

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2277 OF 2022

1. Sayyad Alfiya Fatima Ikhlas]
Age – 20 Year, Occ:- Education]
R/at 66 Bramhdeo Nagar, Hotgi]
Road, Solapur, Dist – Solapur]
2. Sushmita Sharad More]
Age – 20 Years, Occ: Education]
R/at Tulshi, Tal – Madha, Dist. Solapur]
3. Vidya Dharamaraj Navale]
Age: 20 Years, Occ:- Education,]
R/at Prakash Nagar, Chandroday]
Colony, Latur, Dist – Latur.]
4. Vaishnavi Shankar Bhangе]
Age 21 Years, Occ: Education]
R/at Shriram Nagar, Yedshi,]
Dist – Osmanabad.]
5. Sakshi Sadhu Kamble]
Age – 21 years, Occ:- Education]
R/at – Sangram Nagar, Akluj,]
Tal – Malshiras, Dist – Solapur.]

6. Ruba Ishtiyaque Taranaik]
 Age – 21 years, Occ: Education]
 R/at – 100/8, Lokhandwala Complex,]
 PI – 23, Modi, Solapur, Dist – Solapur]

7. Sneha Sreenivasan Achary]
 Age 21 years, Occ:- Education,]
 R/at – B2 Parvathiya Society]
 Shramik Nagar, Satpur, Nashik.]

8. Shivaji Santosh Ghone]
 Age 20 Years, Occ:- Education]
 R/at – Flat No.9, Yashraj Park,]
 Dhruv Nagar, Gangapur, Nashik.]

9. Isha Balchandram Padmanabhan]
 Age: 20 Years, Occ:- Education]
 R/at – 228/D, Diwan Mansion-3]
 Ambadi Road, Near Panchvati Hotel,]
 Vasai (W), Thane]

10. Aditi Ramesh Bhoir]
 Age 21 Years, Occ:- Education]
 R/at-74, Bhiwandi Wada Road,]
 Near Buddhvihar, Kawad Khurd]
 Angaon, Thane – 421 302.]

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| 11. | Aditi Dayanand Bhoir |] | |
| | Age 21 Years, Occ: Education |] | |
| | R/at – 213 D, Wada Road, Opp. |] | |
| | Hanuman Mandir, at – Shelar, |] | |
| | Bhiwandi, Thane – 421 302. |] | |
| 12. | Abhishek Naresh Patil |] | |
| | Age 21 Years, Occ: Education |] | |
| | R/at Khupari, Bilavali, Khupari |] | |
| | Thane – 421312. |] | |
| 13. | Juilee Vinod Shelar |] | |
| | Age 20 Year, Occ: Education |] | |
| | R/at – Room No.5, Swagat Chawl |] | |
| | No.16, Ganpati Pada, Old Belapur |] | |
| | Road, Kalwa, Thane – 400 605. |] | Petitioners |

Versus

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|----|---|---|
| 1. | Union of India |] |
| | Through its Secretary, Ministry of AYUSH] | |
| | “B” Block, CPO Complex INA, |] |
| | NEW DELHI-23. |] |
| 2. | National Commission for Homeopathy |] |
| | Jawaharlalm Bhartiy Chikitsa Avum |] |
| | Homeopathy Anusandhan Bhavan, |] |
| | No.61-65 Industrial Area, Oppo. “D” |] |
| | Block, Janakpuri New Delhi – 110058. |] |

3. The State of Maharashtra]
Through the Secretary for]
Medical Education and Drugs Department] Mantralaya, Mumbai.]
4. The Commissioner and Competent]
Authority, State CET Cell, Through it's]
Chairman, Pravesh Niyantran Samiti,]
305, Government Polytechnic Building,]
Kherwadi, Ali Yawar Jang Marg,]
Bandra (East), Mumbai 400 451.]
5. The Director of AYUSH]
Having office at – Building, 4th Floor,]
Saint George Hospital Compound,]
Mumbai.]
6. Maharashtra University of Health]
Science, Through it's Registrar, having]
office at – Mhasrul, Vani Dindori Road,]
Nashik – 422 004.]
7. Pouravi Shikshan Prasarak Mandal]
A Public Charitable Trust,]
Through its Chairman/Secretary,]
Having Office at-283/1, B, Kolgiri]
Nagar, Hotgi Road, Solapur, Majrewadi,]
Solapur – 413 225.]

