

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.12.2020

Delivered on: 23.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP Nos.13575, 13579, 13596 and 13949 of 2020

and

WMP Nos.16877, 16879, 16839, 16843, 17336, 17338, 16837, 16835,
16836, 16881, 16846, 16876, 17333, 16844, 16845 and 17334 of
2020

W.P.No.13575 of 2020

- 1.D.Thamarai Selvan
- 2.S.Sowmiya
- 3.T.Rajeswari
- 4.V.Priyanga
- 5.G.Lawrein Sagaya Lydia
- 6.M.Dharshana
- 7.L.Mathumitha
- 8.Pon.Vaishali
- 9.S.S.Shadhanasri
- 10.S.Sivamani
- 11.T.harishini

(Students studying in 1st year BSMS course,
Nandha Siddha Medical College and Hospital,
Pitchandampalayam Post,,
Erode 638052).

..Petitioners
in W.P.No.13575 of 2020

सत्यमेव जयते
.Vs.

- 1.The Tamil Nadu Dr. M.G.R.Medical University
rep.by its Registrar,
Anna Salai, Guindy, Chennai 600 032.

- 2.The Commissioner of India Medicine and
Homeopathy, Arunbakkam,
Chennai 600 106.

3.Nandha Siddha Medical College and Hospital
rep.by its Principal,
Erode-Perundurai Main Road,
Pitchandampalayam Post,
Erode 638052.

..Respondents
in W.P.No.13575 of 2020

Prayer in W.P.No.13575 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent ending with its letter in Ref.No.Ex.IV.(2)/77262/2019 dated 11.09.2020 and quash the same insofar as it relates to the petitioners herein and consequently direct the respondents to regularise the admission of the petitioners in BSMS Course in the 3rd respondent College in the light of the protection granted by the Hon'ble Supreme Court in the recent judgment dated 20.02.2020 in Civil Appeal No.603 of 2020 (batch).

W.P.No.13579 of 2020

1.P.Jayasree

2.Mandal Bhanu Prakash

3.V.Yogapuvanya

(Students studying in 1st year BAMS course,
Nandha Ayurveda Medical College and Hospital,
Pitchadampalayam Post,
Erode 638052).

..Petitioners
in W.P.13579 of 2020

.Vs.

1.The Tamil Nadu Dr. M.G.R.Medical University
rep.by its Registrar,
Anna Salai, Guindy, Chennai 600 032.

2.The Commissioner of Indian Medicine and
Homeopathy, Arunbakkam,
Chennai 600 106.

3.Nandha Ayurveda Medical College and Hospital
rep.by its Principal,
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Pitchandampalayam Post,
Erode 638052.

...Respondents
in W.P.No.13579 of 2020

W.P.No.13579 of 2020:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent ending with its letter in Ref.No.Ex.IV.(2)/77262/2019 dated 11.09.2020 and quash the same insofar as it relates to the petitioners herein and consequently direct the respondents to regularise the admission of the petitioners in BAMS Course in the 3rd respondent College in the light of the protection granted by the Hon'ble Supreme Court in the recent judgment dated 20.02.2020 in Civil Appeal No.603 of 2020 (batch).

W.P.No.13596 of 2020

1.R.P.Ramakrishnan

2.L.Vaishnavi

(Students studying in 1st year BSMS course,
Excel Siddha Medical College &
Research Centre, 554, Salem Main Road,
Pallakapalayam, Sankari West Post,
Komarapalayam Taluk, Namakkal District).

...Petitioners
in W.P.13596 of 2020

.Vs.

1.The Tamil Nadu Dr. M.G.R. Medical University
rep.by its Registrar,
Anna Salai, Guindy, Chennai 600 032.

2.The Commissioner of Indian Medicine and
Homeopathy, Arunbakkam,
Chennai 600 106.

3.Excel Siddha Medical College &
Research Centre,
554, Salem Main Road,
Pallakapalayam,
Sankari West Post,
Komarapalayam Taluk,
Namakkal District.

