

**HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHA RAO**

WRIT PETITION Nos.41084, 42326, 42358 & 42546 of 2018

COMMON ORDER: (Per the Hon'ble Sri Justice P. Keshava Rao)

Heard the learned counsel appearing for the petitioners and the learned Standing counsel for the respondents.

2. These writ petitions came to be filed aggrieved by the action of the respondents in not extending the cut-off date from 15.11.2018 to a further date for admission of students into Bachelor of Unani Medicine and Surgery (for short, 'BUMS') course for the academic session 2018-19 and also taking the merit list of National Eligibility-cum-Entrance Test (for short, 'NEET') for admission into AYUSH (UG) courses for the academic year 2018-19, as illegal and arbitrary.

3. Since the subject matter of these writ petitions is one and the same and the issues involved are common, with the consent of both the counsel, this common order is being passed.

4. As far as W.P.Nos.42326 and 42358 of 2018 are concerned, the 1st petitioner is a society registered under the Societies Registration Act with the main object of establishing educational institutions to impart education. Pursuant to the application filed on 29.04.2013 to the 2nd respondent seeking permission to establish Unani Medical College in the name and style of Al-Arif Unani Medical College i.e., the 2nd petitioner herein with 100 seats in BUMS course for the

academic year 2014-15 an inspection was made and the 2nd respondent recommended to the 1st respondent for permission. Accordingly, the permission was granted by proceedings dated 27.10.2014. Thereafter, the 2nd petitioner college obtained affiliation from the 3rd respondent University to start the college. Though the 2nd petitioner college taken admission of students into the first year course, it developed the required infrastructure for the second, third and fourth years of BUMS course thereby permission was granted for the academic years 2014-15 to 2017-18. Even for the academic year 2018-19, the 2nd petitioner college paid Rs.1,30,000/- for inspection. However, the Central Council for Indian Medicine (for short, "the CCIM), without the knowledge of the petitioners, inspected the college on 14.05.2018 and 15.05.2018 and submitted an adverse report to the 1st respondent regarding non-fulfillment of the requirements leading to denial of permission for the academic year 2018-19 vide proceedings F.No.R.12012/02/2013-EP(IM-1) dated 17.10.2018. Questioning the said proceedings, the petitioners filed W.P.No.40576 of 2018 before this Court. By filing an interlocutory application in the said writ petition, the petitioners invited the following interim order dated 12.11.2018:

“Accordingly, there shall be interim order as prayed for subject to the petitioners complying with all the deficiencies as pointed out in the letter dated 12.09.2019, as per clause 3 of the Regulations. It is also made clear that in the event

of failure on the part of the petitioners herein to rectify the statutory requirements, if any, respondents are at liberty to take action, strictly in accordance with law.”

5. Basing on the said interim order, it appears that the petitioners submitted representations for extension of the last date of admission. The cut-off date fixed for admission into UG course in Unani is not mandatory and it is not born out of the Regulations framed for Unani courses.

6. As far as W.P.No.42358 of 2018 is concerned, it is stated that NEET as introduced by the Central Board of Secondary Education (for short, ‘CBSE’) for admission into MBBS/BDS courses for the academic year 2018-19, is not mandatory, since it runs with the approval of the Medical Council of India and the Dental Council of India. The prospectus issued does not indicate NEET as a pre-requisite for admission. The said introduction of NEET is contrary to the provisions of the Indian Medical Central Council Act, 1970 (for short, “the Act”) and the Indian Medicine Central Council (Requirements of Minimum Standard for Under-Graduate Unani Colleges and attached Hospitals) Regulations, 2016 and the Indian Medical Council (Minimum Standards of Education in Indian Medicine) Regulations, 2016.

7. As far as W.P.Nos.41084 and 42546 of 2018 are concerned, the petitioners therein questioned non-dispensing with the appearance of NEET for BUMS course and also to fill up the unfilled seats in the State of Telangana based on the

intermediate examination marks for the academic year 2018-19 and non-consideration of representations dated 12.11.2018 and 16.11.2018 as arbitrary.

