

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 2223 OF 2022

Jumrani Gautam Anilkumar & OrsPETITIONERS
V/S
Union Of India Thr Ministry Of Ayush & Ors. ...RESPONDENTS

**WITH
WRIT PETITION (ST) NO. 5004 OF 2022**

Chaudhary Zoha Maimuna Aslam Parvez & OrsPETITIONERS
V/S
Union Of India Through Ministry Of Ayush & OrsRESPONDENTS

**WITH
WRIT PETITION NO. 2224 OF 2022**

Abnave Sneha Pramod & OrsPETITIONERS
V/S
Union Of India Thr. Ministry Of Ayush & Ors. ...RESPONDENTS

**WITH
WRIT PETITION NO. 12490 OF 2022**

Isha Y Gangwane & OrsPETITIONERS
V/S
Union Of India Thr Ministry Of Ayush & Ors. ...RESPONDENTS

**WITH
WRIT PETITION NO. 5556 OF 2022**

Gondhale Vaishnavi Ramnath & OrsPETITIONERS
V/S
Union Of India Thr. Secretary Ministry Of Ayush
& OrsRESPONDENTS

**WITH
WRIT PETITION NO. 8126 OF 2022**

Pranali Mahesh Karande & Ors. ... PETITIONERS
Vs
Union of India, Thr Ministry of Ayush & Ors. ... RESPONDENTS.

**WITH
WRIT PETITION NO. 5558 OF 2022**

Choudhari Daminee Suresh & Ors ...PETITIONERS
V/S
Union Of India Thr. Secretary Ministry Of Ayush
& OrsRESPONDENTS

Mr. V. B. Naik, Sr. Adv. i/by Adv. Suryajeet P. Chavan for the Petitioners in WP/2223/2022, WP/5004/2022, WP/2224/2022 & WP/12490/2022.

Mr. Mihir Desai, Sr. Adv. i/by Adv. Rajaram V. Bansode for the Petitioners in WP/5556/2022, WP/8126/2022, WP/5558/2022

Mr. R. V. Govilkar a/w Adv. Mihir Govilkar, Adv. A. R. Gole, Adv. Vaishali Botle for the Respondent no. 1 in all Writ Petitions.

Mr. Sameer Khedekar a/w Adv. Jagruti Vemula for the Respondent nos. 3 & 7 in all Writ Petitions.

Mr. Sachin Shetye a/w Adv. R. V. Govilkar, Adv. Mihir Govilkar for the Respondent no. 5 in all Writ Petitions.

Mr. N. K. Rajpurohit AGP for the State.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ**

DATED : 12th DECEMBER, 2022

P.C.:

1. Heard Mr. Naik, learned senior counsel for the petitioners in first four writ petitions i.e. WP/2223/2022, WP/5004/2022, WP/2224/2022 & WP/12490/2022 & Mr. Desai, learned senior

counsel for the petitioners in WP/5556/2022, WP/8126/2022, WP/5558/2022.

2. In all these writ petitions the claim of the petitioners is pertaining to the regularization of admissions to the bachelor of homeopathy course / for declaration of results of the examination of first year and second year, permission to appear for next year examination.

3. Out of the first four writ petitions, the prayers in the WP/2224/2022 reads thus:

(a) That by an order of this Hon'ble Court, a Writ of Mandamus or any other Writ in the nature of Mandamus be issued directing the Respondents to declare the Results of the petitioners;

(b) That by an Order of this Hon'ble Court, a Writ of Mandamus or any other Writ in the nature of Mandamus be issued directing the Respondents to accept the examination forms of the Petitioners and a further direction to permit the Petitioners to appear for 1st year and 2nd year Homeopathy examination;

(c) That by an Order of this Hon'ble Court a Writ of Mandamus or any other Writ in the nature of Mandamus directing the Respondents to regularize the admission of the Petitioners in view of the directions issued by the Hon'ble Supreme Court vide its Order dated 20/02/2020 passed in Civil Appeal No. 603 of 2020.

(d) That by an Order of this Hon'ble Court pending the hearing and final disposal of the present Writ Petition the Respondents be directed to allow the Petitioners to appear for the 1st Year and 2nd Year Homeopathy

examination scheduled to held in the month of March, 2022."

4. As far as second bunch of writ petitions, which are argued by Mr. Desai, learned senior counsel prayers in WP/556/2022 are as follows:

(a) This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of direction and thereby direct the Respondent Authority i.e. Respondent No. 5. ARA to grant approval to the admissions of the present petitions for the 1st year of BHMS Degree Course for the academic year 2020-2021 in the Respondent No. 9 Homeopathic Medical College in view of the Hon'ble Supreme Court's order dated 03.02.2021 passed in Civil Appeal No. 867/2021 and other civil Appeals.

(b) This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of direction and thereby direct the Respondent no. 5 ARA & Respondent No. 7 University i.e MUHS Nashik to accept the 1st year BHMS exam application forms and allow all the Petitioners to appear and/or to face the 1st year BHMS (2015) examination for the academic year 2020-2021 which will be held in the month of January/February 2022 or soon thereafter subject to the outcome of the present writ petition.

