



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.11.2019	Pronounced on: 12.11.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition Nos.29649, 29675, 29679, 29981, 30221, 30307 &
31320 of 2019
& W.M.P.Nos.29561, 29567, 29881, 30190, 30294 of 2019

G.Naveenbharathy,
S/o.K.R.Ganesan,
No.133/2, Sathy-Bhavani Main Road,
Salangapalayam (P.O),
Erattai Vaikkal, Kavindapadi (via),
Erode District - 638 455.

... Petitioner
in W.P.No.29649 of 2019

R.Dharani,
D/o.M.Ravi,
Door No.5, Near Ara Mahal, Thoppur (P.O),
Dharmapuri District - 636 352.

... Petitioner
in W.P.No.29675 of 2019

S.Karthikeyan,
S/o.Late Selvaraj,
No.1/148, Mottaikankattupudhur,
Murungaththoluvu (P.O),
Chennimalai, Erode - 638 051.

... Petitioner
in W.P.No.29679 of 2019

Association of Ayurveda, Yoga & Naturopathy, Siddha
and Homoeopathy Private Medical Colleges,
Rep. by its Secretary,
Reg.No.200 of 2018,
No.4/11, Samayapuram Main Road, Karambakkam,
Porur, Chennai - 600 116.

... Petitioner
in W.P.No.29981 of 2019

B.Krishore Kumar,
S/o.Baskar,
Ammuponnu Nagar,
Avinangudi Post,
Thittakudi Taluk,
Cuddalore District.

... Petitioner
in W.P.No.31320 of 2019

Miss.Afrin.F
Daughter of Mr.A.Syed Feroz Basha,
No.27/65, Jawar Hussain Khan, First Street,
Royapettah, Chennai - 600 014.

... Petitioner
in W.P.No.30221 of 2019

Syed MD Abrar,
S/o.Mr.Syed Mukhtar,
No.57/21 A, Mohammed Pura 1st Street,
Aamina Clinic,
Ambur, Vellore,
Tamil Nadu - 635 802.

... Petitioner
in W.P.No.30307 of 2019

/versus/

1. The Union of India,
Rep. by its Secretary,
(Ministry of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homoeopathy (AYUSH)
'B' Block, GPO Complex, INA,
New Delhi - 110 023.
2. The Central Council of Indian Medicine,
Rep. by its Secretary,
No.61-65, Institutional Area, Opp. 'D' Block, Janakpuri,
New Delhi - 110 058.
3. The Central Council of Homoeopathy,
Rep. by its Secretary,
No.61-65, Institutional Area,
Opp. 'D' Block, Janakpuri,
New Delhi - 110 058.
4. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Health & Family Welfare,
Fort St.George,
Chennai - 600 009.
5. The Commissioner of India
Indian Medicine and Homoeopathy Department,
Arumbakkam,
Chennai - 600 106.
6. The Selection Committee,
Rep. by its Secretary,
Directorate of Indian Medicine,
and Homoeopathy, Arumbakkam,
Chennai - 600 106.
7. The Tamil Nadu Dr. M.G.R.Medical University,
Rep. by its Registrar,
No.69/40, Anna Salai,
Guindy, Chennai - 600 032.

8. National Testing Agency,
Rep. by its Chairman,
C-20, 1A/8, Sector - 62,
Iitk Outreach Centre,
Noida - 201 309.

.... Respondents
in W.P.Nos.29649, 29675,
29679, 31320, 29981

of 2019

1. The Union of India,
Rep. by its Secretary,
(Ministry of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homoeopathy (AYUSH)
'B' Block, GPO Complex, INA,
New Delhi - 110 023.
2. The Central Council of Indian Medicine,
Rep. by its Secretary,
No.61-65, Institutional Area,
Opp. 'D' Block, Janakpuri,
New Delhi - 110 058.
3. The Central Council of Homoeopathy,
Rep. by its Secretary,
No.61-65, Institutional Area,
Opp. 'D' Block, Janakpuri,
New Delhi - 110 058.
4. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Health & Family Welfare,
Fort St.George,
Chennai - 600 009.
5. The Commissioner of Indian Medicine and Homoeopathy,
Arumbakkam, Chennai - 600 106.
6. The Selection Committee,
Rep. by its Secretary,
Directorate of Indian Medicine,
and Homoeopathy, Arumbakkam,
Chennai - 600 106.
7. The Tamil Nadu Dr. M.G.R.Medical University,
Rep. by its Registrar,
No.69/40, Anna Salai,
Guindy, Chennai - 600 032.

