

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

MAT 700 OF 2020

CAN 1 OF 2020

CAN 2 OF 2020

UNION OF INDIA & Anr.

Vs.

Md. Garib Nawaz & Ors.

With

MAT 701 OF 2020

CAN 1 OF 2020

CAN 2 OF 2020

UNION OF INDIA & Anr.

Vs.

EBTESHAM KHATOON & Ors.

Before:

The Hon'ble Justice Soumen Sen

The Hon'ble Justice Saugata Bhattacharyya

For the appellants : Mr. Kumar Jyoti Tewari, Adv.
Mr. Rajesh Kumar Shah, Adv.

For the writ petitioners/
Respondent nos. 1 & 2 : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Arup Nath Bhattacharyya, Adv.

Ms. Sayani Das, Adv.

Ms. Sreetama Biswas, Adv.

For the respondent no.4 : Mr. U.S. Menon, Adv.

Mr. Abhirup Chakraborty, Adv.

For the respondent no. 3

in MAT 700 of 2020 &

respondent no. 2 in

MAT 701 of 2020

: Ms. Indrani Chakraborty, Adv.

Ms. Sarda Sha, Adv.

For WBUHS

: Ms. Debaki Nandan Maiti

For respondent nos. 11

to 13

: Mr. Anirban Roy, Adv.

Mr. Prantik Garai, Adv.

Mr. Hemanta Kumar Das, Adv.

For the State

: Mr. Tapan Kumar Mukherjee, Ld. A.G.P.

Mr. Somnath Naskar, Adv.

Heard on

: 04.12.2020, 15.12.2020, 04.01.2021,
06.01.2021, 13.01.2021, 03.02.2021 &
15.03.2021.

Judgment on

: 22.03.2021

Saugata Bhattacharyya J. :

1. These appeals are presented against the order dated 23rd June, 2020 as well as the order dated 8th September, 2020 by which the previous order

dated 23rd June, 2020 was modified, passed by the learned Single Judge while allowing the writ petitions preferred by two writ petitioners.

2. The writ petitioners, *inter alia*, prayed for following reliefs in one of the writ petitions being W.P. 19900 (w) of 2019 :

“a) A writ of declaration declaring that the students aspiring to pursue the Ayurved and Unani under graduate courses in the academic year 2019-2020 are eligible for admission on the basis of the merit selection made by the respective colleges.

b) A writ of or in the nature of Mandamus commanding the respondents to allow admission of the petitioners and/or aspiring students who qualifies the qualification set forth by the Central Council of Indian Medicine in such manner as this Hon’ble Court may deem fit and proper;

c) A writ of or in the nature of mandamus commanding the respondents and each of them particularly the respondents No.1 and 2 to extend the cutoff date for admission;

d) A writ of or in the nature of Prohibition commanding the respondents not to give any effect or any further effect to the letter dated 1st November, 2018;”

3. From the prayer couched in the writ petitions it appears that writ petitioners were desirous to take admission in Bachelor of Unani Medicine & Surgery (BUMS) and Bachelor of Ayurvedic Medicine and Surgery (BAMS)

and Bachelor of Homoeopathic Medicine and Surgery (BHMS) for the Academic Session 2019-20. In pursuit of getting relief from this Hon'ble Court for taking admission into BUMS/BAMS/BHMS Courses the main plank of argument advanced on behalf of the writ petitioner was inadequate notice of notification dated 7th December, 2018 prescribing requirement by the Central Council of Indian Medicine for participating in National Eligibility-cum-Entrance Test (UG) 2019 in terms of the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Amendment Regulations, 2018. According to the writ petitioners, newspaper's notification requiring participation in the entrance test (NEET UG-2019) was published in November, 2018 and the same need not be given effect to for facilitating admission of the writ petitioners in the said BUMS and BAMS Courses. Another limb of argument for seeking relief on the writ petition filed by the petitioners was that there was no requirement to follow the notification dated 7th December, 2018 issued under the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Regulations, 2018 due to lack of notice which was required to be disseminated prescribing requirement to qualify entrance examination being a precondition for taking admission into BUMS and BAMS Courses. It was also contended on behalf of the writ petitioners that the criteria laid down by the appellants for admission to ayush/unani undergraduate course is not inconformity with the opinion expressed by the Joint Director of National Testing Agency.