8. Learned Stranding counsel appearing for the respondents in W.P.Nos.42326 and 42358 of 2018 filed counter affidavits stating that the 2nd petitioner college was granted permission for the first time for the academic year 2014-15 with a direction to fulfill the deficiencies relating to infrastructure and staff by 31.12.2014. However, the said direction was not complied with. The CCIM also conducted inspections on 09.02.2016 and 26.08.2016 and pointed out deficiencies of staff. The 2nd petitioner college was given conditional affiliation for the academic year 2016-17 directing it to comply with the deficiencies by December, 2016. Even thereafter, the 2nd petitioner college failed to fulfill the mandatory requirements by complying with the deficiencies as pointed out supra. The CCIM once again conducted inspection on 20/21.04.2017, 25.05.2017 and 31.10.2017 and noticed the deficiencies of staff and once again granted conditional permission for the academic year 2017-18 and directed the 2nd petitioner college to fulfill the deficiencies by 31.12.2017. Even on 14/15.05.2018, an inspection was conducted by the CCIM and noticed the deficiencies of staff and infrastructure and other deficiencies and an opportunity was given to the 2nd petitioner college on 19.09.2018. In spite of giving so many opportunities, the 2nd petitioner college

failed to comply with the deficiencies pointed out by the CCIM time and again warranting denial of permission. The last date for admission into BUMS course has already been extended from 31.10.2018 to 15.11.2018 and admissions for the academic year came to be completed on 15.11.2018. In fact, the committee, which conducted inspection, gave report dated 12.03.2018 pointing out that there are severe deficiencies, including non-functioning of hospital. Thus, the 2nd petitioner college right from inception i.e., 2014-15 onwards never complied with the deficiencies pointed out by the CCIM and the 3rd respondent University.

9. As far as dispensing with NEET as introduced by the CBSE is concerned, it is stated in the counter affidavits that the Ministry of AYUSH based on the judgment of the Apex Court decided to admit the students through a Combined and National Level Test in order to bring meritorious students into AYUSH system and all the State Governments were informed about the said exam well in advance. The intention behind introducing NEET is to see that the students with merit will get admission into BUMS courses also. The State Government also addressed letter dated 14.03.2017 to the Under Secretary to the Government of India, Ministry of AYUSH that they have agreed with the decision of the Ministry of AYUSH to admit the students in AYUSH in undergraduate course through NEET merit only. Accordingly, it was incorporated even in the prospectus also. In fact, the

admission Regulations/Rules issued by the Central Council of Indian Medicine also contains a clause that admissions into BUMS course will be on the basis of the entrance examination. Therefore, the decision taken by the State Government is not contrary to the Regulations issued by the CCIM. As far as the Government of Telangana is concerned, it issued G.O.Ms.No.170 dated 19.09.2017 stipulating NEET as a pre-requisite qualification for admission into AYUSH course. The State Government has got the authority to fix the eligibility criteria to bring meritorious students into the AYUSH stream. Accordingly, the 3rd respondent University issued notification dated 01.09.2018 inviting online applications for admission into Under-Graduate Ayurveda, Homoeopathy, Unani and Naturopathy courses for the academic year 2018-19. In fact, the 2nd petitioner college is not included in the notification issued by the University as it had no permission from the 2nd respondent and affiliation was not given to it by the University. Rule 6 of prospectus/regulations clearly stipulate that the candidates should qualify NEET, 2018 UG test.

10. Learned counsel appearing for the petitioners contended that the cut-off date can be extended for admission into BUMS course since on earlier occasions, cut-off date was extended for admissions into AYUSH course for the academic years 2015-16, 2016-17 and 2017-18 also. Though there is no sufficient time for conclusion of the academic year, the

colleges will take special classes for imparting the education to the students. Learned counsel also brought to the notice of this Court the judgment of the Apex Court in **Asha v. Pt. B.D. Sharma University of Health Sciences and others**¹ and contended that the cut-off date can be extended. Learned counsel also relied on the judgment of the Patna High Court in **Vihar Private Unani Medical Colleges, Maulabagh and another v. The Union of India and others** (*Civil Writ Jurisdiction Case No.16541 of 2018*), wherein it is held 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.

11. Learned Standing counsel appearing for the respondents vehemently contended that the cut-off date cannot be extended since there is no sufficient time for completion of the academic year and NEET is introduced only to bring meritorious students into AYUSH course apart from other aspects.

12. Having heard both the counsel and from a perusal of the material on record, the issue that arises for consideration is:

Whether cut-off date for admission into BUMS courses be extended beyond 15.11.2018 and whether a pass in NEET can be insisted upon, for admission to Ayurveda, Unani, Siddha and Homeopathy courses?