...Respondents
in W.P.No.13596 of 2020

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the admission of the petitioners in BSMS Course in the 3rd respondent College in the light of the protection granted by the Hon'ble Supreme Court in the recent judgment dated 20.02.2020 in Civil Appeal No.603 of 2020 (batch).

W.P.No.13949 of 2020

- 1.Hima Balan
- 2.Vinatha K.Suresh
- 3.E.Sreelakshmi
- 4.S.Ashvanthini
- 5.M.Sreemathi
- 6.S.Bhavya
- 7.Fendy Syiem
- 8.M.S.Sreelakshmi

(Students studying in 1st year BAMS course,
Ayurveda College, Coimbatore,
242-B, Trichy Road, Sulur,
Coimbatore-641 402).

...Petitioners
in W.P.No.13949 of 2020

.Vs.

1.The Tamil Nadu Dr. M.G.R.Medical University
rep.by its Registrar,
Anna Salai, Guindy, Chennai 600 032.

2.The Commissioner of Indian Medicine and
Homeopathy, Arunbakkam,
Chennai 600 106.

3.Ayurveda College,
Coimbatore,
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242-BTrichy Road, Sulur,
Coimbatore-641 402.

..Respondents
in W.P.No.13949 of 2020

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For Petitioners
in All WPs : Mr.Kandhan Duraisamy

For Respondents
in All WPs : Mr.D.Ravichandar
Standing Counsel
for R 1

: Mr.V.Kadhirvelu
Special Government Pleader
for R 2

: Mrs.R.Jeevitha
for R 3

COMMON ORDER

The issue involved in all these Writ Petitions are common and hence, they are taken up together, heard and this Common Order is passed.

2.The petitioners after completing their Higher Secondary School Education aspired to undergo Courses in Indian Medicine like Siddha and Ayurveda. Writing NEET entrance Examination for admission into these courses (hereinafter called as the 'AYUSH Undergraduate Courses') was made mandatory by the Central Council of Indian Medicine (hereinafter called as 'the Central Council') from the academic year 2019-2020. The petitioners took the NEET Examination and all of them obtained the required percentile to participate in the selection for the Siddha and Ayurveda Courses.

3.The petitioners were waiting for the 2nd respondent to conduct the second round of counselling from 29.09.2019 to 15.10.2019, for nearly 18 days and it never took place. Ultimately, the petitioners on coming to know that several vacancies are available in the respective 3rd respondent College and Hospital, proceeded to join the Course under the lapsed seat category. These Colleges are affiliated to the 1st respondent University.

4.While the petitioners were undergoing the Course in the respective 3rd respondent College, they were informed by the College Authorities that the 1st respondent University through the Impugned Communication dt. 11.09.2020, has directed that all

those candidates who have been admitted in the College in contravention of the criteria or procedure as laid down in the Regulations formulated by the Central Council, shall be immediately discharged from the 3rd respondent College. Aggrieved by this Impugned Communication, present Writ Petitions have been filed by the discharged students, who were studying in the respective 3rd respondent College.

5. The 1st respondent through the Registrar of the University, has filed a common counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

"8. I state that the Indian Medicine / Selection Committee vide its communication dated 09.09.2020 had clarified and notified that admission of those students with NEET eligibility but not selected through State Government nominated designated authority is declared to untenable and mandated that the same shall not be considered for further process on the strength of aforementioned Statutory Regulations viz Regulation 2 (d)(v) and (viii) of Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2018 and Regulation 4A (i-v) & (viii) of Homeopathy (Degree Course) Amendment Regulations, 2018. Following the aforementioned communication dated 09.09.2020, the impugned communications were issued by this Respondent University, wherein the Affiliated colleges are directed to discharge those students admitted in Indian Medicine and Homeopathy Courses for the Academic Year 2019-2020 with or without NEET eligibility but not sponsored by the Selection committee designated by the State Government.

9. I state that Regulations 2 (d)(v) and (viii) under both Schedule I and Schedule II of Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2018 provided as follows:

"(V) The designated authority for counseling for all admission to undergraduate course in all Ayurveda educational institutions in the States and Union territories including institutions established by the State Government, University, Deemed

University, Trust, Society, Minority Institution, Corporation or Company shall be the respective State or Union territory in accordance with the relevant rules and regulations of the concerned State or Union territory Government, as the case may be.