8. The Principle,]
Mahila Homeopathic Medical College,]
Solapur At -283/1, B, Kolgiri Nagar,]
Hotgi Road, Majrewadi, Solapur-413225]
9. Motiwala Education & Welfare Trust]
A Public Charitable Trust,]
Through its Chairman/Secretary,]
Having office at – Motiwala Nagar,]
Gangapur Nashik – 422 012.]
10. The Principle,]
Motiwala Homeopathic Medical]
College & Hospital, And F.G. Motiwala]
P.G. Institute of Homeopathy & Research]
Centre at Motiwala Nagar, Gangapur -]
Satpur Link Road, Via Ashok Nagar,]
Gangapur, Nashik – 12.]
11. Janseva Mandal Trust]
A Public Charitable Trust,]
Through its Chairman/Secretary,]
Having office at – Dugadphata,]
Tal – Bhiwandi, Dist – Thane – 421 302.]
12. The Principle,]
Sai Homeopathic Medical College,]
Dugadphata, Bhiwandi, Dist. Thane.] Respondents

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Mr. Rajaram V. Bansode, for Petitioners.

Mr. R.V. Govilkar a/w Mr. Ashutosh Gole, for Respondent No.1.

Mrs. Purninma Awasthi, A.G.P, for Respondent No.2.

Mr. S.B. Shetye a/w Ms. Sarika Shetye, for Respondent No.6.

Mr. Sheetal M. Ubale, for Respondents No.7 to 12.

Mr. N.C. Walimbe, A.G.P, for Respondent-State.

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CORAM : SUNIL B. SHUKRE AND

G.A. SANAP, JJ.

DATE : 1st MARCH, 2022.

JUDGMENT: [Per Sunil B. Shukre, J.]

1. Not on board. Mentioned. Taken on board.
2. Heard Mr. Bansode, learned Counsel for the petitioners extensively.
3. The petitioners are the students who have been admitted to B.H.M.S Course on 13th October, 2019 conducted by three different Colleges which are respondents No.8, 10 and 12.
4. The petitioners, now, by this petition have sought direction to respondent No.6 to grant forthwith eligibility to the admissions

of the petitioners taking into consideration that Admissions Regulating Authority has already regularized the admission of all the petitioners vide its order dated 13th October, 2021.

5. Before we deal with the order dated 13th October, 2021 passed by the respondent No.4 - Admissions Regulating Authority, we must state it here that it is not in dispute that as per the minimum eligibility criteria, students desirous of taking admission to B.H.M.S Course must have secured not less than 50 percentile of marks at NEET and the percentile secured by each and every petitioner, there are 13 number of petitioners, is below 50. In other words, as per the minimum eligibility criteria of percentile, none of the petitioners was and is eligible to secure admission to B.H.M.S Course in any of the Colleges, the respondents No.8, 10 and 12.

6. Learned Counsel for the Petitioners submits that the petitioners had approached this Court earlier by filing a Writ Petition bearing Writ Petition (Stamp) No.5903 of 2020 wherein this Court, while disposing of that petition on 2nd February, 2021 issued directions to respondents No.7 to 12 therein. These directions were in following terms;

“(i) Respondent Nos.7 to 12 shall submit the proposals for verification and scrutiny of documents of the students, who have been admitted to their colleges for the Academic Year 2019-2020, to the Director of AYUSH, State of Maharashtra, within a week from today;

(ii) The Director of AYUSH, State of Maharashtra, after scrutiny of the proposals, shall forward the same with his recommendations to the Admissions Regulating Authority within one week from the receipt thereof;

(iii) Admissions Regulating Authority shall examine and verify the proposals within two weeks from the receipt thereof;

(iv) We make it clear that the aforesaid Authorities shall consider the proposals in keeping with the directions and spirit of the order dated 20th February, 2020 of the Supreme Court in Civil Appeal No.603 of 2020;

(v) All rights and contentions of the parties on merits of the proposal for verification and scrutiny are kept open”.

7. According to the learned Counsel for the petitioners, following these directions and also the view taken by the Apex Court while disposing of a bunch of Civil Appeals and Writ

Petitions including Writ Petition (C) No.1461 of 2019 filed by respondents No.8, 10 and 12 - Colleges, respondent No.4 found that admission of six students out of nine students, whose proposals were sent to him, could be approved and accordingly he approved the admissions of these students. Learned Counsel for the petitioners submits that once such approval has been granted, it is not open to National Commission for Homeopathy – the respondent No.2 to say that Admissions Regulating Authority – respondent No.4 does not have any power to grant approval by relaxing the eligibility criteria in relation to minimum percentile to be obtained by these students.

