or equivalent is, however, necessary. Thus, the argument is that one may qualify and be taken to be eligible for admission to BHMS course provided one is through in the HSC / 12th Standard examination with passing grade. Even if passing of equivalent examination is necessary, there is no condition attached to such passing and namely of obtaining minimum 50 percent marks in Physics Chemistry & Biology. Our attention has also been invited to the stipulation in clause / Rule 4.9 which says that a candidate belonging to open category must secure not less than fifty percentile marks in Physics, Chemistry and Biology taken together at the NEET UG – 2018. Though the NEET marks for admission to BHMS and similar Health Science courses would be

required for selection on the basis of merit, but there is no criteria attached of this fifty percentile marks in the above subjects. That is taken to be restricted to admission to MBBS and BDS courses.

11 The argument is that much after this Information Brochure was published, the State of Maharashtra and the respondent Nos.2 and 3 sought to introduce the change in clause 4.10.

12 Our attention is invited to clause 4.10 as it stood prior to the change and thereafter. We have reproduced the unchanged and changed clauses for ready reference herein above. It is this change brought about by the first respondent on 11th June, 2018 and applied by the respondent Nos.2 and 3 to the current / ongoing admission process for 2018-19 which is under challenge in this writ petition under Article 226 of the Constitution of India.

13 Mr. V.M. Thorat, learned counsel appearing on behalf of the petitioners would submit that the entire field of

Homeopathic Medical Science is occupied by the law in field. That law is The Homoeopathic Central Council Act, 1973 (for short “HCC Act”). It is also occupied by the Regulations framed under the power conferred by clauses (i), (j) and (k) of section 33 and sub-section (1) of section 20 of the HCC Act. These Regulations are known as The Homeopathic (Degree Course) Regulations, 1983 (for short “The 1983 Regulations”). Mr. Thorat would submit that unless and until there was any stipulation therein to apply a Common Admission Process for admissions to these Bachelor Degree courses in Homoeopathic medicine, the respondents could not have taken the NEET as the basis for admission to this degree course in various colleges in the State of Maharashtra. Ordinarily, the students who pass 12th Standard examination with passing marks and without any mandate to appear for a Common Entrance Test or participate in a Common Admission Process, were eligible to be admitted to this Degree course. However, the first respondent decided to introduce a Common Admission Process for admissions to Bachelor’s Degree course in Homoeopathic medicine. For that, it also took assistance

and help of a Common Entrance Test. This CET was held across the country and is styled as the NEET. The NEET was held for Undergraduate courses and now the requirement is that the position or ranking in the merit list of this NEET would be the basis for admitting students. So far so good. Assuming that NEET could have been taken to be the basis for admitting students, still, the NEET Regulations itself made the distinction between several Health Science courses. They were not on par with each other. A degree styled as MBBS (Medicine) which is allopathic medicine and a degree in dental sciences is distinguished from a degree which will be required to be obtained for qualifying as a degree in Ayurvedic Medical Science and Homoeopathic Science and similar is the position with regard to Unani, Yoga and Naturopathy. These are taken to be alternate therapies or alternate methods to diagnose and treat the ailments. They are distinct from Allopathic medicine. In the circumstances, the only requirement was to obtain a rank in the merit list of NEET. There was no requirement of having cleared the NEET with a fifty percentile and particularly in the subjects of Physics Chemistry and Biology. Now, not only

that is introduced, but the percentile of fifty percent is also applied and that brings on par these two distinct courses and which have no similarity with each other.

14 Mr. Thorat would, therefore, submit that the field was already occupied by the statute and the statutory Regulations. By an executive fiat, NEET is introduced and applied and now the changes brought about in the whole scheme and mid-way by the first respondent are introduced and applied to the on-going process by the respondent Nos.2 and 3 and that too by an executive fiat. His submission, therefore, is no executive fiat contrary to the statutory provisions and regulations can survive. Alternatively and without prejudice, if the executive fiat survives, still, the Rules cannot be amended after the admission process has begun. Further, assuming that there is a power to amend the Rules in the current Academic session and after the admission process has begun, still, the changes or modifications brought about after the Common Admission Process has commenced should not be applied to the ongoing process. If, as pointed out in the Civil Application in this

Writ Petition, the on-going admission process has commenced as early as in February, 2018, then, applying the changes or modifications to the on-going admission process violates the mandate of Article 14 of the Constitution of India.