8. National Testing Agency,
Rep. by its Chairman,
C-20, 1A/8, Sector - 62,
Iitk Outreach Centre,
Noida - 201 309.

..... Respondents
W.P.No.29981 of 2019

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Health & Family Welfare,
Fort St.George, Chennai - 600 009.
2. The Director of Indian Medicine and Homoeopathy,
A.A.G.H.I.M Campus, Chennai - 106.
3. The Secretary,
Selection Committee,
Director of Indian Medicine and Homoeopathy,
A.A.G.H.I.M Campus, Chennai - 106.
4. Union of India,
Rep. by its Secretary (AYUSH)
Ministry of Ayurvedha, Yoga & Naturopathy, Uniani, Siddha and
Homoeopathy,
AYUSH Bhawan, "B" Block, GPO Complex, INA,
New Delhi - 110 023.
5. Central Council of Indian Medicine,
Rep. by its Secretary,
No.61-65, Institutional Area,
Janakpuri, New Delhi - 110 058.
6. Central Council of Homoeopathy,
Rep. by its Board of Governors,
Institutional Area,
Janakpuri, New Delhi - 110 058.

.... Respondents
in W.P.Nos.30221 &
30307 of 2019

W.P.Nos.29649, 29675 of 2019: Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondent to consider the representation of the petitioner dated 09.10.2019 for lowering the eligibility marks prescribed for admission to Indian Medicine UG course viz., BAMS, BSMS, BUMS and BHMS for the academic session 2019-2020 and for further direction to extend the cut-off date of admission for the academic session 2019-2020 and pass orders.

W.P.No.29679 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents to consider the representation of the

petitioner dated 09.10.2019 regarding admission of students who has not appeared for NEET 2019 examination but has the minimum qualification to undergo AYUSH course (BAMS, BHMS, BUMS) in terms of the direction of the Hon'ble High Court of Karnataka as held by its recent order dated 20.09.2019 in I.A.No.1/2019 in W.P.No.41486 of 2018.

W.P.No.29981 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents 1 to 3 to consider the petitioner's representation to them dated 05.10.2019 for lowering the eligibility marks prescribed for admission to Indian Medicine UG course viz., BAMS, BSMS, BUMS and BHMS for the academic session 2019-2020 and further direct the 1st respondent to extend the cut-off date of admission for the academic session 2019-2020.

W.P.No.31320 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondent to consider representation of the petitioner dated 25.10.2019 lowering the eligibility marks prescribed for admission to Indian Medicine UG course viz., BAMS, BSMS, BUMS and BHMS for the academic session 2019-2020 and for further direction to extend the cut-off and date of admission for the academic session 2019-2020.

Prayer in W.P.Nos.30221 & 30307 of 2019: Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents 1 to 3 herein to give effect to and follow the procedure contemplated in para (ii) of the notification dated issued by the Directorate of Indian Medicine and Homoeopathy Chennai - 106 as well as the Clause 4(iii) of the prospectus issued by the respondents 1 to 3 with regard to admission of candidates who had not appeared for the NEET examination or those candidates who have not secured minimum NEET scores but who are otherwise eligible to get admission in various AYUSH courses (BSMS/BAMS/BUMS/BHMS degree courses) for the academic year 2019-2020 and pass orders.

W.P.Nos.29649, 29675, 29679 of 2019

For Petitioner : Mr.Muthumani Doraisami
For R1 to R3 : Mr.B.Rabu Manohar
For R4 to R6 : Mr.V.Kathirvelu
For R7 : Mr.P.Elaya Raj Kumar,
for M/s.Ramalingam Associates
For R8 : Mr.G.Nagarajan, Standing Counsel

W.P.No.29981 of 2019

For Petitioner : Mr.Godson Swaminathan,
for M/s.Isaac Chambers
For R1 to R3 :Mr.B.Rabu Manohar,
Standing Counsel

For R4 : Mr.N.Inbanathan,
Additional Government Pleader

For R5 & R6 : Mr.V.Kathirvelu,
Special Government Pleader

For R7 : Mr.P.Elaya RajKumar,
for M/s.Ramalingam Associates

For R8 : Mr.G.Nagarajan
Standing Counsel

W.P.No.31320 of 2019

For Petitioner : Mr.Veluchamy,

For R1 : Mr.N.Rajan, SCGSC

For R2 & R3 :Mr.B.Rabu Manohar,
Standing Counsel

For R4 : N.Inbanathan,
Additional Government Pleader

For R5 & R6 : Mr.V.Kathirvelu,
Special Government Pleader

For R7 : Mr.P.Elaya RajKumar,
for M/s.Ramalingam Associates

For R8 : Mr.G.Nagarajan, Standing Counsel

W.P.Nos.30221 & 30307 of 2019

For Petitioner : Mr.S.Haja Mohideen Gisthi

For R1 : Mr.M.Thamizharasan,
Government Advocate

For R2 & R3 : Mr.V.Kathirvelu,
Special Government Pleader

For R4 : Mr.B.Rabu Manohar, SCGC

COMMON ORDER

Heard the Learned Counsel for the Petitioners and the
Learned Counsel for the Respondents.