8. Learned Counsel for the petitioners also submits that the Writ Petition filed by respondents No.8, 10 and 12 - Colleges, was not finally decided by the Apex Court when in paragraph 13 of it's judgment, it expressed it's inability to do so by stating that there being no response filed by Central Council of Homeopathy or by Union of India due to paucity of time clarifying the factual position pertaining to the non compliance of the procedure prescribed under the Homeopathy Central Council Act, 1973 Act for bringing regulations, it was not in a position to decide the issue raised by

the petitioners in Writ Petition (C) No.1461 of 2019. He further submits that the Supreme Court also left it open to the petitioners therein to raise these issues before the High Court, if deemed fit and proper. He further points out that the Apex Court in paragraph 13 of its judgment in the said matter also noted that it was not necessary for it to deal with various submissions made by the appellants in view of the order passed by it permitting the students to continue with their studies. He submits that these observations clearly support the case of the petitioners and on the basis of these observations prayer of the petitioners can be granted.

9. Mr. Shetye, learned Counsel for respondent No.6 submits that the petitioners have suppressed from this Court a material fact relating to filing of one Writ Petition by respondents No.8, 10 and 12 - Colleges before this Court seeking a direction for regularization of the admission given to students like the petitioners by these Colleges and that this Petition was dismissed by this Court. He submits that, therefore, now another petition with the same relief cannot be filed. He further submits that there is no power vested in the Admissions Regulating Authority to relax

minimum eligibility criteria relating to minimum percentile to be secured by the students. He further submits that if at all there is any such power, the power is vested with the Ministry of AYUSH, Government of India which is made clear by the communication dated 3rd January, 2022 issued by the President of Homeopathy Education Board (Page 89).

10. Mr. Shetye, learned Counsel for respondent No.6 also points out from the observations made in paragraph 12 of the judgment of the Apex Court dated 20th February, 2020 rendered in Civil Appeal No.603 of 2020 along with other connected matters on which reliance has also been placed by the learned Counsel for the petitioners, that protection granted by the Apex Court was applicable to only those students who were admitted to AYUSH Under Graduate courses for the year 2019-2020 on the strength of the interim orders passed by the High Courts provided these students had taken admission prior to 15th October, 2019 and that the interim orders were passed before 20th February, 2020. He also submits that in this very judgment, the Apex Court has underlined the importance of maintenance of minimum standards of education in AYUSH courses.

11. As stated earlier, the petitioners in this case have been admitted to B.H.M.S Under Graduate Course on 13th October, 2019. They were so admitted not on the strength of any interim order passed by the High Court but on the basis of the decision taken on it's own by respondents No.7 to 12. The Supreme Court in the aforesaid case has directed that only those students may be permitted to continue with their studies if they were admitted to Under Graduate AYUSH Course for the year 2019-2020 on the strength of interim orders passed by the High Courts and their admissions were made before 15th October, 2019. The judgment was delivered by the Supreme Court on 20th February, 2020 and, therefore, it is obvious that the protection of this direction is available to only those students who were admitted on the basis of interim orders passed by the High Courts before 20th February, 2020. There is, of course, another rider and it is that admission must have taken place before the last date of admission i.e 15th October, 2019.

12. In this case, admission was indeed given to the petitioners before 15th October, 2019, but the admission, as stated earlier, was made on the basis of the decision taken by respondents No.7 to 12

on their own and not on the strength of any interim order passed by the High Court.

13. By the order dated 2nd February, 2021 passed in Writ Petition (Stamp) No.5903 of 2020, this Court had not directed the Authorities to regularize the admissions of these petitioners. This Court had only stated that the proposals for verification and scrutiny of the documents of the students be sent to the Director of AYUSH, State of Maharashtra and thereafter the Director of AYUSH was further directed to forward the same with his recommendations to the Admissions Regulating Authority and final direction was to the effect that Admissions Regulating Authority would examine and verify the proposals within two weeks from the receipt thereof.

14. From these directions, it is clear that this Court did not categorically say that the petitioners being eligible for regularization of their admission, the Authorities shall, after necessary verification and scrutiny of the documents regularize admissions of the students by relaxing eligibility criteria. The direction was to verify and scrutinize the documents with a view to

find out if the students were eligible for admission by considering the criteria of eligibility including one of minimum eligibility criterion, that is, minimum percentile of marks. The direction, however, did not say that the Authorities would also have to relax the minimum eligibility criterion so as to declare the students as eligible for admission. There was also no finding that Admissions Regulating Authority had the power to relax the eligibility criteria. Even then, the Admissions Regulating Authority took the decision of approving admissions of six students out of nine students vide its order dated 13th October, 2021. While taking this decision, the Admissions Regulating Authority was quite aware that none of the students fulfilled the minimum eligibility criteria in terms of 50 percentile and yet exceeding its authority and in ignorance of the directions given by the Apex Court, gave its approval to admissions of six students. This decision of the Authority amounted to relaxing the criterion of minimum 50 percentile of marks at the NEET and thus lowering down of minimum standards of education.