15 Mr. Thorat submits that by the Civil Application, some glaring facts are pointed out. Though no interim order has been passed in this petition after it was filed, the admission process commenced in the first week of September in or at this unaided medical colleges in Maharashtra. Due to implementation of the qualifying criteria of NEET examination particularly a fifty percentile, most of the seats in private Homoeopathic colleges have remained vacant. There are 3975 seats available in 51 private medical colleges in Maharashtra. From the said 3975 seats, there is a vacancy of approximately more than one thousand seats in all private unaided Homoeopathic colleges across the State. For all these reasons, Mr. Thorat would submit that the prayers in the writ petition be granted.

16 Mr. Thorat's further argument is that the first respondent to this writ petition had adopted an inconsistent stand. In this Court, it is opposing the grant of any reliefs to the writ petitioners. However, in other States and particularly in the State of Bihar and Uttar Pradesh, it has accepted the orders and directions of the Patna High Court and the Allahabad High Court. In fact, the Patna High Court has gone to the extent of declaring that NEET cannot be the basis for granting admissions to the Bachelor's degree course in Homoeopathic medical sciences. That final order of the Patna High Court is accepted by the first respondent. It has not been challenged in the higher court. Similar is the direction with some marginal difference of the Allahabad High Court. There are various High Courts in the country which have followed the Patna High Court's verdict and granted interim and ad-interim protection to the students and the Managements of private unaided Homoeopathic colleges in those States. The first respondent, therefore, must indicate to this Court as to how while accepting the verdict of these High Courts, it takes a contrary position

before this Court. Merely because the Principal Seat of this Court and its Benches have refused interim reliefs in such petitions does not mean that this flip-flop of the first respondent should be permitted. It means before other High Courts it has accepted the position that these changes or modifications have been introduced mid-way and they cannot be applied to the on-going admission process for the Academic Year 2018-19. It can thus apply prospectively. This stand is directly opposite to what is being argued before us throughout and that is that the changes or modifications are merely clarificatory in nature. The impugned communications makes explicit what is already implicit in the various stipulations governing the admission process. This stand, therefore, should not be sustained by this Court and it should ask categorically a question to this first respondent as to how it adopts such a stand in the teeth of its contrary posture before the other High Courts. Now the result is that though the admission process has been frozen in Maharashtra on 15th November, 2018, in other States the admission process stands extended and the cut-off date is now stipulated to be of 31st December, 2018 in some States.

Therefore, this Court should grant the necessary declaration and allow these petitions accordingly.

17 Mr. Thorat has contended that the challenge is to these aforesaid actions of the first respondent and the consequent steps taken by respondent Nos.2 and 3. In this, not only will the seats remain vacant, but the students in the companion petitions would be deprived of an opportunity to admit themselves to these courses and to the vacant seats, though they are fully eligible.

18 Hence the common submission of Mr. Thorat is that the change in the stipulation should not be applied to the on-going admission process and it should be allowed to be concluded on the basis of the Information Brochure as notified prior to the changes made therein.

19 In support of his arguments, Mr. Thorat has placed heavy reliance upon the judgment of the Hon'ble Supreme Court in the case of *Sant Ram Sharma vs. State of Rajasthan & Ors.*, reported in *AIR 1967 SC 1910*, the order

dated 10th October, 2018 of the High Court of Judicature at Patna in Civil Writ Case No. 16541 of 2018, the common order that is passed by the Allahabad High Court in several writ petitions dated 11th October, 2018, and the order dated 24th October, 2018, passed by the Hon'ble High Court of Judicature at Rajasthan at Jodhpur in S.B. Civil Writ No.16430 of 2018. He has also placed reliance upon the several orders of other High Courts.

20 Apart from that, our attention is being invited to the Regulation, copy of which is at Exhibit-A to the petition and the HCC Act in support of these contentions.

21 On the other hand, Mr. Limaye appearing on behalf of the first respondent submitted that without any affidavit and on the admitted factual and legal position, the writ petitions deserve to be dismissed. Mr. Limaye submits that there is absolutely no substance in the contentions of Mr. Thorat that sweeping changes have been brought in the clauses after the admission process has begun. Mr. Limaye would submit that the challenge is belated. It has been

raised by those colleges who could not obtain the students from the common merit list. After the respective cut-off dates notified in the States have come to an end, the position of vacant seats in Maharashtra is not as projected, but only ten per cent. Apart therefrom, the change notified is only clarificatory in nature. Our attention has been invited to several communications of the AYUSH which clearly indicate that NEET has now been applied for admitting students. Mr. Limaye argued that once the selection of the students is merit-based, then, the merit cannot be diluted or sacrificed by admitting students who do not fulfill the eligibility criteria. Mr. Limaye submits that eventually this is a Health Science course. As was orally argued by Mr. Thorat, BHMS and BAMS doctor is posted either at Rural Health Centres or Primary Health Centres and he takes care of the Public Health Schemes introduced by the State Government. He is the doctor to whom all the patients from Rural area and particularly those below poverty line access in cases of ailments and diseases. Therefore, there is a risk in not admitting to these courses meritorious, but less qualified students. Eventually mediocracy and merit cannot

go together. Once merit is sought to be diluted by undue insistence on the Rules / stipulations in the Information Brochure, then, all the more we should reject these petitions is his submission.