4. On perusal of the order under appeal dated 23rd June, 2020 it appears that on behalf of respondents point was taken that in absence of admission of the writ petitioners the seats would go vacant for the Academic Session 2019-20 in the said medical courses.

5. Considering the rival contentions of the parties learned Single Judge while disposing of the writ petition passed an order dated 23rd June, 2020 permitting the respondent authorities to allow the writ petitioners to take admission in BUMS and BAMS Courses for the Session 2019-20 by placing reliance on the order dated 18th November, 2018 passed by Lucknow Bench of Allahabad High Court which was taken note by the learned Single Judge in His order dated 5th December, 2018 passed in WP No. 22539 (w) of 2018. The impugned order dated 23rd June, 2020 was corrected by a subsequent order dated 8th September, 2020 by the learned Single Judge which is also subject-matter of challenge in the present appeal whereby the respective colleges were directed to complete the admission process within the period from 16th September, 2020 to 20th September, 2020 for the Academic Year 2019-20.

6. Being aggrieved by such decision as emanates from the orders dated 23rd June, 2020 and 8th September, 2020 the appellants herein preferred an

appeal questioning the said orders of the learned Single Judge dated 23rd June, 2020 and 8th September, 2020 on the following grounds:

- i) In terms of the relevant provisions of the Indian Medicine Central Council Act, 1970 the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Amendment Regulations, 2018 (hereinafter as 'Regulations of 2018') were promulgated by notification dated 7th December, 2018 amending the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Regulations, 1986 which contemplates entrance examination for all medical institutions at the Under Graduate level, namely, the National Eligibility-cum-Entrance Test (NEET) for admission to Under Graduate Courses in each academic year and shall be conducted by an authority designated by the Central council.
- ii) The said Regulations of 2018 also made it mandatory from the Academic Session 2019-20 that in order to be eligible for admission to said Under Graduate medicine course for an academic year, it shall be necessary for a candidate to obtain minimum of marks of 50th percentile in the National Eligibility-cum-Entrance Test for Under Graduate course held for the said academic year.
- iii) The said Regulations of 2018 framed under the Indian Medicine Central Council Act, 1970 being a central legislation is binding upon all the colleges running courses of Ashtang, Ayurveda, Siddha, Unani Tibb or Sowa Rigpa throughout the country and it is also binding upon the concerned

authorities of the State Government regulating admissions to the medical courses under Indian Medicine.

iv) In view of the judgment of the Hon'ble Supreme Court dated 20th February, 2020 passed on batch of civil appeals wherein the lead matter was **Union of India Vs. Federation of Self-Financed Ayurvedic Colleges Punjab & Ors. (Arising out of SLP (C) No. 26267 of 2019)** declaring the said Regulations of 2018 *intra vires*; the candidates intending to take admission in BAMS/BUMS/BHMS Courses must qualify NEET UG-2019 for taking admission in the academic year 2019-20.

v) In view of the solemn judgment of the Hon'ble Supreme Court dated 20th February, 2020 in the case of **Union of India Vs. Federation of Self-Financed Ayurvedic Colleges Punjab & Ors.** after 15th October, 2019, being the last date for taking admission in BUMS and BAMS courses for the academic session 2019-20, no further admission can be permitted after the said cutoff date.

7. Mr. Bikash Ranjan Bhattacharjee, learned Senior Advocate representing writ petitioners has strenuously argued that there was inadequate notice at the material point of time which kept the writ petitioners in dark which resulted in failure on their part to participate in the entrance test, i.e., NEET UG-2019. It has further been contended that the brochure issued by the National Testing Agency prior to holding National Eligibility-cum-Entrance Test (UG) 2019 was meant for admission of

students in medical and dental Under Graduate Courses and which cannot be stretched beyond that requiring writ petitioners to qualify the said entrance test for taking admission in the courses under Indian Medicine. In this regard paragraph 8 of the affidavit-in-opposition used on behalf of the National Testing Agency before the learned Single Judge has been relied upon wherein it has been averred that words “other entities” in Clause 5 Chapter 7 means that the result of NEET UG-2019 could be utilized by the entities other than the entities mentioned in (f) above and not for other courses. According to the writ petitioners such statement demonstrates the actual state of affairs relating to precondition for taking admission into BAMS and BUMS courses which justifies admission of the writ petitioners into the said courses without taking part in the entrance examination of 2019 and the same contention is fortified by the previous notification issued by the Indian Medicine Central Council on 7th November, 2016 in respect of Ayurveda as well Unani Medicine Courses. However, it is important to note that in paragraphs 10 and 11 of the said affidavit the said respondent authorities have taken note of the clarification issued by the Ministry of Ayush that in the process of streamlining admission to bring meritorious students to the Ayush system of medicine in the country, the Ministry had directed all States/Union Territories to admit students in Ayush Under Graduate Courses through the merit list of National Eligibility cum Entrance Test (NEET) and in this regard the Ministry requested all States to make wider publicity to the students seeking admission in Ayush Under Graduate Courses, namely, BAMS, BUMS, BSMS and BHMS to appear in the NEET,

