

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

Writ Petition No.39615 OF 2018

Between:

Syeda Sana Fatima & others

... Petitioners

Vs.

**The State of Telangana,
Rep. by its Principal Secretary Health,
Medical & Family Welfare Department,
Secretariat Buildings, Hyderabad
and others.**

... Respondents

and

Writ Petition No.40752 OF 2018

Between:

Mohammed Omeer Farooquddin

... Petitioner

Vs.

**The State of Telangana,
Rep. by its Principal Secretary Health,
Medical & Family Welfare Department,
Secretariat Buildings, Hyderabad
and others.**

... Respondents

DATE OF JUDGMENT PRONOUNCED: 07.08.2019

Submitted for approval.

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ W.P. No.39615 of 2018

% Dated 07.08.2019

Syeda Sana Fatima & others

... Petitioners

Vs.

**\$ The State of Telangana,
Rep. by its Principal Secretary Health,
Medical & Family Welfare Department,
Secretariat Buildings, Hyderabad
and others.**

..Respondents

! **Counsel for the Petitioner:** Sri P.Pandu Ranga Reddy

^ **Counsel for the Respondents:** Learned Government Pleader for
Medical, Health & Family
Welfare for respondent Nos.1 &2
Sri A.Prabhakar, learned
Standing Counsel for respondent
No.3

> HEAD NOTE:

? Cases referred

¹ (2016) 7 SCC 487

2 AIR 1965 Supreme Court 491

3 AIR 1986 Supreme Court 1448

4 (1992) 2 Supreme Court Cases 220

5 (2016) 7 SCC 353

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**WRIT PETITION Nos.39615 & 40752 of 2018****COMMON ORDER:**

Since the issue involved in both these Writ Petitions is one and the same, they are being heard together and disposed of by way of this Common Order.

2. Both these writ petitions are filed assailing the action of the 3rd respondent in issuing proceedings vide Lr.No.1215/Admissions/KRUHS/2018, dated 16.07.2018 and the consequential proceedings of the 4th respondent dated 27.10.2018, discharging the petitioners from pursuing B.U.M.S course, who were admitted during the academic year 2017-18, as illegal and arbitrary and consequently to set aside the same.

3. Brief facts which are necessary for disposal of these Writ Petitions are as follows:

In pursuance to the notification issued by the 4th respondent institution in Siasat and Rashtriya Sahara Urdu daily news papers, dated 08.11.2017, the petitioners, possessing requisite qualification i.e., 10+2 along with knowledge in Urdu, which is a mandatory for pursuing B.U.M.S, have applied for admission in Unani Course and accordingly, the 4th respondent had accorded admission under management quota. As such, all the petitioners are the students pursuing Bachelor of Unani Medicine and Surgery (for brevity 'BUMS') course in the 4th respondent institution. The Rules of admissions into BUMS course are governed under the

provisions of Indian Medicine Central Council Act, 1970 (for short 'the Act of 1970') and as per Section 36 of the Act of 1970, the Central Council of Indian Medicine had issued Regulations in the name and style as 'The Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016' dated November, 7, 2016 (for short 'the Regulations, 2016') and Regulation 2(A)(a) of Schedule III of said Regulations, 2016 stipulates the eligibility conditions for pursuing BUMS course. As per said Regulation, the candidates who have passed Intermediate qualification or its equivalent with fifty percent marks in aggregate in concerned subjects of Physics, Chemistry and Biology and who have passed 10th standard with Urdu, Arabic or Persian, are eligible to pursue B.U.M.S course. While so, the 3rd respondent, issued proceedings dated 16.07.2018 ratifying the admissions of 19 students, who were admitted through National Eligibility and Entrance Test (NEET) rankings, directed the 4th respondent institution to discharge 31 candidates on the ground that 31 students do not possess required qualification as prescribed by the 3rd respondent University. Irrespective of ranks in NEET 2017, the 3rd respondent University ratified the admissions of 19 students made by 4th respondent institution and though the petitioners 1 to 11 have also submitted their NEET ranks, their admissions were not ratified on par with 19 candidates. The State Government in exercise of its powers under Sections 3 & 15 of the Telangana State Educational Institutions (Regulation of