(viii) No authority or institution shall admit any candidate to the under graduate course in contravention of the criteria or procedure as laid down by these regulations in respect of admissions and any candidate admitted in contravention of the said criteria or procedure shall be discharged by the Central Council forthwith."

Similarly Regulation 4A (i-v) & (viii) of Homeopathy (Degree Course) Amendment Regulations, 2018, provides as follows:

"(V) The designated authority for counseling for all admission to under graduate course in all Homeopathy educational institutions in the States and Union territories including institutions established by the State Government, University, Deemed University, Trust, Society, Minority Institution, Corporation or Company shall be the respective State or Union territory in accordance with the relevant rules and regulations of the concerned State or Union territory Government, as the case may be..

(viii) No authority or institution shall admit any candidate to the under graduate course in contravention of the criteria or procedure as laid down by these regulations in respect of admissions and any candidate admitted in contravention of the said criteria or procedure shall be discharged by the Central Council forthwith."

The above Amendments to Statutory Regulations came into force with their publication in the Official Gazette dated 07.12.2018 and 14.12.2018. The above Regulations make it blatantly clear that admission to the aforementioned courses in each State/ Union territory shall be made only by the concerned designated authority by the respective State/ Union Territory, which is

2nd Respondent herein in so far the State of TamilNadu is concerned. Further, the said Regulations also make it blatantly clear that any admission made in contravention of said Regulations, which includes procedure of admission by concerned State Government/ Union Territory, shall be regarded as illegal and mandates for discharge of such students. Thus, the communication of the 2nd Respondent herein to this Respondent University dated 09.09.2020 following by impugned communications by this Respondent University are in line with the aforementioned Regulations and the same does not warrant any interference by this Hon'ble court.

10. I state that the present Writ petitions are clearly devoid of any merits and not maintainable for the following reasons. Firstly, the students were mandated to be discharged on the basis that their admissions were in clear infraction of the aforementioned Regulations of the respective Central Councils. In the said circumstances, the said Central Councils under the Ministry of AYUSH namely Central Council of Indian Medicine (CCIM) and Central Council of Homeopathy (CCH) ought to have made as a party to the present lis as their presence is proper and necessary for effective adjudication of this lis more particularly when the infraction of their Regulations are at issue. Thus, the present Writ Petition are non maintainable for being bad for non-joinder of necessary and proper parties.

11. state that secondly the present Writ Petitions are not maintainable as the Challenge is confined only to the consequential proceedings viz impugned orders of this respondent University. As mentioned earlier, the impugned communication emanates from the order of the 2nd Respondent herein dated 09.09.2020, wherein it had been clarified and notified that admission of those students with NEET eligibility but not selected through State Government nominated designated authority is declared to untenable and mandated that the same shall not considered for further process. Without there

being any challenge to the aforementioned order dated 09.09.2020 made by the 2nd Respondent herein, the present Writ petitions cannot be maintained confining challenge only to the consequential proceedings.

12. I state that thirdly, the present Writ petitioners cannot take aid under Judgment of the Hon'ble Apex court dated 20.02.2020 in Civil Appeal. No.603/ 2020 for the following reasons:- (a) The benefit of continuation of studies was confined only to those students who were admitted pursuant to Interim orders in cases where the validity of introduction of Common Entrance Examination (NEET eligibility) was at issue, (b) The Apex court had clearly mandated that the said order is a one-time exercise and the same shall not be treated as a precedent, and (c) the issue of legality of admission of students who were not sponsored by the respective State Government was not in consideration in the said case before the Apex court. Thus, the present Writ Petition cannot be maintained seeking extension of protection granted under the aforementioned order dated 20.02.2020 in Civil Appeal. No.603/ 2020..