2019 to be conducted by National Testing Agency on 5th May, 2019. Moreover, the recognition of the certificate and its accreditation falls within the domain of Central Council of Indian Medicine and the State Council have laid down the required eligibility criteria in the notification dated 7th November, 2016. The decision in ***Majda Humayun*** and several other decisions of different High Courts concerning the admission to BHMS Course was considered by the Hon'ble Supreme Court in association of ***Managements of Homeopathic Medical Colleges of Maharashtra v. Union of India & Ors.*** reported in (2019) 20 SCC 511 in disposing of the said Special Leave Petition wherein the Hon'ble Supreme Court in exercise of its power under Article 142 of the Constitution had passed the following orders:

“7. We have perused the judgments and orders passed by the High Courts of Patna, Karnataka, Madras, Rajasthan, Punjab & Haryana, Allahabad and Kolkata. Directions were issued in favour of the students permitting admissions on the basis of the marks in the qualifying examination without reference to the marks secured by them in the NEET UG-2018 examination. The learned Additional Solicitor General fairly submitted that none of the judgments or orders passed by the High Courts have been challenged.

8. Though the last date for admission to the BHMS course was 15-11-2018, we are informed that the last date was extended till 20-12-2018 by the Allahabad High Court. Though there is no agreement on the exact number of vacant seats, it is

common ground that there are vacant seats for admission to the 1st year BHMS course in the State of Maharashtra. As there is no uniformity in the matter of admission to the 1st year BHMS course for the year 2018-19, as securing minimum marks in NEET is not required in some States pursuant to orders of the High Courts, we are of the opinion that the appellants are entitled to the relief of admissions being made without reference to the letter dated 11-6-2018 of Respondent 1 and the consequential notice of Respondent 3. In other words, the appellant Association should be permitted to make admissions to the 1st year BHMS course for the academic session 2018-19 on the basis of the eligibility criteria mentioned in the information brochure dated 5-2-2018. A candidate who has secured minimum marks in the NEET UG-2018 shall be eligible for admission to the 1st year BHMS course for the academic year 2018-19.

9. As two months have passed after the last date of admission to the 1st year BHMS course i.e. 15-11-2018, we direct the appellants to complete the process of admissions strictly on the basis of merit by 15-2-2019. The managements of the colleges are directed to hold extra classes for students who will be admitted pursuant to this order to comply with the requirements of minimum working days. This order which is passed in the peculiar facts of the case shall not be treated as a precedent. No opinion is expressed by us regarding the introduction of the minimum percentile as an eligibility criteria in the NEET examination.”

8. It is further submitted on behalf of the writ petitioners that the State of West Bengal did not take any step to notify as required by Government of India. Mr. Bhattacharyya has relied upon the decision of a learned Single Judge in ***Sweta Singh & Ors. v. All India Medical Council of India & Ors.*** and the decision of a learned Single Judge in ***Majda Humayun & Ors. v. Union of India & Ors. (W.P. 22539(W) of 2018)*** decided on 5th December, 2018 to argue that in both the decisions the learned Single Judges of this court on consideration that there has been lack of adequate publicity of such notices for admission permitted the candidates to get admission although the cut off date may have expired in the meantime. Mr. Bhattacharyya has referred to the decision of the Hon'ble Supreme Court in ***Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College*** reported in (1987) 4 SCC 459 and ***Priya Gupta v. State of Chhattisgarh*** reported in (2012) 7 SSC 433 and submits that the learned Single Judges deciding the earlier two writ petitions involving similar questions of law and fact have relied upon the said two decisions of the Hon'ble Supreme Court to extend the benefit of admission to such students beyond the cut off date. The order of the Hon'ble Supreme Court in ***Union of India v. Federation of Self-Financed Ayurvedic Colleges, Punjab & Ors.*** decided on 20th February, 2020 was sought to be distinguished on the ground that the cut off date prescribed in the said order would not be applicable in the instant case as due to lack of publicity as a result whereof the writ petitioners could not participate in this selection process. It is submitted that the writ court is a court of equity and if it appears on record that there has been no adequate

publicity as directed by the Hon'ble Supreme Court in the abovementioned two decisions, then the aspiring candidates should not be denied their right to admission and if allowed in the meantime, their admission should not be disturbed.