Admission and Prohibition of Capitation Fee) Act, 1983, had issued Rules vide G.O.Ms.No.170, dated 19.09.2017 stipulating rules of admissions for BUMS course and Rule 4 of the said rules prescribe the eligibility for admissions into BUMS course, as per the Regulations of Central Council of Indian Medicine. Even in the rules issued by the State Government, the State Government had not insisted upon the NEET entrance examination as was done for the AYUSH courses as provided under Rule 3(e). Till the academic year 2016-17, the State Government was conducting entrance examination i.e., 'BUMCET' which was being exclusively conducted for the admission into BUMS course on the lines of EAMCET entrance examination, but the said BUMCET was not conducted for the academic year 2017-18 by the State Government. Since the petitioners possess the requisite eligibility criteria as per the rules stipulated by the Apex body i.e., Central Council of Indian Medicine and also as per the Rules issued by the State Government, they are entitled to pursue BUMS course. Unless and until necessary amendments were brought in prescribing the eligibility criteria of NEET entrance examination, any rule which is in contravention of the rules issued by the Central Council, cannot be insisted upon. Since the subject 'education' is governed under the concurrent list, any State Policy or legislation would have to yield to the Central Government policy and legislation i.e., Central Council of Indian Medicine, which occupies the field of Unani Medicine. Therefore, neither the

State Government nor the University can act in a manner that is at variance with or repugnant to the Central Council, which is a Central Legislation. It is also stated that once the Parliament enacts a law, under Entry 66 of List I, the field is fully and completely occupied by the Act of Parliament and it is not open to the State Legislature or the University to encroach upon the said field, as such, any condition imposed by the Central Council of Indian Medicine shall prevail over the condition imposed by the University. Notification for NEET was issued only for the purpose of admissions into MBBS/BDS course, but not for admissions into Unani Courses, as such, any stipulation of condition for admissions into Unani courses cannot be insisted upon by the University, without following the procedure as prescribed under the Act, under which it is functioning. No provision of NEET has been provided for AYUSH courses by the CBSE. Several representations were also made to the State Government as well as the Department of AYUSH, Telangana to conduct BUMCET entrance examination for the purpose of admission into BUMS Course. In view of the same, the Department of AYUSH, Telangana had also addressed a letter dated 07.10.2017 to the 1st respondent to conduct BUMCET. In response to the same, the Special Chief Secretary to Government Health, Medical & Family Welfare Department, Telangana Secretariat, Hyderabad addressed a letter dated 25.10.2017 to 3rd respondent University to examine the letter dated 07.10.2017 and also to furnish report thereof.

Notwithstanding the rules prevailing for the admissions into BUMS course and the communications issued by the Department of AYUSH, Union of India and State Government, the 3rd respondent University issued a notification stipulating NEET Entrance examination as eligibility criteria for the purpose of admission into BUMS course. Aggrieved by the same, present Writ Petitions are filed.

4. Counter affidavit is filed by the 3rd respondent, denying the averments in the affidavit filed in support of the writ petition stating that the Ministry of AYUSH, Government of India vide letter No.13040/33/2016-ITD (Tech) dated 27.01.2017 addressed to all State authorities with an object to bring meritorious students to the AYUSH courses in the country on the basis of merit secured by them in NEET from the academic year 2017-18. The State Government addressed a letter No.1870/E2/2017, dated 14.3.2017 to the Under Secretary, Government of India, Ministry of AYUSH stating that they agree with the decision of the Ministry of AYUSH to admit the students in AYUSH Under Graduate Courses through NEET merit only. The 3rd respondent University also addressed letter No.846/Acad/KNRUHS/2016, dated 15.03.2017 to the Secretary, Ministry of AYUSH, New Delhi intimating that they have resolved to implement the orders passed by the AYUSH for admission into UG & PG Courses in AYUSH through NEET merit for the academic year 2017-18. The State Government also addressed letter No.1870/E2/2017, dated 14.03.2017 and