22 Mr. Limaye and the learned AGPs appearing for the respondent Nos.2 and 3 have invited our attention to the Health Science Information Brochure and to urge that a qualifying examination is similar, namely, the HSC / 12th Standard. The eligibility criteria of qualifying examination for various courses is one stipulation and Rule 4.1.1.1 says that for MBBS/BDS/BAMS/BUMS, a candidate belonging to the open category must have obtained not less than fifty percent marks in Physics Chemistry and Biology taken together at the HSC or equivalent examination. There may be a relaxation in terms of Rule 4.6.1.3 which says that for BHMS course, the earlier clause 4.6.1.1 is not applicable, still, passing grade at HSC / 12th Standard examination or equivalent is necessary, but that is not decisive or conclusive. It is now an admitted position that all the students have appeared for a merit-based National-Eligibility

-cum-Entrance Test. They have already been made aware that their ranking in the merit list alone would entitle them to seek admission to BHMS course. Eventually this is a Health Science course and all Health Science courses have been brought under one umbrella as far as admissions are concerned. A Common Admission Process and a Common Entrance Test was held. Once NEET UG – 2018 eligible for admission to MBBS and BDS courses is also the basis for admission to BHMS course, then, merely because the candidate belonging to open category is not required to secure fifty percentile marks in Physics Chemistry and Biology taken together at NEET UG-2018 as notified earlier would not mean that the selection is not merit-based. In that regard, our attention is invited to Rule 4.10 which says that a candidate will be selected on the basis of merit in the NEET and even to BAMS and BHMS courses. Earlier, BAMS and BUMS were brought on par with MBBS and BDS courses. BHMS was not included. Thus, dissimilar or distinct courses have been grouped and brought under one umbrella, namely, Health Science courses. A further clarification or distinction cannot be, therefore, pressed into service to urge that in

merit-based selection, there cannot be introduction of a percentile marks requirement. According to Mr. Limaye when the NEET Brochure was published by the Central Board for Secondary Education (for short “CBSE”), it was already indicated to all concerned that the National-Eligibility-cum-Entrance Test can be taken assistance of so as to admit students to other Health Science courses. The use of any Entrance Test result by other organisations is permitted expressly. Further, while the instructions were issued for the NEET UG-2018 in Chapter VI of the Brochure in that behalf which was published and brought to the knowledge of all concerned by the CBSE, it has been stated that the eligibility criteria for admission to MBBS/BDS courses for a particular Academic Year may necessitate a candidate to obtain minimum of marks at fifty percentile in NEET. It is in these circumstances that fifty percentile was a requirement already known to all concerned. That is not introduced mid-way, but all the States were earlier informed to introduce and apply it to the on-going admission process. In that regard, Mr. Limaye places reliance upon the communications of 12th February, 2018, 21st February, 2018,

5th June, 2018 and 11th June, 2018. He says that on 1st November, 2018, the fifty percentile requirement is relaxed to thirty five percent taking into consideration the representation with regard to the vacant seats due to less number of qualified students in NEET UG-2018. Thus, there are relaxations and concessions already given. None can claim a vested right, much less a fundamental right to such concessions and relaxations. Hence, there is no merit in these writ petitions and they deserve to be dismissed.

23 Mr. Limaye's contentions are adopted by the other advocates appearing for the respondents.

24 For properly appreciating the rival contentions it must at once be clarified that here we are are concerned with the Bachelor's Degree in Homoeopathic medicine. The HCC Act, 1973 is an Act to provide for a constitution of a Central Council for Homoeopathy and for maintenance of a Central Register of Homoeopathy and for matters connected therewith.

25 After the short title, extent and commencement indicated in section 1 falling under Chapter I titled as ‘Preliminary’, we have several definitions and relevant amongst that is the definition of the terms ‘Board’, ‘Homoeopathy’, ‘medical institution’, ‘prescribed’ and ‘recognised medical qualification’. Thus, section 2 clauses (a), (d), (e), (f) and (g) read as under :

(a) “Board” means a Board, Council, Examining Body or Faculty of Homoeopathy (by whatever name called) constituted by the State Government under any law for the time being in force regulating the award of medical qualifications in, and registration of practitioners of, Homoeopathy;

... ..