15. In paragraph 12 of the judgment of the Apex Court referred to above, the Supreme Court has held that the minimum standards

of education cannot be lowered even for AYUSH courses. It is further held that Doctors who are qualified in Ayurvedic, Unani and Homeopathy treat patients and the lack of minimum standards of education may result in half-baked Doctors being turned out of these professional colleges. It is also found that even 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. These observations in a way issue a warning to all the concerned Authorities that come what may they shall not tinker with the educational standards. That means no Authority except the one vested with the power to relax under the rules, would have any power to relax the eligibility criteria including the one of minimum percentile of marks for securing admission to AYUSH Under Graduate course. Yet by the order passed on 13th October, 2021, the Admissions Regulating Authority, not being an Authority vested with power to relax the criteria, approved the admission of the students. It was an illegality manifestly committed by the Admissions Regulating Authority and, just because the petitioners have been admitted erroneously by the respective Colleges to Under Graduate course, this Court cannot be a party to the

mistake committed by the Admissions Regulating Authority. The mistake which we have called to be an illegality has been rightly pointed out by the President, Homeopathy Education Board in his communication dated 3rd January, 2022 and we do not find any infirmity in the same. The admissions of the students to respondents No.8, 10 and 12 – colleges were thus in complete disregard of the minimum eligibility criteria.

16. Once, we have held that the admissions of the petitioners to the respondents No.8, 10 and 12 - Colleges were in violation of the minimum eligibility criteria relating to minimum percentile of marks, it would necessarily mean that their admissions are *void ab initio*. It would then follow that the petitioners do not have any right to continue with their studies in B.H.M.S course. The students, of course, would have a right to proceed against the respective Colleges and their Management for wrongly admitting them to B.H.M.S course and seek appropriate compensation, if they are advised to do so.

17. We are, thus, not inclined to entertain this petition. The petition deserves to be summarily dismissed.

18. Learned Counsel for the petitioners, at this stage, seeks some time to point out some more case laws which, he thinks relevant to decide the issue involved in the petition. The learned Counsel for the petitioners is not ready with the case laws at present. It was he, who had, in fact, sought urgent circulation of this petition by way of production in the second half which was granted to him. It was, therefore, expected of him to be fully ready with the matter. Even otherwise, judgment of the Apex Court relied upon by the learned Counsel for the petitioners and also by the learned Counsel for respondent No.6 is very clear. It leaves no ambiguity. Therefore, we do not think that any purpose is going to be served by giving further time to the learned Counsel for the petitioners. His request is rejected.

19. It is pertinent to note here that Association of Management of Homeopathy Colleges of Maharashtra had approached this Court by filing a Writ Petition being Writ Petition No.10324 of 2019 seeking permission of the Court to admit the students by considering their not NEET percentile, but their HSC examination marks on the ground that many seats in the Colleges of the Association were lying vacant. In that petition, an interim relief

for permitting these Colleges to admit the students was prayed for. It is not in dispute that respondents No.7 to 12 are the members of Association of Management of Homeopathy Colleges of Maharashtra. Interim relief, however, was not granted by this Court. In fact, by the order passed on 4th October, 2019, this Court specifically rejected the prayer for grant of interim relief to this Association of which respondents No.7 to 12 are the members. So, respondents No.7 to 12 knew that this Court had expressly refused permission to them to admit any students to B.H.M.S course by relaxing eligibility criteria relating to 50 percentile of marks at the NEET. Yet, these respondents gave admission to the petitioners and may be others on 13th October, 2019. These Colleges ought not to have granted any admission to the petitioners, but because of the admissions given by these Colleges to the students, unnecessarily hopes of students like the petitioners are rekindled and now the position is that two precious academic years of these students have been wasted. It is for the petitioners to think and decide as to who can be held responsible for spoiling their academic career.

20. Similar view has been taken by another co-ordinate Bench of this Court in Writ Petition No.410 of 2020 decided on 4th May, 2021 to which one of us is party.

21. Learned Counsel for the petitioners, has also sought parity with the students who are before the Division Bench at Aurangabad in Writ Petition No.2273 of 2022 in which interim relief has been granted by that Bench on 26th February, 2022. We are not fully aware of the facts of the said Petition as copy of the memo of petition is not filed on record. However, on going through the order dated 26th February, 2022, one can see that the limited issue which had arisen before that Court was in relation to declaration of result of the examination of the petitioners. In this petition, prayer made is for regularization of the admissions of the petitioners by issuing a mandamus to respondent No.6 for issuing eligibility certificates to the petitioners. This issue, has been considered by us in the light of the legal position as discussed above. Accordingly, we have found that this petition is not maintainable. It appears to us that the Division Bench at Aurangabad has deferred the matter by observing that contentions of the parties will have to be decided on merit. It is thus clear that

no parity can be seen between the petitioners and students in the said writ petition at Aurangabad.

22. The Petition is thus summarily dismissed.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]