2. Aspirants to join BSMS/BAMS/BUMS/BHMS courses commonly called as AYUSH courses and the Association of Ayurveda, Yoga and Naturopathy, Siddha and Homoeopathy Private Medical Colleges have filed these Writ Petitions seeking relaxation in the eligibility criteria for admission into these courses particularly either to admit students who have not participated in the N.E.E.T exam or to reduce the minimum mark prescribed in the eligibility test known as N.E.E.T and consequentially to extend the cut of date for admission into these courses for the academic year 2019-2020 taking into consideration huge number of seats unfilled due to want of

eligible candidates.

3. The Central Council of Indian Medicine (CCIM) constituted under the Indian Medicine Central Council Act, 1970 and the Central Council of Homoeopathy (CCH) constituted under the Homoeopathy Central Council Act, 1973, are the respective regulatory body for the Siddha, Ayurveda and Unani courses and for Homoeopathy course. These Councils, in exercise of the power conferred under the respective Acts, with the previous sanction of the Central Government has framed regulations for the AYUSH courses.

4. To be eligible for admission into BAMS, BSMS and BUMS courses the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986, as amended by Regulations, 2018 and notified on 07.12.2018 prescribes, the candidates apart from securing minimum mark in the qualifying examinations (10, +2) also should have secured minimum mark of 50th percentile in the "National Eligibility Entrance Test for Under Graduate Course " (shortly known as N.E.E.T - UG). As far as reserved candidates like SC/ST and OBC, the minimum mark shall be 40th percentile. Similar eligibility condition for BHMS course has been introduced by the Homoeopathy (Degree course) Regulations, 1983 as amended by Regulations, 2018 by notification dated 14.12.2018.

5. In both the amended Regulations by way of explanation, it is stated that, "the percentile shall be determined on the basis of highest marks secured in the all India common merit list in the National Eligibility Entrance Test for undergraduate courses:

Provided further that when sufficient number of candidates in the respective categories fail to secure minimum marks in the National Eligibility Entrance Test, as specified above, held for any academic year for admission to undergraduate courses, the Central Government in consultation with Central Council may at its discretion lower the minimum marks required for admission to undergraduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for that academic year only."

6. The petitioners based on their prayer, on the ground that, after the end of the counselling for admission into AYUSH courses in Tamil Nadu, there are more than 500 seats vacant as on 15.10.2019, which is the last date fixed for admission. The additional eligibility criteria of securing minimum mark in N.E.E.T was introduced only from this academic year. Many of the aspirants of AYUSH Courses were not aware of this, hence those candidates who have secured the minimum marks

prescribed for the qualifying exam (10, +2) should be allowed to be admitted in the AYUSH courses for this academic year 2019-2020, without insisting on N.E.E.T score or in alternate, the minimum percentile fixed for the N.E.E.T should be reduced as it was done for B.D.S course for this academic year, since those seats were substantially left unfilled at the end of the cut-off date.

7. In support of their claim, the petitioners rely on the Communication of Ministry of Health and Family Welfare, Government of India, issued on 6th September 2019, in consultation with Dental Council of India, wherein, the qualifying percentiles for N.E.E.T - UG 2019 for admissions to B.D.S courses for the academic session 2019-2020 has been reduced to 40th percentile for General Category and 30th percentile for SC/ST/OBC reserved categories.

8. The 1st respondent/Secretary, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha & Homoeopathy, which is the final Authority to decide about the eligibility criteria and the last date for admission has filed counter, wherein, the decision of the 1st respondent is expressed as under:-

4. It is most respectfully submitted that the admission through NEET was to commence from the academic year 2018-2019. Earlier the time schedule prescribed under the Regulations of Establishment of New ASU & H Medical College (Opening of New/Higher Course of study/Training & Increase of Admission Capacity by a College) Regulations was from 1st to 30th April for each subsequent academic year which was revised for receiving applications from "1st July to 31st August" for starting new colleges during the subsequent year.

