

\$~22 & 25 (2021 Cause List)

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision 22nd September, 2021

+ W.P.(C) 4044/2021 & CM APPL. 12211/2021
HMS UNANI MEDICAL COLLEGE
AND HOSPITAL AND OTHERS Petitioners

+ W.P.(C) 4720/2021 with CM APPL. 14567/2021, CM APPL.
14568/2021
SHIVALIK AYURVEDIC MEDICAL COLLEGE
AND HOSPITAL AND OTHERS Petitioners

Through: Mr. A. Mariarputham, Sr.
Advocate with Mr. Avneesh
Aruputham, Advocate

versus

UNION OF INDIA AND OTHERS Respondents

Through: Ms. Archana Pathak Dave,
Advocate with Mr. Pramod Kr.
Vishnoi, Mr. Avnish Dave,
Advocate for NCISM/CCIM
Mr. Shashank Bajpai, Sr. Panel
Counsel with Mr. Abhishek
Khanna, Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through
video conferencing.

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1. The petitioners are colleges offering Ayurveda and Unani courses. The grievance with which they have approached the Court is that the Union of India [“the Union”] has rejected their representations to reduce the minimum percentile which a candidate must score in the National Eligibility Entrance Test [“NEET”] in order to be eligible for admission to AYUSH courses.

2. Mr. A. Mariarputham, learned Senior Counsel for the petitioners, refers to a notification of the Central Council of Indian Medicine [“CCIM”] dated 07.12.2018, by which the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 [“the Regulations”] were amended. By virtue of Regulation 2 of the amendment Regulations, the eligibility criteria for admission in the Bachelor of Ayurveda programme were revised. The relevant clause for the purposes of the present petitions is Regulation 2(d) of the said Regulations, which provides as follows: -

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

xxxxxx

xxxxxx

xxxxxx

(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 undergraduate 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. ”

(Emphasis supplied.)

3. As far as the academic year 2020-21 is concerned, by a notification dated 15.01.2021, the Union has relaxed the minimum percentile required in the NEET for General category candidates to the 40th percentile, for SC/ST and OBC category candidates to the 30th percentile, and for the General category-PWD category candidates to the 35th percentile.

4. Mr. Mariarputham submits that despite the aforesaid relaxation, there has been insufficient uptake of seats in Ayurveda and Unani colleges as a result of the counselling process, and several seats remain vacant. It is his submission that a relaxation in the minimum percentile required would bring a large number of eligible candidates into the pool available for admission, and the Union is duty bound by the proviso to Regulation 2(d) to consider this aspect while deciding whether to relax the minimum percentile.

5. Mr. Mariarputham also draws my attention to a judgment of the Supreme Court dated 08.02.2021 in W.P.(C) 54/2021 [*Harshit Agarwal & Ors. v Union of India & Ors.*], in which the Court was concerned with the minimum percentile required for admission in the Bachelor of Dental Surgery [“BDS”] course in the same academic year, i.e. 2020-21. The relevant provisions in the regulations relating to the BDS course are undisputedly in *pari materia* with Regulation 2(d) extracted above. In the context of said Regulation, the Supreme Court *inter alia* held as follows: -

“10. The question that arises for our consideration is whether the exercise of the discretion by the first Respondent is for the purpose specified in the

Regulations and whether irrelevant considerations have been taken into account making the decision irrational. The proviso to Sub- Regulation (ii) of Regulation II is clear in its terms empowering the Central Government to exercise its discretion to lower minimum marks only when sufficient number of candidates fail to secure minimum marks. The Central Government cannot pursue any purpose other than the one specified in the proviso to Regulation II (5) (ii). There are three reasons given for the decision not to lower minimum marks. The first is that the ratio of available seats vis-à-vis eligible candidates is 1:7 and therefore there is no dearth of eligible candidates. The other factor which propelled the Central Government to decide that there is no need to reduce the minimum mark is that there are sufficient number of Dentists in India. Lack of keenness of students to join BDS, especially in private colleges which charge exorbitant fee, as they are interested in MBBS course is yet another ground which impelled the decision of the first Respondent.

11. The stand of the Central Government is that there are seven candidates available for each seat and, therefore, there is no need to lower the minimum marks. This calculation of the first Respondent is without taking into account the fact that NEET (UG) 2020 is conducted for admission into different courses like MBBS, BDS, UG AYUSH and other medical courses. Admissions for UG AYUSH and other UG medical courses are included in the NEET for the first time from this year. That apart, it is clear from the letter of the Dental Council of India that NEET has been made mandatory for admission to AIIMS and AIIMS like institutions and ZIPMER. Hitherto, AIIMS and AIIMS like institutions and other institutions

like ZIPMER were conducting their own separate entrance test. The total number of seats available for the academic year 2020-2021 for MBBS are 91,367, BDS are 26,949 and AYUSH are 52,720 making it a total of 1,71,036 seats. Whereas, the NEET qualified candidates are 7,71,500. The ratio of seats available vis-à-vis eligible students is 1 : 4.5 and not 7. The basis for the decision to not reduce minimum marks that there are sufficient eligible candidates is without considering the above vital facts. The decision which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. The decision of the first respondent was propelled by extraneous considerations like sufficient number of Dentists being available in the country and the reasons for which students were not inclined to get admitted to BDS course which remits in the decision being unreasonable. Consideration of factors other than availability of eligible students would be the result of being influenced by irrelevant or extraneous matters. There is an implicit obligation on the decision maker to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.