21.03.2017 intimating the decision taken by the Government that the admissions to AYUSH under Graduate Courses shall be done only through NEET merit for the academic year 2017-18. It is stated that the Ministry of AYUSH, Government of India vide Lr.No.F.No.R-13040/33/2016 ITD (Tech) dated 26.04.2017 addressed to all the State authorities to ensure the admission of meritorious students in AYUSH stream of medicine on the basis of merit secured by the students in NEET for academic year 2017-18 and advised the State and Union Territory Government to adopt the merit list of NEET for admissions. However, an option was given to those State Governments and Union Territories in case of any difficulty to adopt NEET merit list for AYUSH Under Graduate Course admissions for academic year 2017-18 to make admission into AYUSH Courses on the basis of Common Entrance Test conducted by them. The Government of Telangana adopted NEET Merit list for academic year 2017-18 and directed the University to adopt NEET merit and intimation was also given to the Ministry of AYUSH vide letter dated 14.03.2017. The University had made admissions into all AYUSH Courses for competent authority seats on the basis of merits secured by the students in NEET examination for the academic year 2017-18 and for Management Quota seats of BHMS Course also by NEET merit. The 4th respondent college was not given permission by the Ministry of AYUSH for the academic year 2017-18 before the 1st phase of counselling, but conditional permission was given to the 4th respondent by the

Ministry of AYUSH at the time of 2nd phase of counselling. The 3rd respondent University once again issued a notification dated 31.10.2017 inviting applications from the candidates through online for admission into BUMS Courses from U.G NEET 2017 qualified candidates in continuation of previous notification dated 20.09.2017, in view of conditional permission granted to the 4th respondent college. After verification of the original certificates of those candidates who had applied for admission into competent authority seats and counselling was conducted on 05.11.2017 and the admissions into competent authority quota seats were completed with candidates who qualified in the NEET examination 2017. In the said notification, it was specifically stipulated that those who are qualified in the NEET UG entrance test alone were eligible along with other eligibility criteria for admission. In a notification issued by the 3rd respondent University dated 02.11.2017 inviting applications through online for admission into management quota seats in to the 4th respondent college, it is also stipulated that the candidates who are qualified in the NEET UG Entrance test alone eligible for admission. The 4th respondent college issued notification dated 08.11.2017 inviting applications from the candidates who passed NEET examination and who qualified EAMCET 2017, but the 4th respondent admitted the candidates contrary to the notification dated 08.11.2017 issued by the college and as mentioned in the letter by the Principal of 4th respondent college, at the request of students, 50 candidates

were given conditional admission subject to approval of competent authority. Though, the 4th respondent college issued notification in SIASATH Urdu News paper on 08.11.2017 inviting applications from the candidates who passed in NEET for admission into BUMS courses, but admitted the candidates in contrary to the said notification. The Principal of the 4th respondent College had addressed letter dated 01.08.2018 to the 3rd respondent stating that he had given conditional admission to 50 students and that the petitioners are not eligible to pursue BUMS course as they did not appear in NEET examination UG, 2017. Rules issued in G.O.Ms.No.170, dated 19.09.2017 stipulates entrance examination for admission into BUMS courses and that the 3rd respondent University had made admissions into the 4th respondent college as well as Government Nizamia Tibbi College on the basis of the merit in the NEET-UG-2017, as such, no exception can be taken for the conditional admissions made by the 4th respondent college under management quota. The State Government, in pursuance to the letter dated 25.01.2017 of Ministry of AYUSH took decision to make admission into BUMS course on the basis of NEET UG Merit-2017 and that the decision taken by the State Government is not contrary to the regulations issued by the Central Council of Indian Medicine. The State Government cannot conduct examination for admission already made in the last academic year and that

there are no merits in these Writ Petitions and same are liable to be dismissed.

5. In pursuance to the orders of this Court in I.A.No.1 of 2018, the petitioners were allowed to attend classes and also to attend examination, but there is a direction, not to declare the results. Now, I.A.No.1 of 2019 is filed to declare the results of the petitioners.