(d) “Homeopathy” means the Homeopathic system of medicine and includes the use of Biochemic remedies;

(e) “medical institution” means any institution within or without India which grants degrees, diplomas or licences in Homoeopathy;

(f) “prescribed” means prescribed by regulations;

(g) “recognised medical qualification” means any of the medical qualifications, in Homoeopathy, included in the Second or the Third Schedule;”

26 Then appears Chapter II which provides for the Central Council and its Committees. Chapter II inserts section 12A providing for permission for establishment of new medical institution, new course of study etc. Chapter III is important for our purpose and that is titled 'Recognition of Medical Qualifications'. The said Chapter contains sections 13 to 16 and in clearest terms they provide for a qualification to be obtained after clearance of an examination. That qualification is set out in the Schedule. The admission to such qualification or the courses of study and examination to be undergone or the proficiency required from candidates at any examination held by any University, Board or Medical Institution can be withdrawn and equally the Medical Institution or colleges need a recognition and this recognition can be withdrawn. The minimum standards of education in Homoeopathy are set out in section 20 and thereafter falls Chapter IV which is titled as 'The Central Register of Homoeopathy'.

27 The power to make Regulations is conferred in

the Central Council which, with the previous sanction of the Central Government, may make, by Notification in the Official Gazette, Regulations generally to carry out the purpose of the Act and the Regulations can include and may provide for matters which are highlighted in various clauses of sub-section (1) of section 33. The important amongst them are clauses (i), (j) and (k).

28 It is evident therefrom that there is power to make regulations and which regulations are made in exercise of this statutory power and notified accordingly. A copy of these Regulations is at Exhibit-A to the petition and from the Regulations themselves, we can cull out that the definitions therein of the terms 'courses', 'diploma', 'degree', 'syllabus and curriculum' would require the Central Council to apply its mind while recognising the degrees and diplomas as qualifications making a person obtaining them eligible to commence practice in Homoeopathic medicine. There is a Diploma in Homoeopathic Medicine & Surgery and there is a Bachelor's degree in Homoeopathic Medicine & Surgery. The Regulation is divided into two Parts and Part II is titled

‘Course of Study’. The degree course of BHMS shall comprise of a study consisting of curriculum and syllabus provided in these Regulations for a period of five and half years, including compulsory internship of one year duration after passing the Final Degree Examination. It is only on successful completion of internship and on the recommendation of the Principal of the Homoeopathic College concerned, that the concerned University shall issue the degree to such candidate. Every candidate shall complete the course, including the passing of examination in all subjects and the compulsory internship training within a period of eleven years from the date of admission in First B.H.M.S. Degree Course in the college concerned, failing which, their name shall be removed from the rolls of the college.

29 Part III is titled as ‘Admission to Course’ and it is evident that the eligibility criteria does not rule out admission of students to the courses by compelling them to undergo a Common Entrance Test at National level. A Common Admission Process and a Common Entrance Test is

thus not ruled out. Ultimately, it is a Health Science course. There cannot be any compromise with the merit of a candidate and the common perception that one who does not qualify for Allopathic medicine or as a doctor in Allopathy can always choose this Branch of Health Science or Medical Science is misconceived. Eventually, merit is required to qualify as a doctor in both Allopathy and Homoeopathy. There is no question of dilution of merit and the best amongst the students should be selected. Regulation 4A says that the criteria for selection of students shall be based solely on merit of the candidate and for determination of merit, the criteria adopted uniformly throughout the country can be as set out in Regulation 4A. Then Part IV sets out the curriculum and with the subjects. The curriculum and the subjects would show that there is a commonality insofar as the subjects which are required to be cleared for obtaining this degree as also the MBBS degree. Medicine and surgery is thus the common subject together with others and with their peculiarities. The examination is equally tough and theory and practicals are both given due importance and place. The authorities empowered to

conduct the examination are the Universities and, therefore, we have not found anything which would enable us to conclude that this branch of Medicine is easier or less tough regime. AYUSH now is taken to be the sole body to prescribe studies and award degrees in alternate medicine. It is an alternate to Allopathy but nonetheless is a Science course. It is extremely popular. These are our traditional sciences and which empower those who have studied and practiced it to treat the patients. Therefore, Yoga and Naturopathy and Homoeopathy are taken to be alternate modes of treating diseases and ailments, even serious but prevalent throughout the world.. We have a pattern emerging in the recent years and of people visiting India for medical treatment. They come from all over the world. Besides being cost-friendly, this system of medicine is equally effective in treating serious ailments and life style diseases. The life style diseases are to be found in various parts of the world. They have a intimate connection with the prevalent busy life style.