9. In furtherance to this argument, Mr. Bhattacharjee, learned Senior Advocate has drawn our attention to the notification dated 7th November, 2016 issued under the Indian Medicine Central Council Act, 1970 under notification No.24-14/2016(U.G. Regulation) prescribing eligibility criteria for admission in Bachelor of Ayurveda Education as well as notification dated 7th November, 2016 also issued under the Indian Medicine Central Council Act, 1970 vide notification No.11-76/2016-Unani(UG Regl.) prescribing eligibility criteria for taking admission in Bachelor of Unani Medicine Courses. Pointing out the relevant provision under the respective Amendment Regulations of 2016 it has been argued on behalf of the writ petitioners that the requirement of qualifying NEET (UG)-2019 is not necessary for taking admission into BAMS and BUMS courses.

10. Another limb of argument which has been advanced on behalf of the respondent in this appeal is pendency of vacant seats in the courses wherein the writ petitioners have already taken admission and if such admissions are not saved by the Hon'ble Court the seats in several colleges would go vacant.

11. The Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Amendment Regulations, 2018 amending the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Regulations, 1986, have been framed in terms of Section 36 of the Indian Medicine Central Council Act, 1970, albeit no challenge is thrown to the said amendment regulations of 2018, we find it apposite to find out the legislative competence of the Central Council of Indian Medicine to frame such amendment regulations of 2018 in order to answer the points raised by the parties to this appeal and for adjudication of the issue involved herein. On perusal of the said Act of 1970 it appears that under Section 36 the Central Council of Indian Medicine has been empowered subject to previous sanction of the Central Government, to make regulations on the subjects described under Section 36(1)(a) to 36(1)(p). Clause (k) under sub-Section (1) of Section 36 is reproduced below:

“(k) The conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;”

We also find it apposite to quote Section 22 (1) of the Act of 1970:

“22. Minimum standards of education in Indian medicine.—

(1) The Central Council may prescribe the minimum standards of education in Indian medicine, required for granting recognized medical qualifications by Universities, Boards or medical institutions in India.”

12. We find *pari materia* provisions under Clause (l) of sub-Section (1) of Section 33 of the Indian Medical Council Act, 1956 governing the field of modern medicine. Section 33 (1) (l) is reproduced below:

“(l) The conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;”

This provision of Section 33 (1) (l) was tested exhaustively in the case of **Dr. Preeti Srivastava And Anr. Vs. State of Madhya Pradesh And Ors.** reported in **(1999) 7 SCC 120** by the Five Judge Bench of the Supreme Court wherein in paragraph 36 and 37 the law was laid down by the full bench of the Supreme Court and those two paragraphs are quoted below:

“36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of

education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) the calibre of the teaching staff;
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;
- (3) the student-teacher ratio;
- (4) the ratio between the students and the hospital beds available to each student;
- (5) the calibre of the students admitted to the institution;
- (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
- (7) adequate accommodation for the college and the attached hospital; and
- (8) the standard of examination held including the manner in which the papers are set and examined and the clinical performance is judged. .

37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a

high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses.”

(emphasis supplied)

13. The Indian Medicine Central Council Act, 1970 is relatable to Entry 66 of List-I (Union List) under the Seventh Schedule of the Constitution. Since the Act of 1970 governs the field of medical education, Entry 66 of List-I of the Seventh Schedule of the Constitution is reproduced below:

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

At the same time we are not unmindful of the fact that the medical institution is also relatable to Entry 25 List-III of the concurrent list of the Seventh Schedule of the Constitution which is reproduced below:

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

Therefore, under the constitutional scheme governing the field of medical education empowers the State authorities to frame laws relating to such education subject to the laws framed by the Union under List-I Entry 66 of the Seventh Schedule; In this regard reliance is placed on paragraph 52 of **Dr. Preeti Srivastava (Supra)**. Paragraph 52 is reproduced below:

“52. Mr. Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers under Section 20 read with Section 33 the India Medical Council has framed

regulations which govern postgraduate medical education. These regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.”