6. Heard learned counsel for the petitioners, who submits that the admissions into BUMS Under Graduate course is governed by the Act of 1970 and the Regulations framed thereunder. He submits that by virtue of Section 36 of the Act of 1970, the Central Council of Indian Medicine had issued Regulations namely 'The Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016' governing the admission into BUMS. He submits that as per Regulation 4 of the Regulations in G.O.Ms.No.170, dated 19.09.2017, issued by the Government of Telangana, provides for Eligibility for admission for BUMS course, wherein it stipulates that a candidate must have passed 10+2 and NEET examination is not the criteria for admission. He submits that since the petitioners possessed the requisite qualification prescribed in Regulations, 2016, they are entitled to pursue their BUMS course in the 4th respondent college. He also submits that the NEET Notification for the academic year 2017-18 is only made for admissions into MBBS and BDS examinations and that introduction of NEET was insisted by

virtue of Judgment of Supreme Court in **Mihir Abhijat Pathak & others v. Medical Council of India and another**¹ and that too, after amending the provisions of the Indian Medicine Central Council Act and Dentists Act by introducing Section 10D in the said Acts, but there is no such amendment to Act of 1970. He also submits that even though the respondents are insisting that NEET is compulsory for admissions into BUMS course, they have admitted students, who have not secured minimum percentage prescribed under NEET, even the students, who have secured negative marks have been provided the admission. He also submits that since the NEET notification indicated admissions only for MBBS and BDS, petitioners were under the impression that it is not for Unani Courses and that separate BUM CET will be conducted as was done in the earlier years by virtue of rules prevailing, but the same was not conducted. As such, the requirement of NEET for admissions into BUMS course is not mandatory. In support of the contention, reliance has been placed on the judgments i.e., Judgment of High Court of Judicature at Patna in Civil Writ Jurisdiction Case No.16541 of 2018, dated 10.10.2018, Judgment of Gujarat High Court in R/Special Civil Application No.22606 of 2017 & batch, dated 09.05.2018 and Order of High Court of Karnataka in WP Nos.41486-534/2018 & batch, dated 11.10.2018.

7. On the other hand, Sri A. Prabhakar Rao, learned Standing Counsel appearing for the 3rd respondent University submits that the Ministry of AYUSH has requested all the State

¹ (2016) 7 SCC 487

Governments to make admissions into AYUSH courses basing on the ranks in NEET entrance examination and the State of Telangana has accepted the same and that the 3rd respondent University was also directed to follow the same, as such, the 3rd respondent University has prescribed the eligibility of NEET examination for admission into BUMS course and accordingly issued notification. He submits that the 4th respondent college issued notification for admissions under management quota, prescribing the NEET qualification, but contrary to the same, made admissions of those students, who have not appeared for the NEET examination, which is against the rules. He also submits that the Regulations issued by the State Government under G.O.Ms.No.170, dated 19.09.2017 i.e., the Telangana State AYUSH Regulation of Admissions into Under Graduate AYUSH Professional Courses Rules, 2017, provide for common entrance test for admissions into AYUSH courses and clause (iv) of Rule 2 provides that Common Entrance Test means, National Eligibility cum Entrance Test (NEET) U.G conducted by Government of India and Rule 3 also provides that for admission into AYUSH courses, one should be qualified in NEET UG. He submits that since the 4th respondent has made admissions of petitioners 12 to 30 and petitioner in W.P.No.40752 of 2018, against the rules, as such, they were discharged and admissions of petitioners 1 to 11 in WP No.39615 of 2018, who were admitted through NEET, were approved, after it was brought to the notice of the University

that the students had appeared in NEET. He also submits that though Rule 4 provides eligibility for admission into BUMS course, Rule 4 is in addition to Rule 3 in respect of BUMS course, as such, NEET is mandatory for admissions into BUMS course. He also placed reliance on the letter dated 26.04.2017 issued by the Ministry of AYUSH wherein it is stated that admissions in AYUSH UG Courses shall be compulsorily through NEET Merit list from the academic year 2018-19. In support of his contentions, he relied on the judgments reported in the case of the University of **Mysore v. C.D.Govinda Rao**², **Rajendra Prasad Mathur v. Karnataka University**³ and **Bhushan Uttam Khare v. Dean, B.J.Medical College**⁴.