30 The Government of Maharashtra, therefore,

notified in its Information Brochure, a preference system for admission to Health Science courses in State Government / Corporations / Private and Minority Colleges. The degrees are also set out in the Information Brochure, copy of which is at Exhibit-B to the petition. The Schedule for admission to Health Science courses is notified. It is evident that there shall a solitary Eligibility-cum-Entrance Examination, namely, National Eligibility-cum-Entrance Test for admission to all Health Science courses for Academic Year 2018-19.

31 With greatest respect and pausing here for a moment, had the attention of the Hon'ble Single Judge of the Patna High Court been invited to not only the HCC Act, the Regulations, but the stipulations in place for holding of NEET, possibly he would not have arrived at the conclusion that NEET is ruled out in its application to admissions to the Health Science courses other than MBBS and BDS. With greatest respect to the learned single Judge, his attention was neither invited to the Act and the Regulations, nor to the notified CBSE programme for the NEET UG-18. Once the attention was not invited to all these materials, then, we do

not think that the judgment of the Patna High Court would persuade us to take a view taken by that High Court as also some other High Courts. Those High Courts may have passed merely interim orders, but we do not think that the view taken by the Patna High Court and other High Courts, following the Patna view, disentitles AYUSH – respondent No.1 before us to urge that NEET cannot be the basis for admission to Health Science courses. We do not find any principle of law which would enable AYUSH to argue otherwise before us. We do not think that the first contention of Mr. Thorat has any merit.

32 Continuing our reference to the Information Brochure at Exhibit-B, we find that the various stipulations in terms of the clauses would qualify a student or a candidate for admission to Health Science courses for a particular Academic Year, only by obtaining minimum marks at the NEET. He has to clear it besides obtaining minimum marks at the qualifying examinations as prescribed by the respective Central Council. Thereafter, it is clear that no candidate who has failed to obtain the

minimum eligibility marks as prescribed by the Medical Council of India / Dental Council of India shall be admitted to MBBS/BDS courses in the said Academic Year. The stipulation and as clear as it can be is that all admissions to Health Science courses within the respective categories shall be based solely on the marks obtained in the NEET. The CBSE shall be the organisation to conduct NEET for admission to MBBS/BDS courses and besides MBBS and BDS courses, the admission to other Health Science courses will also be on the basis of the merit list of NEET UG-2018. It is, therefore, clear that there is a single umbrella under which all these courses have been brought and for the purpose of ensuring a fair, transparent and open competition. Apart from providing for constitutional reservations, there are no relaxations and concessions which can be claimed. There are some other reservations, but strictly not within the parameters of the constitutional regime and yet demanded by local conditions. Save and except that, the merit list for the State quota of Maharashtra is drawn from the success at this NEET. Even the definitions amplify this aspect for there is a reference to not only courses in medicine and dental

surgery, but to the MUHS and which is a single University for Health Science courses. That is respondent No.4 before us. The NEET means an examination conducted by the CBSE Delhi, for admission to Undergraduate medical and dental course and which test can be utilised as a basis for admitting students. The merit list thereof can thus be employed for selecting eligible, competent and meritorious students. That is how eligibility for admission to Health Science Degree courses is the broad title of clause 4. Once we find that there are common stipulations and requiring a student to pass the qualifying examination, namely, 12th Standard, then, what the argument of Mr. Thorat overlooks is that for MBBS/BDS course the percentile in the qualifying examination marks and in the subjects Physics, Chemistry and Biology is in place and coupled with this an eligibility criteria applied for BAMS and BUMS. Surely, Ayurvedic Medical Science and Unani Medical Science is within the competence of the Ministry of AYUSH. Thus, a common nomenclature is brought within the power of superintendence and control of the first respondent before us. It is very clear that initially for BHMS, clause 4.6.1.1 was not applicable but passing the

12th Standard or equivalent was still necessary. In this context, one can usefully refer to the Regulations of 1983 under the HCC Act. Regulation 4 appearing in the Part III titled “Admission to Course” reads as under :

“Admission to Course

4. *Eligibility criteria.- (i) No candidate shall be admitted to B.H.M.S. Degree Course unless he has passed -*

(a) the higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of twelve years’ study, the last two years of study comp[ri]sing of Physics, Chemistry, Biology with Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on Education;

or

(b) the intermediate examination in science of an Indian University or Board or other recognised examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject;

or

(c) the pre-professional or pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent Examination, which shall include a practical test in Physics, Chemistry and Biology and also English as a compulsory subject;

or

(d) the first year of the three years’ degree course of a recognised University, with Physics, Chemistry and Biology including a practical test in these subjects provided the examination is a University Examination and candidate has passed 10+2 with English at a level not less than a core course;

or

(e) any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University or Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English as a compulsory subject.