14. In view of the constitutional provisions as discussed above and placing reliance upon **Dr. Preeti Srivastava (Supra)** we have no hesitation to hold that the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Amendment Regulations, 2018 is framed by the Central Council of Indian Medicine in terms of Section 36 cannot be impinged upon by any State authorities including the college authorities running courses under Ayurveda/Unani medicine thereby diluting the standard of medical education as envisaged under the said Act of 1970.

15. Since the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Amendment Regulations, 2018 has been framed by the Central Council of Indian Medicine which as we have held earlier within their legislative competence the said amendment Regulations of 2018 are statutory in nature and binding upon all the authorities running the courses of Ayurveda and Unani Medicine. If any regulations have been

framed by an authority which is statutorily empowered to maintain the standard of medical education and framing of such regulations is within the legislative competence of the said regulatory authority; the regulations framed under the parent act cannot be tinkered with. In this regard reliance has been placed on paragraph 57 of **Dr. Preeti Srivastava (Supra)** wherein Five Judge Bench of the Supreme Court placing reliance upon **Medical Council of India Vs. State of Karnataka and Others** reported in (1998) 6 SCC 131, held that medical council regulations have a statutory force and are mandatory. Paragraph 57 of **Dr. Preeti Srivastava (Supra)** is reproduced below:

“57. In the case of Medical Council of India v. State of Karnataka a Bench of three Judges of this Court has distinguished the observations made in Nivedita Jain. It has also disagreed with Ajay Kumar Singh v. State of Bihar and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana (SCC at p.580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical

Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.”

(emphasis supplied)

16. Borrowing inspiration from the law laid down by the Five Judge Bench of the Supreme Court in the case of **Dr. Preeti Srivastava (Supra)** it is apposite to conclude that the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Amendment Regulations, 2018 are binding upon the respondent authorities more so when the same has already been declared *intra vires* by the solemn judgment of the Supreme Court dated 20th February, 2020 delivered in the case of **Union of India Vs. Federation of Self-Financed Ayurvedic Colleges Punjab & Ors. (Arising out of SLP (C) No. 26267 of 2019)** along with batch of analogous matters.

17. In view of above discussion it is axiomatic that for taking admission in BAMS and BUMS courses for the academic session 2018-19 qualifying NEET UG-2019 was *sine qua non*.

18. Argument has been made on the point of lack of adequate notice which prevented the writ petitioners to participate in NEET UG-2019 appears to us an argument made in desperation since a due notice was published on 2nd November, 2018 by the Government of West Bengal

Central Selection Committee (AYUSH) informing all the aspirants seeking admission in the AYUSH-UG Courses namely, BAMS, BHMS and BUMS for the academic session 2019-20 would have to appear in NEET(UG) - 2019 to be conducted by National Testing Agency on 5th May, 2019. It was further notified to the aspirants that the last date of submission of On-line Application Form for appearing in the NEET(UG)-2019 was 30th November, 2018 and it was categorically stated in the said notice published in the daily vernacular that no separate entrance test will be conducted for admission in NEET (UG) Course in the State of West Bengal. The newspaper advertised dated 7th November, 2018 published in Bartaman (Bengali Vernacular) is at page 268 of the Stay Application. It also appears from one of the letters dated 6th December, 2018 issued by the Director of Ayurveda, Homeopathy & Chairman, Central Selection Committee (AYUSH), West Bengal addressed to the Ministry AYUSH, 'B' Block, GPO Complex INA, New Delhi-110023 that adequate steps have been taken by the Directorate of AYUSH and Homeopathy for wide publicity of the decision of the Ministry of AYUSH, Government of India amongst students seeking admission in Ayurveda – UG Courses would have to appear in NEET UG-2019 to be conducted by National Testing Agency on 5th May, 2019. By the said letter dated 6th December, 2018 it was also informed to the Ministry of AYUSH that a notice dated 2nd November, 2018 was uploaded on the website of the Department of Health and Family Welfare of the Government of West Bengal on 2nd November, 2018 and in addition thereto the concerned department had arranged for publication of the said notice in four leading daily newspapers

(Bengali, English, Hindi and Urdu) on 7th November, 2018. The said letter dated 6th December, 2018 is appended to the Stay Application filed in connection with the one of the appeals (MAT 700 of 2020) at page 271.