8. In view of rival contentions of both parties, the points that arise for consideration are:

- a) Whether the 3rd and 4th respondents are justified in discharging the petitioners 12 to 30 & petitioner in WP No.40752 of 2018 from the BUMS Under Graduate Course?
- b) Whether the action of the 3rd respondent in not approving the admissions made by the 4th respondent College and directing the 4th respondent to discharge the petitioners on the ground that the petitioners did not appear in the NEET Entrance examination?

9.Points (a) & (b):

In this case, it is to be seen that the provisions of Indian Medicine Central Council Act, 1970 and Regulations made there under govern the procedure of admission into BUMS course. In exercise of powers conferred by clauses (i), (j) and (k) of sub-

² AIR 1965 Supreme Court 491

³ AIR 1986 Supreme Court 1448

⁴ (1992) 2 Supreme Court Cases 220

section (1) of Section 36 of the Act, with the previous sanction of the Central Government, the Central Council of Indian Medicine issued notification on 07.11.2016 to amend the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 prescribing necessary qualifications for the admission into BUMS course. Since the admission of students pertains to the year 2017-18, it is relevant to extract relevant Regulation. Regulation 2 of Schedule III provides for eligibility for admission into BUMS course, which reads as follows:

- “2. Eligibility for admission: To seek admission in the respective course of Bachelor of Unani medicine are as under:
- (A) Admission to Kamili Tib O Jarahat course: A candidate seeking admission to main Kamili Tib O Jaharat (Bachelor of Unani Medicine and Surgery-B.U.M.S) Course must have passed-
- (a) intermediate (10+2) or its equivalent examination with at least fifty per cent, aggregate marks in the subjects of Physics, Chemistry and Biology and the candidate shall have passed 10th standard with Urdu or Arabic or Persian language as a subject, or clear the test of Urdu of 10th standard (wherever there is provision to conduct of such test) in the entrance examination conducted by the University or Board or registered Society or Associations authorized by the Government to conduct such examination;

A perusal of the aforesaid Regulation makes it clear that it is not mandatory to appear for NEET examination for admission into BUMS course, but the respondents are relying on the G.O.Ms.No.170, dated 19.09.2017, wherein the Rules were framed by the Government of Telangana namely the Telangana State AYUSH Regulation of Admissions into Under Graduate AYUSH Professional Courses Rules, 2017 and clause (e) of Rule 3 provides that , a student should be qualified in NEET Under Graduate course for admission into AYUSH courses, but

whereas **Rule 4** provides for eligibility for admission for BUMS course, as per Regulation of Central Counsel of Indian Medicine, dated 25.06.2013 & 02.05.2016, which reads as follows:

“(A) Admissions to Kamil-E-TIB-Wa-Jaharat course: A candidate seeking admission to main Kamil-E-Tib-Wa-Jaharat (Bachelor of Unani Medicine and Surgery-B.U.M.S) Course must have passed:-

- a) Intermediate 10+2 or equivalent examination with fifty percent aggregate marks in the subjects of Physics, Chemistry and Biology.
- b) The candidate should have passed 10th standard with Urdu or Arabic or Persian language as a subject or clear the test or Urdu in the entrance examination conducted by the University or Board or Registered Society authorized by the Government to conduct such examination
(or)
- c) The Pre-Tib examination of one year duration.

Though Rule 3 provides for eligibility under the AYUSH Courses, Rule 4 provides for eligibility criteria for admission into BUMS courses, which is in conformity with the Regulations, 2016, framed under the Act. Though the 3rd respondent placed reliance on the letter dated 26.04.2017 issued by the Ministry of AYUSH for making NEET eligibility for admissions into BUMS course, but the said letter also indicates that NEET was made compulsory for admissions into AYUSH UG courses for the academic year 2018-19, but in respect of the States which are unable to adopt NEET merit list for AYUSH UG admission for academic year 2017-18, then the States may admit students in all the AYSH Colleges/Institutions (Public and Private) through Common Entrance Test (CET) of the concerned State Governments, as per the existing rules and policies, as was done in the previous year 2016-17, shows that even the Ministry of AYUSH was of the opinion that NEET should be

made compulsory for admission into AYUSH courses from the academic year 2018-19.