6.The 2nd respondent has also filed a counter affidavit in all the Writ Petitions. The relevant portions in the counter affidavit are extracted hereunder:

"8.The counseling for the Govt.Quota seats for ASU&H Under Graduate courses was conducted from 26.09.2019 to 28.09.2019 FN. Totally, 1617 students were 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, the counseling for 430 available Management quota seats was conducted for which 715 students were 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 the Govt.Quota and 304 seats in Management quota seats in S.F.Colleges were left vacant in Self-Financing AS&H Medical Colleges.

9.....

10.It is submitted that "As per Clause 2 (d) (viii) of the Regulation for Central Council of Indian Medicine (CCIM), New Delhi, No authority or institution shall admit any candidate to the under-graduate course in contravention of the criteria or procedure as laid down by these regulations in respect of admissions and any candidate admitted in contravention of the said criteria or procedure shall be discharged by the Central Council forthwith. Hence, admission of the petitioners in the 3rd respondent's college cannot be entertained/Considered, candidates even with requisite eligible NEET score percentile to the BSMS/BAMS/BHMS course for the academic session 2019-20.

11.With reference to the averments made in the para 12 and 13 of the affidavit. It is submitted that to fill up the vacant seats in Self-Financing ASU&H Medical Colleges, the Govt. of India, Ministry of AYUSH, New Delhi had been requested to lowering the minimum eligibility cut-off percentile for NEET ASU&H UG courses for the academic year 2019-20 vide this office Lr.No.8728/P&D2/2019 dated 12.06.2019 & 29.09.2019 and to extend the cutoff date for admission to ASU&H Under Graduate course for the academic year 2019-20 vide this office Lr.Ref No.8728/P&D2/2019, dated 11.10.2019.

12.It is respectfully submitted that as per the clause 12 (xvii) and 33 of the Prospectus for admission to ASU&H U.G. Courses for the academic year 2019-20. Re-allotment for the vacancies arising due to non-joining of the candidates will be done on merit/community basis subject to the availability of sufficient time before the cut off date as prescribed by the CCIM/CCH/Ministry of AYUSH. The extend last cut off date for admission processes for UG courses in ASU&H systems of medicine for the academic year 2019-20 was 15.10.2019 and hence further movement counseling 2nd Round of Counseling etc., could not be conducted due to paucity of time. The Ministry of AYUSH, Govt. of India, New Delhi had neither lowered the minimum eligible NEET percentile for

admission to ASU&H courses nor extended cut-off date for admission for the academic year 2019-20.

7.Mr. Kandhan Doraisamy, learned counsel appearing on behalf of the petitioners made the following submissions:

- All the petitioners passed the NEET Examination and obtained the requisite percentile and became eligible to participate in the selection in the AYUSH Undergraduate Courses.
- There were nearly 421 vacancies which include both the Government Quota and Management Quota and unfortunately the 2nd respondent did not conduct the 2nd round of counselling for nearly 18 days and ultimately all the seats fell under stray vacancies which was filled up by the 3rd respondent College.
- The inaction on the part of the 2nd respondent in not conducting the counselling on time should not adversely affect the interest of the students who were otherwise eligible to participate in the counselling.
- The NEET Examination was made compulsory for the first time during the academic year 2019-2020 and this notification became a subject matter of challenge which ultimately reached the Hon'ble Supreme Court and the Hon'ble Supreme Court in Civil Appeal No. 603 etc., of 2020, by order dt. 20.02.2020, even while upholding the Notification safeguarded the interest of all those students who had already joined the Course. To substantiate this submission, the learned counsel for petitioners specifically relied upon paragraph 12 of the order and the same is extracted hereunder:

12. Prescribing a minimum percentile for admission to the Under Graduate courses for the year 2019-2020 was vehemently defended by the Central Council and the Union of India by submitting that the minimum standards cannot be lowered even for AYUSH courses. We agree. Doctors who are qualified in Ayurvedic, Unani and Homeopathy streams also treat patients and the lack of minimum standards of education would result in half-baked doctors being turned out of professional colleges. Non-availability of eligible candidates for admission to AYUSH Under Graduate courses cannot be a reason to lower the

standards prescribed by the Central Council for admission. However, in view of admission of a large number of students to the AYUSH Under Graduate courses for the year 2019-2020 on the strength of interim orders passed by the High Courts, we direct that the students may be permitted to continue provided that they were admitted prior to the last date of admission i.e. 15th October, 2019. The said direction is also applicable to students admitted to Post Graduate courses before 31st October, 2019. This is a one-time exercise which is permitted in view of the peculiar circumstances. Therefore, this order shall not be treated as a precedent.