19. On perusal of the two orders dated 23rd June, 2020 which subsequently corrected by the learned Single Judge vide order dated 8th September, 2020 thereby permitting the college authorities to admit the writ petitioners within the period from 16th September, 2020 to 20th September, 2020 resulted in admission of the writ petitioners pursuant to the order of the learned Single Judge. It also suggests that the writ petitioners pursuant to the order dated 8th September, 2020 took admission in the month of September, 2020 which is long after the last date for taking admission for the academic session 2019-20 since the last date has been fixed by the Supreme Court in the judgment dated 20th February, 2020 in **Federation of Self-Financed Ayurvedic Colleges Punjab & Ors.** (Supra) 15th October, 2019 whereas writ petitioners took admission in the month of September, 2020. In the judgment dated 20th February, 2020 the Supreme Court saved admission of some of the students in respect of the academic year 2019-20 provided the admission of the candidates took place prior to the last date, i.e., 15th October, 2019. Such relief was granted to the students who took admission prior to the last date of 15th October, 2019 by the Supreme Court as a onetime measure and it was clarified that the same shall not be treated as precedent. The tenor of the relevant part of the judgment of the Supreme

Court dated 20th February, 2020 clearly suggests that this is a direction given by the Apex Court in terms of Article 142 of the Constitution of India.

20. We find it apposite to reproduce paragraph 12 of the judgment of the Supreme Court in **Federation of Self-Financed Ayurvedic Colleges Punjab & Ors.** (Supra):

“12. Prescribing a minimum percentile for admission to the Under Graduate courses for the year 2019-20 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 2019-20 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.”

It appears from the record disclosed by the appellants that publicity was made for admission to the said course. It is, however, not clear whether the advertisements have been made on at least two consecutive days as observed by the Hon'ble Supreme Court in **Dr. Dinesh Kumar** (supra) and **Priya Gupta** (supra). The writ petitioners have prayed for a declaration that the students aspiring to pursue Ayurvedic, Homeopathy and Unani under graduate courses for the academic year 2019-20 are eligible for admission on the basis of the merit selection made by the respective colleges which runs counter to the eligibility criteria laid down by the Central Council of Indian Medicine. This declaration in view of the judgment in **Federation of Self-Financed Ayurvedic Colleges Punjab & Ors.** (Supra) decided on 20th February, 2020 is no more permissible and a fait accompli for the writ petitioners. The writ petitioners were allowed admission pursuant to the order dated 23rd June, 2020 as corrected on 8th September, 2020. The said order was passed notwithstanding attention being drawn to the learned Single Judge on 8th September, 2020 that the Hon'ble Supreme Court had passed an order on 20th February, 2020 by which the cut off date for admission in BAMS and BUMS courses should be restricted to all students admitted on or before 15th October, 2019. The learned Single Judge declined to take note of the said order on the ground that the matter was listed for correction of the order dated 23rd June, 2020. It is pertinent to mention that on 23rd June, 2020 when the initial order for admission was passed, the Hon'ble Supreme Court had already decided the matter on 20th February, 2020 and the

appellants, in our view, ought to have taken out application before the learned Single Judge for review of the order.

21. The argument of Mr. Bhattacharyya that in view of the fact that the writ petitioners have been admitted by an interim order and they may be allowed to pursue their course on the ground of equity cannot be accepted in view of the clear dicta of the Hon'ble Supreme Court in paragraph 12 of **Federation of Self-Financed Ayurvedic Colleges Punjab & Ors.** (Supra).

22. Both the orders of the Hon'ble Supreme Court of which we have made references were passed in exercise of power under Article 142 of the Constitution of India. We do not have any such power. Accordingly, we cannot accept the submission of Mr. Bhattacharyya to allow continuation of the said course after the Hon'ble Supreme Court has indicated the cut off date.

23. In the case at our hand we are constrained to hold albeit interest of the writ petitioners being the students is involved, the admission of the writ petitioners in the month of September, 2020 for the academic session 2019-20 wherein last date has been categorically been specified by the Apex Court, i.e., 15th October, 2019 cannot be countenanced. In this regard reliance has been placed on the judgment of the Supreme Court reported in

(2005) 2 SCC 65 paragraph 32 (**Mridul Dhar (Minor) & Another Vs. Union of India & Others**); **(2012) 10 SCC 149** paragraph 14 (**Faiza Choudhary Vs. State of Jammu & Kashmir And Another**) and **AIR 2012 SC 2413** paragraph 53 (**Priya Gupta Vs. State of Chhattisgarh & Ors.**).