10. The next contention of the learned counsel for the petitioners is that there is no mention about mandatory NEET eligibility for admission into BUMS in NEET notification for the years 2017 and 2018. A perusal of the NEET notifications for the academic year 2017-18 which are produced before this Court, goes to show that admission under NEET 2017-18 is meant for admission into MBBS/BDS courses, but the said notification does not contemplate that the admissions in BUMS or AYUSH courses would be based on the NEET merit. Learned counsel for the petitioners also asserts that the petitioners are also of the opinion that NEET is for MBBS and BDS and it is also a fact that up to the academic year 2016-17, the State Government had conducted separate test for BUMCET, but the same has not been conducted for the year 2017-18, which is also one of the factor weighing in favour of the petitioners. As such, the eligibility of NEET is not found in the Notifications for the year 2017 and 2018.

11. Another interesting factor is that candidates who have secured as low as minus (-) 3 or (-) 9 in a subject like Chemistry in the NEET, were also admitted into BUMS course through NEET eligibility category, which goes to show that a candidate has to only appear in the NEET examination, but there is no minimum cut off marks provided for admission into BUMS course. When once minimum percentage of marks is not fixed

in the NEET examination for admission into BUMS course, the merit obtained in the NEET is not at all considered for admission into BUMS Course. The said fact also makes it clear that mere appearance in the NEET is sufficient for fulfilling the criteria for taking admission into BUMS Course. This aspect rather paints a grim picture where mere appearance in the competitive examination has been taken into consideration despite the fact that the students, whose admissions were ratified/approved on the basis of mere participation, were not even competent enough to secure required percentage of marks in the entrance examination. The purpose of NEET throughout the country is only to filter meritorious candidates for taking admissions into MBBS/BDS or any AYUSH Courses. The basis for conducting NEET is based on the syllabi as provided in the qualifying examination. In the present case, there is no dispute that qualification examination for admission into BUMS Course is as per Rule 2 (A) (a) of the Regulations 2016. Admittedly, it is not the case of the respondents that the petitioners does not possess the qualifications mentioned in Regulation 2(A)(a) in the III schedule of the Regulations, 2016.

12. Disallowing the candidates who have not appeared for NEET, may be at the most a technical objection, as merit in the NEET examination is not a ground, as the admission of candidates with (-) minus 3 or (-) 9 marks were also approved by 3rd respondent University. Even the petitioners who have been admitted into course on the basis of 10+2 qualification and have

been permitted to pursue the course, have written 1st year examination, there is no reason as to how the merit gets defeated if their admissions are approved, with that of the candidates who secured (-) minus 3 marks in the NEET.

13. Learned counsel for the petitioners have heavily relied on the judgement of Patna High Court in Civil Writ Jurisdiction Case No.16541 of 2018 and has asserted that that impugned notification issued by the Government of Telangana was beyond its competency as the necessary amendments were not brought in the Central Council Act on the similar lines of Medical Council and Dentist Act. It was also argued that that the Patna High Court has rightly held that the Notification Issued by the Ministry of AYUSH making NEET mandatory for AYUSH courses cannot be sustained. However, I find it difficult to accept this argument and the observation made by the High Court of Patna for the simple reason that the learned single Judge, has not appreciated the Entry 25 of the Concurrent list of Schedule 7 that gives equal prerogative to State Government to prescribe Standard of Education in the State subject to Entry 66 of List 1.

Entry 66 reads as follows:

Entry 25 of List III reads as follows:

25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Entry 66 of List reads as follows:

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

The question that has to be considered is whether the State Government can prescribe the Higher Standards for

education than those prescribed by Central Government? The answer has to be in affirmative.