- The Hon'ble Supreme Court while passing the order took into consideration the admission of large number of students to the AYUSH Undergraduate Courses on the strength of the interim orders passed by various High Courts and permitted those students to continue the Course if they have been admitted prior to 15.10.2019. The petitioners are in the better footing since they also have the requisite percentile to participate in the counselling, if the 2nd respondent had conducted the counselling.
- The petitioners have already completed the Course for one year and they should not be discharged at this point of time, based on the Impugned Communication made by the 1st respondent.

8. The learned Standing Counsel appearing on behalf of the 1st respondent University, made the following submissions:

- The Impugned Communication of the 1st respondent University is based on the Statutory Regulations of the Central Council and without challenging the Regulations, the petitioners have challenged a consequential communication and on this ground alone all the writ petitions are liable to be dismissed.
- The 1st respondent University held a meeting on 14.10.2020, to discuss about the admission of candidates into lapsed seats pertaining to AYUSH Courses and the Committee recommended that candidates who have cleared the NEET Examination with the requisite percentile can be considered for approval for the courses in which they have already joined. When this recommendation was placed before the Central Council, it was rejected by the Council on the ground that any admissions against the lapsed seat made by the Managements, of the Self- Financing

Colleges in violation of the existing Regulations cannot be entertained. It was pursuant to this decision taken by the Central Council, the Impugned Communication was given by the 1st respondent University to the respective Colleges.

- The unilateral admission made by the Colleges under the lapsed seat in violation of the Regulations is illegal and it cannot be regularized under any circumstances. The learned Standing Counsel in order to substantiate this submission, relied upon the judgment of this Court in Dr. A. Aswin and Others v. Secretary to Government of Puducherry, Health and Family Welfare Service Department, Secretariat, Beach Road, White Town, Puducherry and Others reported in (2020) 7 MLJ 779.
- The Hon'ble Supreme Court has already upheld the Regulation and the Hon'ble Supreme Court only safeguarded the interest of those students who were admitted into various Courses by virtue of interim orders passed by various High Courts and the said order will not come to the aid of the petitioners.

9. The learned Special Government Pleader appearing on behalf of the 2nd respondent apart from reiterating the averments made in the counter affidavit, submitted that the 2nd respondent is the designated Authority to conduct the counselling and no seats can be filled up unless it is authorized by the 2nd respondent through counselling. The learned Special Government Pleader further submitted that the 1st counselling was conducted from 26.09.2019 to 29.09.2019 and on the completion of the 1st round of counselling, there were 421 vacancies. A request was made to the Central Council for lowering the minimum eligibility cut off percentile in the NEET Examination to fill up the AYUSH Courses and to extent the time limit for conducting the counselling and the 2nd round of counselling could not be conducted due to paucity of time. Just because the 2nd respondent did not conduct the 2nd round of counselling, that will not in any way give any right to the Colleges to fill up the seats without the authorization of the 2nd respondent. The learned Special Government Pleader therefore submitted that there are no merits in these writ petitions and the same is liable to be dismissed.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. The short issue that arises for consideration in all these writ petitions is as to whether the admission given to the 25 students in the respondent Colleges should be held to be illegal on the ground of violation of the Regulations of the Central Council and all the students are liable to be discharged from the respective Colleges?