12. The first Respondent reduced the minimum marks for admission into first-year BDS course for the year 2019-2020 in consultation with the second Respondent. In spite of the recommendation made by the second Respondent to reduce the minimum marks for the year 2020-2021, the first Respondent deemed it fit not to lower the minimum marks for the current year. While arriving at a decision on 30.12.2020 not to lower the minimum marks it does not appear that the first Respondent has consulted the second Respondent in accordance with the proviso to

Sub-Regulation (ii) of the Regulation II. There is no dispute that the minimum marks have been reduced by the first Respondent for the super speciality courses for the last year and AYUSH courses for the current year. If reducing minimum marks amounts to lowering the standards, the first Respondent would not do so for super speciality courses. We are in agreement with Mr. Maninder Singh, learned Senior Counsel for the Petitioners that lowering the minimum marks and reducing percentile for admission to the first-year BDS course would not amount to lowering the standards of education.”

6. The Court ultimately directed the Union to reduce the minimum marks for admission in the BDS course by 10 percentiles. Relying upon the aforesaid judgment, Mr. Mariarputham submits that the vacancy position in AYUSH colleges is such that the Union is duty bound to consider reducing the NEET percentile requirement in AYUSH colleges further.

7. Mr. Shashank Bajpai, learned counsel appearing for the Union, on the other hand, submits that the Union has already relaxed the eligibility criteria by its communication dated 15.01.2021. Further representations by various institutions were rejected by an order dated 26.03.2021, which has been annexed to the counter affidavit. The relevant part of the said communication reads as follows: -

“2. Your representation has been considered and examined in view of the prevailing situations and status of NEET qualified candidates. It is found that, as per the percentile criterion required as per regulations namely the Indian Medicine Central Council (Minimum

Standards of Education in Indian Medicine) amendment Regulations, 2018 approximately 7,71,511 NEET qualified candidates were available against the approximately 38,814 permitted seats in ASU & H UG courses for A. Y. 2020-21 and out of which total permitted seats in UG Ayurveda course are approximately 21,135. Further, Ministry vide its letter dated 15.01.2021 (copy attached) has relaxed the percentile criteria by reducing 10 percentile point for each category for academic session 2020-21 due to prevailing COVID-19 pandemic and various reasons, which has resulted in availability of total 9,09,776 NEET-2020 qualified candidates. As per present relaxed criteria, marks required for Unreserved (UR) category candidates at 40th percentile is 113 out of 720 (15.69%), for Schedule Castes (SC)/ the Scheduled Tribes (ST)/ Other Backward Classes (OBC)/SCPwD / STPwD/ OBCPwD candidates at 30th percentile is 87 out of 720 (12.08%) and for URPwD candidates at 35th percentile is 99 out of 720 (13.75%) and maximum of the seats are filled up in most of the States. Thus, it may be seen that, sufficient number of NEET qualified candidates are available.”

8. Having heard learned counsel for the parties, I am of the view that the relief sought by the petitioners cannot be granted by the Court under Article 226 of the Constitution. The discretion vested by Regulation 2(d) (extracted above) is applicable in a situation where there are insufficient candidates in the respective categories who have scored the minimum marks in the NEET. The contents of the Union’s communication dated 26.03.2021 extracted above are that the total number of NEET qualified candidates, after reducing the minimum

percentile requirement, increased from 7,71,511 to 9,09,776. The number of undergraduate seats in AYUSH colleges for the relevant year is approximately 21,135. This factual position is undisputed. However, the petitioners' contention is that the sufficiency of the number of candidates must be adjudged on the anvil of the vacancies which remain to be filled. I am unable to accept this contention. There may be many reasons for which seats remain unfilled, some of which have been noticed by the Supreme Court in *Harshit Agarwal* (supra). Regulation 2(d) does not require the Union to enter into an examination of those issues while deciding the question of relaxation of the minimum required percentile. The Union has already exercised discretion in terms of the proviso to Regulation 2(d), and reduced the minimum percentile by ten points. It cannot be said that the decision of the Union in this regard is unreasonable. The interference of the writ court with eligibility criteria laid down for admission to various academic and professional courses would be justified only in the face of manifest arbitrariness, which the petitioners have failed to demonstrate.

9. As far as the judgment of the Supreme Court in *Harshit Agarwal* (supra) is concerned, it may be noted that the Court has proceeded on the basis that the Union had taken into account irrelevant considerations while rejecting the representations of the petitioners therein with respect to the BDS course. The ratio of seats available and the number of candidates mentioned therein, taken into account by the Union, were wrongly computed. The Union had also purported to consider the total number of dentists available and the

reasons for which students were not inclined to get admission to the BDS course. The Supreme Court held that these matters were extraneous to the discretion under the relevant regulations. In the present case, in contrast, the decision has been made on grounds referable to the Regulation itself. Further, Ms. Archana Pathak Dave, learned counsel for the National Commission for Indian Systems of Medicine [which is the successor to the CCIM], submits that unlike the case of *Harshit Agarwal* (supra), where the Dental Council of India had supported the case of the institutions for reduction of the percentile, in the present case, the concerned sectoral regulator has made no such recommendation.

10. Having regard to the aforesaid, the only consideration left is Mr. Mariarputham's submission that there exist a large number of vacant seats in AYUSH colleges. As stated above, it is not for the writ court to substitute the discretion exercised by the Union on relevant considerations. However, this decision will not come in the way of the Union in reconsidering the matter in light of the contentions raised in these writ petitions, and taking a policy decision in its own discretion, if it considers it appropriate to do so.

11. The writ petitions stand disposed of in these terms. The pending applications also stand disposed of.

PRATEEK JALAN, J

SEPTEMBER 22, 2021

j'

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NAGPAL

Signing Date: 23.09.2021

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