14. The Supreme Court of India has answered this question in several cases while discussing entries 66 of list I and 25 of list III and observed that that these two should be read harmoniously. Constitution Bench of Hon'ble Supreme Court in ***Modern Dental College & Research Centre v. State of M.P.***⁵, held as follows: **(2016) 7 SCC 353 : at page 452**

“146. Observing that the scope of the relevant entries in the Seventh Schedule of the Constitution has to be understood in the manner as stated in *Preeti Srivastava case* [*Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120 : 1 SCEC 742] , in *State of T.N. v. S.V. Bratheep* [*State of T.N. v. S.V. Bratheep*, (2004) 4 SCC 513 : 2 SCEC 547] , this Court held as under: (SCC pp. 518-19, para 9)

“9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by AICTE. It is no doubt true that AICTE prescribed two modes of admission—one is merely dependent on the qualifying examination and the other, dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by AICTE, can it be said that it is in any manner adverse to the standards fixed by AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by AICTE would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by AICTE are not belittled in any manner. The manner in which the High Court [*S.V. Bratheep v. State of T.N.*, 2003 SCC On Line Mad 690 : (2003) 4 LW 635] has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in *Preeti Srivastava case* [*Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120 : 1 SCEC 742] . It is no doubt true, as noticed by this Court in *Adhiyaman case* [*State of T.N. v. Adhiyaman Educational & Research*

⁵ **(2016) 7 SCC 353**

Institute, (1995) 4 SCC 104 : 1 SCEC 682] that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including *Preeti Srivastava case* [*Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120 : 1 SCEC 742] . If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.”

In view of the principle laid down in the aforesaid judgment of Hon’ble Supreme Court, the observation made by the learned Single Judge of Patna High Court is not tenable and couldn’t be agreed upon or relied as far as this aspect is concerned. State Government has framed the Rules under G.O.Ms.No.170, dated 19.09.2017 prescribing NEET as requisite qualification, the same cannot be faulted. The State Government can always prescribe higher qualifications than fixed by the Central Government or Ministry of AYUSH. I find it difficult to concur with the findings arrived at by the High Court of Patna, suggesting that the Ministry of AYUSH was not competent to issue notification making NEET mandatory for AYUSH Courses, without amending the Act of 1970 and I am of the opinion that the State Government can always fix higher qualifications. However, in the case on the hand the said G.O Ms.170, dated 19.09.2017, was issued by the Government of Telangana, making NEET mandatory for AYUSH courses, on 19th September 2017, more than three months after the declaration of final NEET Results of 2017, making impossible for the students to avail the opportunity to appear in the exam

as they could not have known about the issuance of such notification.

15. The medical education as per the Entry 25 of list III falls under concurrent list and state is very much competent to bring law in relation to it subject to the provisions of entries 63, 64, 65 and 66 of list I. There cannot be any conflict between the Central Government and State Rules, as held by High Court of Gujarat in **Joshi Milan kumar Ashvinbhai v. State of Gujarat (R/Special Civil Application No.22606 of 2017 & batch**, wherein it is held as follows:

"22. It is required to be noted that when the validity of Rule 4(5)(A) of the Rules of 2017 was challenged by the concerned students by filing Special Civil Application No.12827 of 2017, the Division Bench of this Court by an order dated 02.08.2017 in the case of Dhrutikumari B. Patel (supra) upheld the validity thereof. However, it is further required to be observed at this stage that the Division Bench has specifically observed in para 21 as under:

"21. Thus, from the aforesaid provisions, it is revealed that State is empowered to frame the Rules for the subject mentioned in Entry 25 of List III of the Seventh Schedule to the Constitution. From the regulations framed under the Act of 1970 as well as Act of 1973, it is revealed that the minimum eligibility criteria for giving admissions in BAMS and BHMS courses respectively is provided. From the submissions canvassed by learned Additional Advocate General, it is revealed that for approximately 15,000 seats available for Professional Medical Educational Courses, approximately 33,000 students were registered. Hence, looking to the number of seats available for admission to various Professional Medical Educational Courses and looking to the registration of large number of candidates for such courses, the impugned Rules framed by the respondent State laying down the qualification for a candidate to be eligible for being considered for selection for admission to BAMS and BHMS courses on the basis of the merit list of NEET, cannot be said to be in conflict with the Act of 1970 and Act of 1973 or in any way repugnant to the said Central Legislations. From the aforesaid decisions rendered by the Hon'ble Supreme Court which are referred to hereinabove, it is further clear that When there are more students/applicants than the available seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the center or the Central authority to short-list the students/applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List and when the Rules are framed by the State laying down further qualification, it cannot be said to be in conflict with the Central Law or repugnant to the Central Law. Thus, when the field is not occupied, the State is empowered to frame the Rules."