12. The Central Council for the first time, by amending its Regulations in the year 2018, prescribed an All-India National Eligibility cum Entrance Test (NEET) for admissions to AYUSH Undergraduate Courses from the academic year 2019-2020. This Notification became a subject matter of challenge and ultimately the matter reached the Hon'ble Supreme Court in Union of India vs. Federation of Self-Financed Ayurvedic Colleges, Punjab and others in Civil Appeal No. 603 etc. of 2020. Before discussing about the judgment passed by the Hon'ble Supreme Court in this case, it will be more beneficial to extract the relevant Regulations of the Central Council which made NEET Exam compulsory for admission to undergraduate AYUSH Courses and the same is extracted hereunder:

CENTRAL COUNCIL OF INDIAN MEDICINE

NOTIFICATION

New Delhi, the 7th December, 2018

F. No. 24-14/2018 (UG Regulation).—In exercise of the powers conferred by clauses (i), (j) and (k) of sub-section (1) of section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), the Central Council of Indian Medicine, with the previous sanction of the Central Government, hereby makes the following regulations further to amend the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986, namely:—

1. Short title, commencement and application.—(1) These regulations may be called the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These regulations shall apply to students who shall be admitted for B.A.M.S., B.S.M.S. and B.U.M.S from the commencement of the academic session (2019-2020).

2. In the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 (hereinafter referred to as the said regulations) in Schedule-I, for regulation 2, the following regulation shall be substituted, namely:-

"2. Eligibility for Admission.- The eligibility to seek admission in Bachelor of Ayurveda education shall be as under:-

(a) The candidate must have passed intermediate (10+2) or its equivalent examination recognised by the concerned State Government and Education Board with the subjects of Physics, Chemistry, Biology and English individually and must have obtained minimum of fifty per cent. marks taken together in Physics, Chemistry and Biology at the aforesaid qualifying examination in the case of general category and forty per cent. Marks in the case of the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

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(b) In respect of persons with disability candidate specified under the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the minimum qualifying marks in the said qualifying examination in Physics, Chemistry and Biology shall be forty-five per cent. in the case of general category and forty per cent. in the case of the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

(c) No candidate shall be admitted to B.A.M.S Degree Course unless he has attained the age of seventeen years on or before the 31st December of the year of his admission in the first year of the course and not more than of twenty-five years on or before the 31st December of the year of admission in the first year of the course:

Provided that the upper age limit may be relaxed by five years in the case of the Scheduled Castes, Scheduled Tribes, Other Backward Classes and physically handicapped candidates.

(d) (i) There shall be a uniform entrance examination for all medical institutions at the under-graduate level, namely the National Eligibility Entrance Test (NEET) for admission to under-graduate course in each academic year and shall be conducted by an authority designated by the Central Government.

(ii) In order to be eligible for admission to under-graduate course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th

percentile in the 'National Eligibility Entrance Test for under graduate course' held for the said academic year:

Provided that in respect of-

(A) candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, the minimum marks shall be at 40th percentile;

(B) candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the minimum marks shall be at 45th percentile in the case of general category and 40th percentile in the case of the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Explanation.-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 under-graduate 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 under-graduate courses, the Central Government in consultation with the Central Council may at its discretion lower the minimum marks required for admission to under-graduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for that academic year only.

(iii) An all India common merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in the National Eligibility Entrance Test and the candidates, within the respective categories, shall be admitted to under-graduate course from the said merit lists only.

(iv) The seat matrix for admission in the Government, Government-aided Institutions and Private Institutions shall be fifteen per cent. for the all India quota and eighty-five per cent. for the States and Union territories quota.

(v) The designated authority for counseling for all admissions to under-graduate course in all Ayurveda educational institutions in the States and Union territories including institutions established by the State Government, University, Deemed University, Trust, Society, Minority Institution, Corporation or Company shall be the respective State or Union territory in accordance with the relevant rules and regulations of the

concerned State or Union territory Government, as the case may be.

(vi) The counseling for all admission to B.A.M.S Course for seats under all India quota as well as for all Ayurveda educational institutions established by the Central Government shall be conducted by the authority designated by the Central Government.

(vii) No candidate who has failed to obtain the minimum eligibility marks as specified above shall be admitted to under-graduate course in the said academic year.

(viii) No authority or institution shall admit any candidate to the under-graduate course in contravention of the criteria or procedure as laid down by these regulations in respect of admissions and any candidate admitted in contravention of the said criteria or procedure shall be discharged by the Central Council forthwith.

(ix) The authority or institution which grants admission to any student in contravention of the aforesaid criteria or procedure shall be liable to face action in terms of the provisions of the Act.