¹ (2012) 7 SCC 389

13. As per the pleadings, it is born out of the record that after receipt of representations from various States, the cut-off date for admission into AYUSH course was extended up to 30.10.2018. It is again extended up to 15.11.2018 leaving hardly three months' time available for completion of the present academic year i.e., 2018-19. If a further time is extended, there will be hardly any time for the colleges to impart the AYUSH course to the admitted students and the entire admission process as well as the teaching pattern will be jeopardized. Unless and until sufficient time has been given, it is difficult for the teaching staff to teach the entire course to the students. Further, midstream admission and extension of periods of admission would delay commencement of course and thus lower the standard of education and give scope for adopting impermissible practices. Inequities would be created which would be prejudicial to both students and colleges and highly competitive standards for admission to such colleges would stand frustrated.

14. The above said aspect of mid session admissions and extension of dates has been considered by the Apex Court in **Medical Council of India v. Madhu Singh and others**² and held as under:

“There is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions.

² (2002) 7 SCC 258

If any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. As the factual position goes to show, the inevitable result is increase in the number of seats for the next session to accommodate the students who are admitted after commencement of the course for the relevant session. The submission that with the object of preventing loss of national exchequer such admissions should be permitted, cannot be a ground to permit midstream admissions which would be against the spirit of governing statutes. The further suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the students to study and the appropriate spacing of classes. The students also need rest and the continuous taking of classes with the object of fulfilling the requisite number of days would be harmful to the students' physical and mental capacity to study.

There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year.

MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission. There is a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course.

Different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time.

No variation of the schedule so far as admissions are concerned shall be allowed.

In case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.”

15. Therefore, this Court is of the opinion that within a span of three months, one year course cannot be taught by the teaching staff. The AYUSH, being a professional course, is not expected that the entire course will be completed within a short time. Since the candidates are dealing with the lives of the patients, and unless they are properly taught and with half knowledge if they come out of the institutions, there will be a potential threat to the human existence in the society. That apart, when the Rules and Regulations as framed under the AYUSH course stipulate a specific academic period, it cannot be truncated to hardly three months. Therefore, the contention raised by the petitioners that the cut-off date can be extended further on the ground that special classes will be taken for completion of the course cannot be countenanced.

16. That apart, as far as W.P.Nos.42326 and 42358 of 2018 are concerned, the 2nd petitioner college was denied permission by the CCIM by proceedings dated 17.10.2018 in view of non-functioning of hospital, severe deficiencies in infrastructure relating to staff and etc. When the 2nd petitioner college itself is not having any recognition, the question of maintainability of writ petitions on the aspect of extension of cut-off date and dispensing with NEET may not arise.

17. Since there is no recognition, learned Standing counsel appearing for the 3rd respondent University brought to the notice of this Court that the University has not granted

any affiliation to the 2nd petitioner college for this academic year. Therefore, on both the counts, the petitioners in the said two writ petitions miserably failed to make out any case warranting interference under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

18. As far as the requirement of NEET qualification is concerned, basing on the judgment of the Apex Court the Ministry of AYUSH in order to bring meritorious candidates into AYUSH course decided to admit the students through combined and national level test through NEET and all the State Governments were also informed well in advance. Many State Governments have also advertised in newspapers that the admission into AYUSH (PG) course for the academic year 2018-19 will be done from the merit list of NEET. The same was also incorporated in the prospectus. The intention behind introducing NEET is to see that meritorious candidates get admission into BUMS courses also.

19. The Indian Medical Central Council Act and the Regulations framed thereunder are referable to Entry 66 of List-I of the Seventh Schedule to the Constitution of India. The Entry 25 in List-III deals with 'Education', which include technical and medical education and universities. In fact, the Ministry of AYUSH decided to admit the students through a combined and national level test to bring meritorious students into AYUSH system. The said decision was taken by the concerned Ministry based on the judgment of the Apex

Court and the State Governments were informed well in advance. To that effect, many State Governments have already advertised in newspapers that admission into AYUSH (PG) course for the academic year 2018-19 will be done from the merit list of NEET. In that regard, the 1st respondent issued proceedings dated 23.01.2017, 25.01.2017 and 26.04.2017 to the concerned State authorities ensuring compliance of the decision of the Ministry and accordingly admit the students in AYUSH under-graduate course through NEET only. Pursuant thereto, the 3rd respondent University issued the prospectus/regulations for admission into BUMS course for the academic year 2018-19. As per Regulation 6.3, it is specifically mentioned that the candidate should have qualified in NEET UG entrance test. The said regulation is sought to be challenged on the ground that the admission of the students into AYUSH are governed by the Act and the Regulations made thereunder. Since there is no provision regarding the NEET as the basic qualification for considering the admission into AYUSH either under the provisions of the Act or the Regulations made thereunder, insistence of the same in view of Regulation 6.3 in the prospectus/regulations framed by the 3rd respondent University is bad in law. The prospectus/regulations have been issued by the 3rd respondent University pursuant to the proceedings dated 23.01.2017, 25.01.2017 and 26.04.2017, as referred supra, issued by the 1st respondent. That apart, the education,