(ii) No candidate shall be admitted to B.H.M.S. Degree Course unless he has attained the age of 17 years' on or before 31st December of the year of his admission to the first year of the course.

(iii) No candidate shall be admitted to B.H.M.S. Degree Course if he is blind (including colour blindness) deaf, dumb, deaf and dumb.

4A. Criteria for selection of students.- (i) The selection of students to the college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country, namely:-

(a) In States, having only one Medical College and one University or examining body conducting the competitive examination, marks obtained at such qualifying examination shall be taken into consideration.

(b) In States, having more than one University or examining body, conducting the competitive examination or where there is more than one medical college under the administrative control of one authority, a competitive examination shall be held so as to achieve a uniform evaluation.

(c) Where there are more than one college in a State and only one University or examining Board conducting the competitive examination, then a joint selection board consisting of the Principals of all the colleges and a representative from the faculty of University or examining Body, as the case may be, shall be constituted by the State Government for all colleges to achieve a uniform method of competitive examination.

(d) *The Central Government itself or any other agency notified by it shall conduct a competitive examination in the case of institution of an all India character.*

(ii) *A candidate shall be eligible for the competitive examination if he has passed any of the qualifying examination specified under regulation 4.*

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive examination and in case of selection for admission to the B.H.M.S. Degree Course, he shall not be admitted to that course until he fulfills the eligibility criteria under regulation 4.”

33 A bare perusal of the same would reveal that only those candidates clearing 12th Standard exams with Science and Mathematics subjects are eligible. This a common factor applicable to all Health Science courses. However, the further clauses of the Brochure would make it apparent that there is an introduction, besides the marks in the qualifying examination, of a percentile marks in Physics Chemistry and Biology taken together at NEET UG-2018. At the same time, in merit-based selection, no candidate outside NEET could have been admitted to even BAMS, BHMS and BUMS courses. The candidate will be selected on the basis of merit in this test.

34 If the criteria is merit based selection, then, we do not see how AYUSH was barred from introducing a requirement of percentile. That is not even the argument of Mr. Thorat. Pertinently Mr. Thorat has not argued by taking an extreme position. He does not say that NEET should not be prescribed for seeking admission nor can it be termed as a necessary eligibility criteria for admission to BHMS Course. He does not argue that prescribing a percentile is not within the ambit and scope of the powers conferred on the Central Council by the HCC Act and the Regulations. He would urge that percentile can be prescribed, but having prescribed it after the admission process has commenced has caused prejudice and resulted in injustice.

35 In dealing with this argument we must at once bring to the notice of the petitioners in all these petitions that the Information Brochure at Exhibit-B has been published and it enlists at running page 21, the Schedule as prescribed in the amended Notification of Medical Council of India, New Delhi, dated 5th February, 2018. The process as per the Schedule was to commence by the first week of

June, 1 2018 and thereafter the online registration / application form would be published. A provisional merit list was also to be published later on. The declaration of the list of selected candidates of the first round is dated 5th July, 2018.

36 Now, for the Health Science courses we expected the petitioners to inform this Court categorically as to when the admission process commences and when the same comes to an end.

37 Even if it is stated to be inconclusive insofar as the completion date is concerned, still, the petitioners could have indicated the date of commencement of the process and in terms of the Schedule for MBBS / BDS courses. If, on par with this Schedule, the list of selected candidates were to be displayed in July, 2018, then, the argument that mid-way or after the admission process commenced, the change or modification has been made would fall to the ground. Here, it is stated that the Ministry of AYUSH, New Delhi, changed the NEET eligibility criteria on 11th June, 2018. Pertinently,

the writ petition is silent about the Schedule by which the admission process was to be set in motion and the tentative date of its conclusion. In the Regulations as well, there is a broad indication, but with no specific details.

