

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 7555 of 2020 (O&M)
Date of Decision: 09.09.2020

*SHRI BABA MAST NATH AYURVEDIC COLLEGE, ASTHAL BOHAR,
ROHTAK, HARYANA THROUGH ITS AUTHORIZED OFFICER, DR.
VINOD KUMAR*

...Petitioner

VS.

UNION OF INDIA AND OTHERS

....*Respondents*

CORAM: **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.**
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Akshay Bansal, Advocate
for the petitioner.

Mr. Arun Gosain, Senior Government Counsel,
for respondent No. 1-UI.

Mr. Angel Sharma, Advocate,
for respondent No. 2.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
for respondents No. 3.

Mr. Bhuvan Vats, Advocate,
for respondent No. 4.

RAKESH KUMAR JAIN, J.

The petitioner has prayed for the issuance of a writ in the nature of *mandamus* to direct respondents to regularize the admission of the petitioner's institution for the academic session 2019-2020 in view of the order dated 20.02.2020 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 26267 of 2019 titled as Union of India Vs. Federation of Self-Financed Ayurvedic Colleges Punjab and Others.

In brief, the petitioner is an unaided self-financed Ayurvedic Medical College affiliated to Shri Krishna Ayush University, Kurukshetra. In the earlier round of litigation, the petitioner, by way of CWP No. 29517 of 2019, had challenged the notification dated 07.12.2018 issued by the Central Council of Indian Medicine (hereinafter referred to as “the Council”) introducing the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2018 (hereinafter referred to as “the Regulations of 2018”) amending the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 (hereinafter referred to as “the Regulations of 1986”). Regulations 2(d) of the Regulations of 2018 provides that *“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.”*

The petitioner had admitted students before 15.10.2019 through central counselling conducted by respondent No. 4. In the earlier writ petition i.e. CWP No. 29517 of 2019, an interim order was passed by this Court on 09.10.2019 which read as under:-

“Notice of motion for 15.10.2019.

Mr. Arun Gosain, Sr. Panel Counsel, accepts notice on behalf of respondent No.1.

Mr. Bhuwan Vats, Advocate, accepts notice on behalf of respondents No.3 and 4.

On the asking of the Court, Mr. Vikrant Pamboo, D.A.G., Haryana, accepts notice on behalf of respondent No.5.

Respondent No.2 be served through Mr. R. Kartikey, Advocate, Panelist Counsel for the date fixed.

Learned counsel for the respondents pray for a weeks time to have further instructions and also to file written statement.

Learned counsel relies upon pendency of CWP No.27413 of 2019 titled 'Harmony Ayurvedic Medical College and Hospital and others vs Union of India and others' and CWP No.29089 of 2019 titled 'Khalsa Ayurvedic Medical College and Hospital vs Union of India and others'.

Interim order in the same terms as passed in CWP No.27413 of 2019.

To be heard along with CWP No.27413 of 2019.”

The earlier writ petition i.e. CWP No. 29517 of 2019 filed by the present petitioner as well as the petitions filed by the other petitioners were taken up together by a Division Bench of this Court and were dismissed on 18.12.2019 with the following observations:-

“In conclusion of the above discussion, we are of the considered opinion that there is no conflict, repugnancy or inconsistency between the provisions of the impugned amendment in the regulation dated 07.12.2018 and the Homeopathy notification dated 14.12.2018 viz.-a-viz. the Punjab Act as well as the notifications issued by the State of Punjab dated 28.05.2018 and of Haryana dated 01.08.2019. We also do not find any ground to declare the amendment made in Regulation vide the impugned notification dated 07.12.2018 as ultra vires the powers conferred by the Act of 1970 or the Act of 1973 or to declare the same to be unconstitutional.”

“In view of the conclusion recorded by us that NEET is mandatory for obtaining admissions in Ayush under Graduate courses, therefore, all admissions made to the contrary are illegal and cannot be sustained and therefore, only those admissions made on the basis of appearing and passing in NEET can be sustained or continued by the authorities. It is directed accordingly.

The decision dated 18.12.2019 passed by this Court was challenged in the Hon'ble Supreme Court by way of SLP (C) No. 26267 of 2019 which was converted into Civil Appeal No. 603 of 2020, filed by the other writ petitioners but not by the present petitioner. The said civil appeal was disposed off on 20.02.2020. The relevant observations made by the Hon'ble Supreme Court are as under:-

“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.”

After the aforesaid order of the Hon'ble Supreme Court, the petitioner made a representation to respondent No. 4 on 07.04.2020 to regularize the admission of its students but respondent No. 4, by way of reply

dated 27.04.2020, turned down the request of the petitioner on the ground that the petitioner had not filed the appeal in the Hon'ble Supreme Court against the decision of the High Court dated 18.12.2019, therefore, the decision of the Hon'ble Supreme Court dated 20.02.2020 is not applicable to its case. Faced with this difficulty, present petition has been filed in which after notice, respondents No. 1 and 4 have filed their reply in which the only objection raised is that since, the petitioner was not a party before the Hon'ble Supreme Court in a bunch of civil appeals in which direction has been issued on 20.02.2020, therefore, the case of the petitioner is hit by the principles of *res judicata*.

On the other hand, counsel for the petitioner has submitted that the directions issued by the Hon'ble Supreme Court is applicable to all the students who are similarly situated i.e. having been admitted before the last date of admission on 15.10.2019.

We have heard counsel for the parties and perused the record with their able assistance.

There is no doubt that the students of the petitioner's institution got admission before 15.10.2019 and have been continuing as such thereafter and the only objection raised by the respondents is that the petitioner was not a party in a bunch of appeal filed before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court in the penultimate paragraph has categorically observed that "*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.”

Thus, in our considered opinion, the decision of the Hon’ble Supreme Court applies to the case of the present petitioner as well *de hors* the fact that the petitioner has not challenged the order of this Court before Hon’ble Supreme Court. The Hon’ble Supreme Court has issued the aforesaid directions to avoid any other litigation either in the High Court or in the Supreme Court, in regard to the admissions made before 15.10.2019.

Thus, in view of the aforesaid facts and circumstances and observations, present petition is hereby allowed and direction is issued to respondent No. 4 to regularize the admissions of the students of the petitioner’s institution who had been admitted before the last date of admission i.e. 15.10.2019.

The needful shall be done within a period of 15 days from the date of receipt of certified copy of this order.

[RAKESH KUMAR JAIN]
JUDGE

September 9, 2020
Ess Kay

[ASHOK KUMAR VERMA]
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No