which includes medical education, and the regulations made thereunder can be traced to Entry 25 of List-III. Therefore, unless and until a repugnancy between the provisions of a Central Act traceable to Entry 66 of List-I and the prospectus/regulations issued by the 3rd respondent under the instructions of the 1st respondent which also referable to Entry 25 of List-III is established, it is not open for the petitioners to contend that the regulations issued by the 3rd respondent are in violation of the provisions of the Central enactment or whether insistence of NEET qualification would in any way trample upon and wipe out the field occupied by the Central Legislation.

20. Insistence of NEET as the basic qualification (merit list and qualifying criteria) for admission into AYUSH course is only to maintain uniformity for admission into all medical courses and to ensure admission of the meritorious students into AYUSH stream of medicine on the basis of the merit secured by the students in NEET. Though the provisions of the Act and the Regulations made thereunder are silent with regard to the introduction of NEET as the basic qualification, it will not in any way trample upon or violate any of the provisions of the Act or the Regulations made thereunder. It is not in any way wipe out or abridge the Central enactment and the regulations made thereunder.

21. The law is well settled that where the Universities cannot dilute the standards as prescribed by the enactment, more particularly, with regard to the qualifications and the standard, the Universities are always free to prescribe higher standards. Therefore, merely on the ground that the Act and the Regulations framed thereunder are silent with regard to NEET, this Court is not inclined to accept the contention of the petitioners that insistence of NEET is contrary to the provisions of the enactment and the regulations made thereunder.

22. In **Bharathidasan University v. AICTE**³, the observation of the Apex Court that AICTE is not a super power with a devastating role undermining the status, authority and autonomous functioning of the Universities in areas and spheres assigned to them, was recognized in subsequent decisions in **Association of Management of (Private) Colleges v. AICTE**⁴, **Jaya Gokul Educational Trust v. Commissioner and Secretary to Government**⁵, **State of Tamil Nadu v. S.V. Bratheep**⁶ and **Modern Dental College and Research Centre v. State of Madhya Pradesh**⁷. That the University can prescribe higher standards than those prescribed by AICTE was recognized in **Visveswaraya**

³ (2001) 8 SCC 676

⁴ (2013) 8 SCC 271

⁵ 2000 (2) SCR 1234

⁶ 2004 (3) LAWS (SC) 20

⁷ (2009) 7 SCC 751

Technological University v. Krishnendu Halder⁸ and in **Mahatma Gandhi University v. Jikku Paul⁹**.

23. Even in **The State of Andhra Pradesh and another v. Lavu Narendra Nath and others¹⁰**, the Constitutional Bench of the Apex Court observed that prescription of written entrance test by the State Government for admission to medical college for successful candidates at public examination neither contravenes the provisions of Andhra University Act nor encroaches on the field covered by Entry 66 of List-I of the Constitution and therefore is within the executive power of the State Government and held as under:

“In our view the test prescribed by the Government in no way militates against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. The said entry provides:

“Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.” सत्यमेव जयते

The above entry gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It has no relation to a test prescribed by a Government or by a University for selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject.

In *Rajendran v. State of Madras* ((1968) 2 SCR 786 = AIR 1968 SC 1012) the petitioners challenged an order of the State Government by which rules were promulgated for selection of candidates for admission to a medical course. These rules inter alia provided for selection and

⁸ (2011) 4 SCC 606

⁹ (2011) 15 SCC 242

¹⁰ AIR 1971 SC 2560

classification of candidates including one for awarding a maximum of 75 marks for extra-curricular activities which had been specified under five heads. Turning down the contention that there was no objective test laid down in the rules for the interview it was said:

“So far as admission is concerned, it has to be made by those who are in control of the Colleges.... in this case the Government, because the medical colleges are Government colleges affiliated to the University. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the university as to eligibility and qualifications. This was what was done in these cases and therefore the selection cannot be challenged on the ground that it was not in accordance with the University Act and the Rules framed thereunder.”

It is the Central Government which bears the financial burden of running the medical colleges. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admissions will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.

The above case is not directly in point but it at least shows that a candidate has not an unqualified right to a seat in a medical college merely because he has obtained higher marks than another candidate at the qualifying examination.