38 We find that a reference is made to a complaint of a student who says that he is 17 years of age. He completed his 12th in Science with sixty per cent in Physics Chemistry and Biology and he appeared for the NEET examination on 6th May, 2018. The complaint made on 27th August, 2018, is that it is not mentioned that to get admission he has to obtain a score of 119 marks. Now, how does one rely on this communication for it is conspicuous by its silence with regard to all the details that are necessary to build an argument of this nature. The first Writ Petition is by the Management, but the other writ petition heard together with it - WP No.24833 of 2018 is by the students. The petition is filed by four students. These four students in the petition have stated in paragraph 6 as under :

“6 The petitioners say that upon passing of the aforementioned Higher Secondary Examination (12th Std examination) of which results were declared

*on 31st May 2018. A copy of the HSC result is annexed hereto and marked as **Exhibit- "B"** by the State Board and subsequently passing the NEET whose results were declared on 4th June 2018, the Petitioners applied online to Respondent No.3, for admission into their chosen and preferred medical field of Homeopath; as per the schedule for admissions to Health sciences courses published on 6th June 2018 by the Respondent No.3, for which online registration commenced on 7th July and 17th July was the last day of online registration. Therefore, Petitioners registered themselves on 12th June 2018. Subsequently thereto, a provisional merit list came to be published on 19th June 2018 wherein the names of all the Petitioners figured. A copy of the NEET result is annexed hereto and marked as **Exhibit- "C"** and a copy of online Admission Process schedule for Health Science Courses is marked as **Exhibit- "D"**."*

39 If the above paragraph is read together with Exhibits-C and D of the above petition of the students, then, it is evident that there is no merit in the argument that mid-way there was a change or modification. The Schedule has been annexed at Exhibits C and D. The Schedule was notified on 6th June, 2018, by the third respondent, namely, the State Common Entrance Test Cell. That is a notice setting out the admission process for Health Science courses. That notice itself states that the test was conducted by the CBSE on 6th May, 2018, the result of the test is declared on 4th June, 2018, and thereafter the candidates can download the

marksheet / rank card of this test. The admission process would have the major steps as indicated therein. The online registration / application was permitted to be made from 7th June to 17th June, 2018. The last date to pay the amount by challan is 18th June, 2018 and the publication of the provisional merit list is 19th June, 2018 after 5:00 p.m. The further steps of document verification, publication of revised provisional merit list, online preference filling process and declaration of selection list of first round etc are post 21st June 2018.

40 If one were to vehemently canvass that this is a change brought about in the midst of the admission process, then, one would have to indicate with certainty and clarity that the admission process had already commenced and had reached a certain point after which the situation was irreversible. Far from such a position, the process had not commenced until the online registration and which itself was to go on till 17th June, 2018. The student community as also the Management was thus aware of the communications from AYUSH and first of which they claim is of 11th June,

2018. That is also patently incorrect for Mr. Thorat has candidly stated before us that the Annexures or Exhibits to the petition filed by the Management denote that the NEET was applied much earlier and that requirement was prescribed by the Ministry of AYUSH way back in January / February, 2018. That the percentile was also a policy decision under consideration but finalised and communicated on 11th June, 2018. It was brought to the notice of all concerned by the State authorities on 15th June, 2018. In such circumstances, to then contend that there is a breach of the mandate of Article 14 whereby Rules of the game are changed mid-way or after the process has begun is not a valid and sound plea particularly in law. It appears to be a clear after-thought. It appears to be raised when the Managements and the students together noticed the vacant seats and the students saw in the same, an opportunity to get on-board. Therefore, such of those students who could not achieve the eligibility criteria of fifty percentile together with the Management filed such petitions. They are but handful. Apart from them, nobody else has complained at all. Even these students have taken their chances after

discovering that they would not meet the eligibility criteria. Far from satisfying it fully, they have chosen to challenge the communications. We do not think that in our extraordinary equitable and discretionary jurisdiction, we can grant any relief to such parties. In our view, the moot question is whether Managements of Educational Institutions can raise such a plea. At best, a candidate who is part of the admission process and seeking a seat can raise a plea that he is prejudiced by a change in the Rules and brought about after the last date of receipt of the application. At best and assuming that in law the plea of legitimate expectation can be raised, it can be by a genuinely aggrieved student. A long heavy burden is cast on him by law and the student would be obliged to substantiate and prove it with proper pleadings and particulars. Before us, the plea is jointly raised by the Management and a few students. This establishes and demonstrates how a weak and feeble attempt is made to serve the object of the Management, but unfortunately students have allowed themselves to be roped in.