5. It is respectfully submitted that the policy decision taken to make admission through NEET compulsory was taken in June 2018 and the Notification for admission through NEET for academic session had already been issued before the new policy for ASU&H on 07.11.2018. Hence owing to this technical flaw and being number of seats vacant in ASU&H Colleges the cut-off date for admission for the academic session was extended to 15.11.2018 but this was only restricted to the academic year 2018-2019 only.

6. It is most respectfully submitted that the details of permitted seats by this respondent for the academic year 2019-2020 in ASU&H Colleges are as follows:-

Category	Number of permitted seats
Ayurveda	20685
Unani	1935
Siddha	550
Homoeopathy	15964
Total	39134

Total NEET qualified candidates available for admission: 7,97,060 (Seven Lakhs Ninety Seven Thousand and Sixty only).

* 50th Percentile = 134 marks out of 720 marks (18.6%)

* 40th Percentile = 107 marks out of 720 marks (14.86%)

7. It is respectfully submitted that the cut-off date for admission to ASU&H Colleges was 30th September 2019 considering the representation from State Governments and Counselling Authorities stating that seats are lying vacant and more rounds of counselling are required to fill up the vacant seats in ASU&H Course, the cut-off date for admission to the UG courses in ASU&H Colleges has been extended to 15th October 2019 vide this respondent's letter no.F.No.L.14011/14/2019-EP-1, dated 30.09.2019. No further extension in cut-off date for admission in Under Graduate Courses in ASU&H Colleges has been made or is under consideration for this respondent. [Emphasis added]

9. As per the direction of this Court, the 5th respondent/ has filed the position note which say, the counselling for the Government Quota seats for ASU&H Under Graduate course was conducted from 26.09.2019 to 28.09.2019 F.N. Totally, 1617 students applied and on scrutiny of the above applications, only 1428 students were found eligible & placed in the merit list and 880 students got admission. In the afternoon of 28.09.2019 and 29.09.2019, counselling for 430 available

Management quota seats was conducted for this 715 students applied and on scrutiny of the above, only 555 applicants were found eligible. Totally 126 students got the allotment order. Due to this, 117 seats in Government Quota and 304 seats in Management Quota seats in self finance colleges were left vacant in Self-Financing AS&H Medical Colleges.

10. As requested by this Court, in the position note, the probable number of candidates who will be eligible if N.E.E.T marks are reduced also provided. The tables below show the slabs of N.E.E.T UG-2019 percentile and its marks. Number of candidates applied to the Selection Committee, seats surrendered to the Government and Management Quota and number of candidates eligible to get admission in various AYUSH Courses by lowering the N.E.E.T eligibility cut-off. The tables are extracted below:-

(iii). For Seats Surrendered to Government:-

NEET Percentile	Marks	OC	BC	BCM	MBC	SC	SCA	ST	Total Applicants
35	106-96	2	6	10	5	5	0	0	28
30	95-86	0	3	4	1	4	0	0	12
25	85-76	0	9	2	8	4	1	0	24
20	75-66	0	5	4	2	4	0	0	15
15	64-56	0	6	0	3	4	0	0	13
10	55-45	0	9	3	2	7	0	1	22
5	44-30	1	10	1	4	0	0	0	16
	Total	3	48	24	25	28	1	1	130

(iv) For Management Quota seats.

NEET Percentile	Marks	Total Applicants for Management Quota Seats
40	132-107	5
35	106-96	24
30	95-86	7
25	85-76	16
20	75-66	16
15	65-56	15
10	55-45	21
5	44-30	20

NEET Percentile	Marks	Total Applicants for Management Quota Seats
	Total	124

11. From the above data, it is evident that, even if the minimum eligibility reduced to 5th percentile, only 254 applicants will be eligible for admission into these Courses as against vacancy of about 500 seats. By reducing the cut-off mark the quality of candidates taken into admission will necessarily get diluted and will be detrimental to the Standard of Education. Hence, the respective Councils alone will be the better Authority to decide about reduction of minimum eligible mark in N.E.E.T.