In our view there is no substance in any of the contentions as will be apparent from our conclusions noted above and the decisions of this Court bearing on this point. The University Act, as pointed out, merely prescribed a minimum qualification for entry into the higher courses of study. There was no regulation to the effect that admission to higher course of study was guaranteed by the securing of eligibility. The Executive have a power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the field and the Government order in this case in no way affected the rights of candidates with regard to eligibility for admission: the test prescribed was a further hurdle by way of competition when mere eligibility could not be made the determining factor.”

24. Therefore, viewed from any angle and for more than one reason, as stated supra, the contentions raised by the petitioners that the cut-off date for admission into BUMS course can be extended from 15.11.2018 to a further date and insistence of NEET as the basic qualifying test are bad in law, cannot be countenanced. As such, there are no merits in the writ petitions and the same are liable to be dismissed.

25. Mr. P.Gangaiah Naidu, learned Senior Counsel appearing for some of the writ petitioners, submitted that almost all High Courts in the country have struck down the prescription regarding a pass in NEET as a mandatory requirement for admission to courses in Indigenous Medicine. The learned Senior Counsel drew our attention extensively to the judgment of the Patna High Court dated 10-10-2018 in **Vihar Private Unani Medical Colleges v. Union of India** and the judgment of the Rajasthan High Court in **Om Shiv**

Sansthan Yoga and Naturopathy College v. State of Rajasthan decided on 24-10-2018.

26. We have carefully considered the decisions.

27. It is seen from the decision of the Patna High Court that the prescription of a pass in NEET is a requirement for admission to Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homeopathy courses, was made by the State Government of Bihar through a press communication. The said press communication did not have any statutory force. Therefore, finding that the regulations framed by the Central Council of Indian Medicine did not contain such a prescription, the Patna High Court held the press communication issued by the State Government to be *ultra vires*.

28. Similarly, what was challenged before the Rajasthan High Court in ***Ohm Shiv Sansthan Yoga and Naturopathy College*** was a notification issued by the Ministry. All that the Rajasthan High Court did was to grant an interim order on the basis of the judgment of the Patna High Court. Therefore, the same shall not operate as a precedent.

29. In the case on hand, the prescription of a pass in NEET was made, by the Government of Telangana, through G.O. Ms.No.170, Health, Medical and Family Welfare Department, dated 19-9-2017, by way of amendment to a set of rules known as Telangana State AYUSH Regulation of Admissions into Under Graduate AYUSH Professional Courses Rules, 2017. The power to issue the aforesaid set of

rules could be traced to Sections 3 and 15 of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983.

30. Therefore, the case on hand is completely different from the case before the Patna High Court. A press communication issued by the Government of Bihar, which was under challenge before the Patna High Court, did not have a statutory flavour, while the rules framed by the State of Telangana have statutory force. Therefore, the prescription of a pass in NEET cannot be tested merely on the basis of the letter issued by the Ministry of Health of the Union of India.

31. Moreover, the University also made it clear in the Prospectus for Admission into BUMS Course for the Academic Year 2018-19 that a pass in NEET was mandatory. Therefore, the petitioners cannot escape the consequences that flow out of the Statutory Rules issued by the State Government and the Prospectus issued by the University.

32. Yet another contention was raised by Mr. P.Gangaiah Naidu, learned Senior Counsel for a few petitioners, that while admitting some of the writ petitions, an interim suspension of the order of the Ministry refusing to grant approval, was given. Therefore, he contended that the University should also grant approval, as otherwise the respondents will be guilty of contempt.

33. But we do not think so. The interim order passed by the learned single Judge in one of these writ petitions, was

merely to suspend the order of rejection of the request for approval. The suspension of an order of rejection of approval, would not tantamount to an approval. Unless an approval is granted by the Central Government, the University cannot grant affiliation. For the current academic year the petitioners in two of the writ petitions where the learned Senior Counsel appears, do not have approval as well as affiliation. Therefore, the reliance placed upon the interim order is of no avail.

34. In the remaining cases where both approval and affiliation are there, the colleges have admitted students under the Convener quota, of candidates who possess a pass in NEET. The colleges now want to admit students under the Management quota, without a pass in NEET. This cannot be accepted. Accordingly, all the writ petitions are dismissed. Pending applications, if any, shall stand closed. No costs.

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

Date: 31.12.2018.

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**HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHA RAO**

WRIT PETITION Nos.41084, 42326, 42358 & 42546 of 2018
(Common Order of the DB – per PKR, J.)



December, 2018.
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