13. The Hon'ble Supreme Court upheld the Notification and the relevant portion in the judgment has been extracted supra. Therefore, there is no requirement for this Court to go into the Regulations and once again examine the same. For the purpose of this case, it is important to note that the Hon'ble Supreme Court came to the rescue of those students who were admitted in the courses by virtue of interim orders passed by various High Courts, provided they were admitted prior to 15.10.2019. The Hon'ble Supreme Court took into consideration the peculiar circumstances of the case and also of the fact that NEET was introduced for the first time for the AYUSH Courses and therefore permitted these students to continue the Courses and made it clear that this judgment cannot be treated as a precedent.

14. In the present case, the 2nd respondent is the designated Authority for conducting the counselling for the AYUSH Undergraduate Courses. Only those students who are selected during the counselling and allotted to the respective Colleges, can be permitted to be admitted in the Colleges. It has been made clear in the Regulation that no Authority or Institution can admit any candidate in the Undergraduate Course in contravention of the criteria or procedure laid down by the Regulations. In the present case, it is an admitted fact that

the petitioners have straight away joined in the respective 3rd respondent Colleges which have filled up the vacancies under the guise of filling up stray vacancies. These admissions did not have the authorization of the 2nd respondent. There is absolutely no dispute with regard to this fact.

15. The 1st respondent University by taking into consideration the peculiar situation, tried to safeguard the interest of those students who had secured the requisite percentile in the NEET Examination to continue their education in the respective Courses. This recommendation made by the 1st respondent University was not accepted by the 2nd respondent on the ground that the admissions are in violation of the Regulations of the Central Council. Therefore, the 1st respondent University did not have any other option except to issue the Impugned Communication to the respective Colleges to discharge the students who were admitted in the AYUSH Courses in violation of the Regulations.

16. The 2nd respondent which was the designated Authority to conduct the counselling, thoroughly failed in its duty and the same is apparent from the counter affidavit filed by the 2nd respondent. It is seen that the 1st round of counselling to fill up the Government Quota seats was conducted from 26.09.2019 to 28.09.2019. During this counselling, 880 students got admission in various Colleges. Similarly, the 1st round of counselling for Management Quota seats was conducted on 28th and 29th of September 2019 and 555 students were found eligible and out of the same 126 students got the allotment letter. After this exercise, there were 117 seats which were vacant in the Government Quota and 304 seats that were vacant in the Management Quota and in total there were 421 vacancies to be filled up by the 2nd respondent. The 2nd respondent had time to conduct the 2nd round of counselling till 15.10.2019. Which means there were nearly 18 days available for the 2nd respondent to conduct the 2nd round of counselling to fill up nearly 421 vacancies.

17. The counter affidavit is completely silent as to why the 2nd round of counselling was not conducted in spite of the fact that there were eligible candidates like the petitioners with requisite percentile marks in the NEET Examination, who could have secured an admission if the counselling had been conducted. The only reason assigned in the counter affidavit is that representation was made to the Central Council for lowering the minimum eligibility cut off percentile for the NEET

Examination and there was no sufficient time available for conducting the 2nd round of counselling. This stand taken by the 2nd respondent only shows the recklessness with which the situation was handled. When there are students available with the requisite percentile marks in the NEET Examination, to participate in the 2nd round of counselling, it is not known as to why the 2nd respondent approached the Central Council for reduction of the percentile marks. The 2nd respondent should have conducted the 2nd round of counselling and should have filled up the seats with all those students who have the requisite marks. Thereafter, if the 2nd respondent finds that there are still more vacancies to be filled up but however the available students do not have the requisite percentile marks, then a representation should have been made for reducing the percentile marks to ensure that the seats do not go unfilled. For some very curious reason, the 2nd respondent failed to adopt this procedure and as a result of the same, nearly 421 vacancies remained unfilled and went waste. The 2nd respondent who had nearly 18 days time to conduct the 2nd round of counselling, wasted this time and as a result of the same, the counselling was not conducted before the due date viz; by 15.10.2019. This attitude of the 2nd respondent in wasting nearly 421 vacant seats through its inaction is nothing but reprehensible.