12. The performance of the Writ Petitioners, who are aspirants for admission into AYUSH Course, 2019 is capsulated below:

S.Nos	Writ Petition	Petitioner Name	Marks secured in N.E.E.T/Percentile
1.	W.P.No.29649 of 2019	Naveen Bharathi	25/3.8752299
2.	W.P.No.29675 of 2019	Ms.Dharani	71/22.9957009
3.	W.P.No.30221 of 2019	Miss. Afrin.F	91/32.9591602
4.	W.P.No.30307 of 2019	Syed.MD.Abrar	99/36.50832236
5.	W.P.No.31320 of 2019	Kishore Kumar	15/1.9834060
6.	W.P.No.29679 of 2019	S.Karthikeyan	Non NEET candidate

13. The Learned Counsels appearing for the Petitioners, submitted that, the High Courts of Karnataka and Rajasthan by interim orders had permitted to admit candidates who have secured marks less than cut-off percentile and those who have not participated in the N.E.E.T exams on certain conditions. Similar order may be passed, so that, the seats which are unfilled will not go waste.

14. This Court is of a view that, as far as admissions in Education Courses, interim order allowing admission only

create unwanted anxiety to all the stake holders including the Judiciary. If the main case is not taken up for final disposal within reasonable time, the candidates who got admission by interim order will be allowed to continue the course till the disposal of the main case, and in some cases, they complete the course before the main case is taken up for final disposal. Later, when during final hearing Courts find that the admission is not legal or sustainable in such cases, the fate of the candidates who has already completed the course or at verge of completion become uncertain. So, interim order is not the proper redressal for such cases.

15. In these batch of cases, though total exemption from N.E.E.T is not possible, the petitioners have made out a reasonable point for reduction of cut-off mark in N.E.E.T. Any decision regarding cut-off mark or last date for admission has to be taken by the 1st respondent, taking note of the overall demand and availability of seats in AYUSH courses throughout the Country.

16. Mr. Godwin Swaminathan, the Learned Counsel for the petitioner in W.P.No.29981 of 2019 fairly brought to the notice of this Court, the order of the Hon'ble Supreme Court passed on 05.11.2019. In a Writ Petition filed by an Association similar to that of the petitioner, the Bombay High Court has rejected their prayer for reducing the minimum eligibility and extending the last date of admission. The Hon'ble Supreme Court on appeal, has disposed the SLP with following observations:

Permission to file Special Leave Petition is granted.

We are not inclined to interfere. The Special Leave Petition is dismissed. Pending application, if any stand disposed of.

However, the petitioners are at liberty to make a representation to the Union of India to reduce the qualifying marks for admission to Homoeopathy, Ayurveda and Unani courses in the N.E.E.T - 2019 which shall be considered by the Union of India expeditiously and not later than ten days from today without reference to the expiry of last date fixed for admissions.

17. This Court holds that, in view of the above direction given to the 1st respondent by the Hon'ble Supreme

Court, it is needless to add anything more except to say, while considering the request, the 1st respondent shall take note of the decision taken by Dental Council of India in a similar situation and the data furnished by the State Government regarding vacancy position and number of applicants, their score in N.E.E.T and pass appropriate orders.

18. With the above observations, these batch of Writ Petitions are disposed of. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

bsm

To,

1. The Secretary,
The Union of India,
(Ministry of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homoeopathy (AYUSH)
'B' Block, GPO Complex, INA,
New Delhi - 110 023.
2. The Secretary,
The Central Council of Indian Medicine,
No.61-65, Institutional Area, Opp. 'D' Block, Janakpuri,
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3. The Secretary,
The Central Council of Homoeopathy,
No.61-65, Institutional Area,
Opp. 'D' Block, Janakpuri,
New Delhi - 110 058.
4. The Secretary/Principal Secretary,
The State of Tamil Nadu,
Department of Health & Family Welfare,
Fort St.George,
Chennai - 600 009.

5. The Director,
Indian Medicine and Homoeopathy Department,
Arumbakkam,

Chennai - 600 106.

6. The Secretary,
The Selection Committee,
Directorate of Indian Medicine,
and Homoeopathy, Arumbakkam,
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 7. The Registrar,
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C-20, 1A/8, Sector - 62,
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Noida - 201 309.
 9. The Commissioner of Indian Medicine and Homoeopathy,
Arumbakkam, Chennai - 600 106.
 10. The Secretary,
Central Council of Indian Medicine,
No.61-65, Institutional Area,
Janakpuri, New Delhi - 110 058.
 11. The Board of Governors,
Central Council of Homoeopathy,
Institutional Area,
Janakpuri, New Delhi - 110 058.
- +1cc to M/s. Isaac Chambers, Advocate SR.No.93913
- +1cc to Mr.B.Rabu Manohar, Advocate SR.No.93820
- +2cc to M/s. Ramalingam Associates, Advocate SR.No.93809
- +3cc to Mr.G.Nagarajan, Advocate SR.No.93703

Writ Petition Nos.29649, 29675, 29679,
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(CO)
GMY(14/11/2019)