41 Apart from that, on merits also, we find that the

NEET Rules already indicated and with sufficient clarity, the percentile and the requirement in that regard for satisfying the initial eligibility criteria. That was the XIIth (12th) Standard passing with subjects such as Physics Chemistry and Biology. The percentile of that was notified and in that regard, we find a reference being made to BAMS and BUMS courses. What is left out earlier is the BHMS course and finding that this was a Common Admission Process for all Health Science courses that the clarification had to be issued. That clarification was issued by 11th / 15th June, 2018. Once we find that the change or modification was notified much before the due date and is clarificatory and there is nothing therein which takes the students by surprise, then, all the more we are disinclined to entertain the grievance of the petitioners as also the Management. Ultimately, the understanding of the Academic bodies and students of this concept of percentile is also relevant. The word “percent” as per the Oxford English Dictionary means “By a specified amount in or every hundred, one part in every hundred, the rate, number or amount in each hundred”. So is the meaning of the word “percentile”. It is

also a rate, number or amount in each hundred. The word “percentile” means each of the hundred equal groups into which a population can be divided according to the distribution of the values of a particular variable, each of ninety nine intermediate values of a random variation which divide a frequency distribution into hundred such groups. The words “percent” and “percentile” do not surprise or shock those in the Academic circles at all. This is a well known concept. This is also prescribed by the State Education Boards so as to determine the eligibility criteria for admissions to Junior Colleges post clearance of the SSC (10th Standard) qualifying examination. Hence, we do not think that the change or modification is of such a nature that the petitioners had no opportunity to arrange their affairs in terms thereof. That being introduced for the first time allegedly, took them by surprise. The principle or doctrine of legitimate expectation has no place when we have this factual scenario.

42 We are, therefore, unable to accept the arguments of Mr. Thorat that there was either a change mid-

way or that assuming that there could have been a change mid-way, that change or modification ought not to have been applied to the students who have already taken the NEET and have become a part and parcel of the ongoing admission process for the Academic Year 2018-19. In other words, his argument was that this change or modification should not have been applied to the current Academic Year. We have already held that this argument is not sound, but untenable on facts and law. Once we reach such a conclusion, then, the alternate plea also must fail.

43 We are equally unimpressed by the argument of Mr. Thorat that the field is occupied by the law, namely, The Homoeopathy Central Council Act, 1973, and the Regulations, any change or modification thereto has to be by a process known to law and not by an executive fiat. First of all, this argument is premised on the plea that the Regulations of 1983 have been amended and they cannot be amended, but by a process set out in the substantive law. That is not the position emerging from the record at all. There is a Information Bulletin and which contains various

clauses. They are loosely termed as 'Rules' by the petitioners themselves. They are not substantive Rules by themselves, but are such steps in the admission process which indicate its initiation and culmination. Right from the initiation upto the culmination, at various stages, the student or the aspirant has to fulfill a pre-defined criteria. That criteria is already notified to all. The stepping stone is clearance of the HSC examination with the percentile. Thereafter, NEET which is notified by the CBSE in terms of certain binding directions of the Hon'ble Supreme Court. How the CBSE NEET would be utilised for the Common Admission Process so as to fill the seats in the Health Science course is then notified by this Information Brochure. We do not see how every clause or every stipulation therein can be termed as a Rule. Thus, when such Information Brochure is notified and in terms of the executive power of the State, then, such power is taken recourse to for notifying any change or modification therein. This is not a takeover of the statutory regime by an executive fiat. At best, the executive instructions already issued are amplified or clarified by taking recourse to the same power, namely, to issue

instructions. That is used to clarify or fill in certain gaps and that is permissible even in terms of the judgment of the Hon'ble Supreme Court relied upon by Mr. Thorat. Hence, this is not a case of an executive fiat being taken recourse to for amending or modifying the statutory Rules and Regulations. Far from it, the Regulations do not prescribe any such condition for admitting students, but declares that admission or selection should be merit-based. Once that broad policy has to be effectively implemented, then, academically it was prudent to take recourse to the NEET. That being a comprehensive test at the National level and already in place, its merit list was utilised. That was taken to be the benchmark and real merit was determined on the results and ranking of that test. If that is taken to be foundation on which students were going to be admitted, then, we do not see how the Regulations or the Rules stand amended or modified by an executive fiat. This argument must also fail.

44 Having dealt with all the contentions raised before us and finding no merit therein, we hold that each of

these petitions must fail. No assistance can be derived by the petitioners from any orders passed by other High Courts for we do not see these orders deciding the larger or wider challenge that has been dealt with and decided by us.

45 As a result of the above discussion, each of these writ petitions are dismissed. Rule is discharged without any order as to costs.

46 In view of the dismissal of Writ Petition No.10665 of 2018, nothing survives in Civil Application No.2441 of 2018 and it is, accordingly, disposed of.

SMT. BHARATI H. DANGRE, J. S.C. DHARMADHIKARI, J.