18. The judgment cited by the learned counsel appearing on behalf of the 1st respondent University was a case where the designated Authority was conducting the counselling till the last day and was allotting the students to the respective Colleges and in spite of the same, the respective Colleges unilaterally admitted some of the students who were not sponsored by the designated Authority (CENTAC) and therefore this Court held that those admissions were illegal and in violation of the MCI Regulations. In the present case, the facts are slightly different. Here is a case where the 2nd respondent failed in its duty to conduct the 2nd round of counselling and as a result of the same, nearly 421 vacant seats went unfilled. Therefore, the facts of the case in the judgment cited before this Court is completely different from the facts of the present case.

19. The petitioners who had the requisite percentile marks in the NEET Exams, were waiting for the 2nd respondent to conduct the counselling and ultimately the counselling was not conducted by the 2nd respondent and they went and joined the respective 3rd respondent Colleges which admitted them in the guise of filling up the stray vacancies. As it is, the number of students who opt for the Courses in Indian Medicine is very less compared to

the MBBS Course. Even those students who were willing to join Indian Medicine Courses were prevented from joining the Course by the inaction on the part of the 2nd respondent to conduct the 2nd round of counselling. That led to the petitioners going and joining the Courses in the respective 3rd respondent Colleges.

20. The Hon'ble Supreme Court had safeguarded the interest of those students who were admitted in the Courses by virtue of the interim orders passed by various High Courts. It is not known whether these students wrote the NEET Examination or if they had written, secured the requisite percentile marks to qualify for the selection. What is obvious is that these students were not sponsored by the designated Authority and they got admission only by virtue of the interim orders passed by various High Courts. The Hon'ble Supreme Court has permitted these students to continue the Course after taking into consideration the peculiar circumstances.

21. In the present case, the petitioners are in a better footing since all the petitioners had taken the NEET Examination and secured the requisite percentile to make themselves eligible to be considered for admission for the AYUSH Undergraduate Courses. All these petitioners have joined the respective 3rd respondent Colleges prior to the last date of admission viz; 15.10.2019. The 1st respondent University was also inclined to permit the students to continue with the Course taking into consideration the marks secured by them in the NEET Examination. However, the Regulation has been put against the petitioners and they have been asked to be discharged from the respective Colleges. The Regulations had cast a duty on the 2nd respondent to conduct the counselling for the eligible candidates. The 2nd respondent by not conducting the 2nd round of counselling has in fact violated the Regulations. After having violated the Regulations, it does not lie in the mouth of the 2nd respondent to quote the same Regulations and discharge the petitioners. The Regulations equally governs the 2nd respondent as well as the petitioners. The inaction on the part of the 2nd respondent made the petitioners desperate to get admitted in the Course before the last date of admission.

22. Taking into consideration the totality of the facts and circumstances of the case and the peculiar circumstances in which the petitioners were placed due to the inaction on the part of the 2nd respondent, this Court is inclined to interfere with the Impugned Communication of the 1st respondent and permit

the petitioners to continue with their Course in the respective 3rd respondent Colleges. Accordingly, the Impugned Communication dt. 11.09.2020, of the 1st respondent University is hereby quashed and there shall be a direction to the respondents to regularize the admission of the petitioners in the AYUSH Undergraduate Courses undergone by them in the respective 3rd respondent College. It is made clear that this order cannot be taken as a precedent in any other case since this order has been passed under exceptional circumstances after considering the peculiar facts of the present case.

23. In the result, these writ petitions are allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Registrar,
The Tamil Nadu Dr. M.G.R.Medical University,
Anna Salai, Guindy, Chennai 600 032.

2.The Commissioner of Indian Medicine and
Homeopathy, Arunbakkam,
Chennai 600 106.

+4cc to M/s.Muthumani Doraisami, Advocate Sr.42809, 42805,
42808, 42807

+4cc to M/s.D.Ravichander, Advocate Sr.42919

WP Nos.13575, 13579, 13596 and 13949 of 2020

gp[co]
srg 07/01/2021