23. From the aforesaid observations made by the Division Bench, it is clear that this Court held that the State is empowered to prescribe higher standards than the minimum eligibility criteria prescribed by the concerned Council. It is further clear that approximately 15,000 seats were available for professional medical courses against which approximately 33,000 students were registered. Thus, looking to the number of seats available for admission to the various professional medical educational courses and looking to the registration of large number of candidates for such courses, Rule 4(5)(A) framed by the respondent State laying down higher qualification was accepted by this Court."

16. There is no dispute about the fact that the Ministry of AYUSH made NEET merit mandatory for the Academic Year of 2018-19 by way of proceedings dated 26.04.2017, wherein it is stated as follows:

“(iii) Admission in AYUSH UG Courses shall be compulsorily through NEET merit list from the A. Y. 2018-19.”

They could have been made applicable had the State issued the G.O.Ms.No.170, dated 19.09.2017 before the last date of filing NEET application for the Academic Year of 2017-18 enabling the petitioners to appear in the NEET. Even some students, without NEET have been admitted as Ministry of AYUSH permitted same for the year 2017-18 and made NEET compulsory for the year 2018-19. Therefore, by allowing petitioners to continue would not in any way affect the policy framed by the Ministry of AYUSH.

17. The High Court of Karnataka in WP Nos.41486-534/2018 & batch, granted interim orders on 11.10.2018 for admission of students, who have not undergone NEET qualification.

18. Though learned Standing Counsel relied on the judgments of Apex Court, the same cannot be made applicable to the facts and circumstances of the case. No doubt, this Court cannot go into the aspects regarding prescription of qualification for admission into courses. As this Court does not have expertise to deal with such matters and it is the 3rd respondent University, who can fix the same, as held by the Hon'ble Apex

Court in **Bhushan Uttam Khare v. Dean, B.J.Medical College (supra)**. But in this case, this Court has not undertaken such exercise, as such, the judgments relied on by the learned Standing Counsel are not applicable to the facts and circumstances of the case on hand.

19. The notification issued by the Ministry of AYUSH making NEET mandatory envisages the noble idea behind it as it has made it pretty clear that the purpose of the said notification was to bring the meritorious students into the different fields of medicine. In a country, plagued by the non availability of the efficient and competent medical personnel; where hundreds of thousands find it difficult to avail basic health benefits, the idea of bringing competency in other health professions, other than MBBS/BDS can not be termed as an exercise devoid of diligence. However, it is to be said that the minimum prescribed limit must be taken into consideration while giving admissions to the students in medical courses. I do not find any rationale in ratifying the admission of such students who could not even open their accounts and secured as less as -3 & -9 marks in the NEET in a subject. It would rather be preposterous to suggest that the NEET appearing student who has secured such number of marks must be given precedence over non NEET student who possesses minimum qualification as provided under various rules by both the Central and State Governments.

In view of above facts and circumstances, the impugned proceedings are quashed and 3rd respondent is directed to approve the admission of petitioners 12 to 30 in WP No.39615 of 2018 and petitioner in WP No.40752 of 2018 by declaring the results. Since the admissions of petitioners 1 to 11 have already been approved, the impugned order of the 3rd respondent discharging the petitioners 12 to 30 and petitioner in WPNo.40752 of 2018 and consequential proceedings of the 4th respondent college, are set aside and declare the results of the petitioners 12 to 30 and petitioner in WPNo.40752 of 2018, and permit them to pursue further course, in accordance with the Regulations.

Accordingly, both the Writ Petitions are allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

07.8.2019

Note: LR copy to be marked.

B/o. kvs

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION Nos. 39615 & 40752 of 2018

07.08.2019

kvs