24. In **Sweta Singh** (Supra) the learned Single Judge saved admission of Sweta upon placing reliance on the judgments of the Supreme Court in **Dinesh Kumar (Dr.) Vs. Motilal Nehru Medical College** and **Priya Gupta Vs. State of Chattisgarh** on inadequacy of notice of admission into medical courses in the backdrop of fact that the writ petitioner (Sweta) was ward of insured person under Employees State Insurance Corporation and was eligible to be considered as ESIC category candidate. Under the said category in the relevant academic year the last candidate who took admission obtained lesser marks in the entrance test than Sweta and Sweta was permitted to take provisional admission in the MBBS Course vide interim order dated September 26, 2014 within the cutoff date of September 30, 2014. But in the present case the writ petitioners are not NEET-UG qualified candidates and the cutoff date fixed by the Supreme Court was 15th October, 2019 and the writ petitioners took admission in the month of September 2020; therefore, judgment of **Sweta Singh** (Supra) has no manner of application in the present case.

25. Another limb of submission made on behalf of the respondents is in the event the admission of the candidates who did not qualify in NEET UG-2019 is not saved, the seats in the colleges would go vacant. The same argument does not hold water in view of the decision of the Hon'ble Apex Court reported in **(2002) 7 SCC 258** paragraph 22 and 23 (**Medical Council of India vs. Madhu Singh and Others**) wherein the Supreme Court has categorically held that even the seats are unfilled that cannot be a ground for mid-session admission after the cutoff date.

26. In order to satisfy our conscience and to ascertain whether for the Academic Session 2019-20 in the State of West Bengal admission was made in BAMS/BUMS/BHMS courses thereby admitting the candidates who did not qualify NEET UG-2019, we directed Mr. Tapan Mukherjee, learned Additional Government Pleader to file an affidavit indicating whether candidates who did not qualify NEET UG-2019 were permitted to take admission in the said Academic Session of 2019-20. The affidavit has been affirmed on 20th January, 2021 by Dr. Rajat Chattopadhyaya as Member Secretary, in Central Selection Committee, Calcutta Homeopathe Medical College & Hospital wherefrom it appears that in government medical colleges in AYUSH-UG Courses total 318 candidates took admission within 31st October, 2019 and all 318 candidates qualified NEET UG-2019. At the same time by a chart annexed to the said affidavit being Annexure 'R-2' it has been averred that 102 candidates who did not quality NEET UG-2019 took

admission in private medical colleges for the said session of 2019-20. Therefore, from the affidavit affirmed on behalf of the state-respondents it appears that pursuant to the notice published in the newspaper on 7th November, 2018 requiring candidates to qualify NEET UG-2019, candidates participated in the NEET UG-2019 for taking admission in BAMS/BUMS Courses and ultimately took admission in the medical colleges of the State. Therefore, the contention of the writ petitioners/respondents that due to inadequate notice they were prevented from participating in NEET UG-2019 pales into insignificance.

27. In view of the above discussions on the points argued by the learned advocates representing the parties to the appeal and placing reliance upon the above referred judgments delivered by the Supreme Court including the recent judgment of the Supreme Court dated 20th February, 2020 in **Federation of Self-Financed Ayurvedic Colleges** (Supra) we set-aside the orders of the learned Single Judge dated 23rd June, 2020 and the order dated 8th September, 2020 modifying the previous order and in view of our interpretation of relevant provisions of the Indian Medicine Central Council (Minimum standards of Education in Indian Medicine) Amendment Regulations, 2018 specially Regulation 2 (d)(i) & (ii) framed under the Indian Medicine Central Council Act, 1970 the candidates aspiring to take admission in BAMS/BUMS/BHMS Courses for the academic session 2019-

20 are required to qualify entrance examination (NEET UG-2019) as contemplated under the said amendment Regulations of 2018.

28. In above conspectus the both the appeals and the connected applications are allowed.

29. However, this order shall remain stayed for a period of three weeks.

29. Urgent certified copies of the judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SAUGATA BHATTACHARYYA, J.)

I agree,

(SOUMEN SEN, J.)