(c) Pending the hearing and final disposal of this writ petition, direct the Respondent No. 5 ARA & Respondent No. 7 University i.e. MUHS, Nashik to accept the 1st year BHMS exam application forms and allow all the Petitioners to appear and/or to face the 1st year BHMS (2015) examination for the academic year 2020-2021 which will be held in the month of January/February 2022 or soon thereafter subject to the outcome of the present Writ Petition.

(d) Interim/Ad-interim relief be granted in terms of prayer

clauses (c) in favour of the Petitioners.

5. The petitioners in the first four writ petitions alleged that they were admitted to first year Bachelor's of Homeopathic Medicine and Surgery (BHMS) Course for the academic year 2019-20 and 2020-21 in the respondent no. 6-college. It is claimed that the aforesaid admissions were carried out at the college level on or before 15/10/2019 by the college authority as the petitioners pursuant to their qualification in NEET examination were not qualified to get admissions having scored less than the qualifying marks. The reference to the admissions prior to 15/10/2019 is claimed to be only for the purpose of same being cut-off date fixed by the orders of the Apex Court for admissions of graduate medical course. For the aforesaid four years under graduate course of homeopathy, it is claimed that as per the regulations framed by Homeopathy Central Council Act, 1973 the qualifying marks of the candidates are considered from HSC examination.

6. It is claimed by the petitioners that as per Central Council of Homeopathy (Degree Course) Regulations, 1983 the marks obtained in 10+2 examinations after having studied last two years the subject of physics, chemistry and biology were qualified to get admission in first year BHMS Course. It is claimed vide

amendment dated 14/12/2018 a proviso was inserted vide clause 4A. As per amended clause 4A the requirement is made necessary of 50% percentile in NEET examination.

7. According to the petitioners since the aforesaid clauses i.e. 4A were subject matter of challenge in various High Courts and subsequently before the Apex Court, the Apex Court has issued directions vide order dated 20/02/2020 passed in Civil Appeal No. 603 of 2020 and connected matters. According to the petitioners vide said order of the Apex Court admissions of the students like that of petitioners are protected provided they are admitted prior to 15/10/2019 to the undergraduate course. It is also stated by the petitioners that issue of non-compliance of the provisions of section 20 of the Central Council Act was kept open to be agitated before the High Courts.

8. In this background, the petitioners claim that they continued to appear for first year BHMS examination and subsequently they have approached this Court vide WPST/94490/2020 seeking necessary reliefs in the matter of regularization of the admissions of the petitioners and acceptance of their examination forms so as to enable the petitioners to appear for first year homeopathy examination. The High Court by

consent of the parties was pleased to issue directions to the colleges to submit their proposals for scrutiny of documents of students admitted for the academic year 2019-20 with the respondents who in turn were directed to forward the same to the university. The aforesaid orders are claimed to have been passed keeping in mind the spirit of order dated 20/02/2022 referred supra by the Apex Court in Civil Appeal No. 603 of 2020. The High Court in the aforesaid matter claimed to have given a time bound directions to the respondents while disposing of the said writ petitions. It is also stated that in view of the aforesaid directions, the respondent-Admission Regulating Authority (ARA) has regularized the admission of the students pursuant to recommendations of the Directorate of AYUSH, Maharashtra State, Mumbai. According to the petitioners, in view of above the petitioners have appeared for the examination, however, the respondents are intentionally not declaring their results, which has prompted them to prefer the present petitions.

9. The submission of Mr. Naik, learned senior counsel appearing for the petitioners are, the challenge to the clauses 4A were adjudged before various High Courts and the Supreme Courts. Relying on the judgment of Karnataka High Court delivered on

31/08/2021 in WP/100650/2021 and WP/100652/2021, the amended regulations which were gazetted on 14/12/2018 & 19/06/2019 were set aside as illegal and arbitrary. He would further urge that directions are issued by the Karnataka High Court to approve the admissions of the students. As such, according to Mr. Naik, the insertion of the clause 4A in the existing regulations are already set aside as illegal and arbitrary and that being so the qualification prescribed i.e minimum 50% percentile in NEET examination cannot be made a qualifying criteria for the petitioners.

10. Relying on the sub Article 2 of Article 226 of the constitution and drawing support from the judgment of Apex Court in the matter of ***Kusum Ingots & Alloys Ltd. vs Union of India & Anr.*** reported in **(2004) 6 SCC 254** he would urge that the order passed in writ petition questioning the constitutionality of Parliamentary Act will have effect through out the territory of India and as such the said judgment of Karnataka High Court has to be taken into account by this Court for the purpose of determining the issue.

11. According to Mr. Naik, if the judgment in the matter of Civil Appeal No. 603 of 2020 decided by the Apex Court on 20/02/2020

is perused, it can be inferred that so as to avoid the seats going waste and thereby causing loss to the students and the academic institutions, the Apex Court has already permitted to continue the studies by the students who were admitted before 15/10/2019. He would further urge that the paragraph no. 13 of the said judgment which deals with the notification dated 14/12/2018 in categorical terms has left the issue open to be considered by the High Courts. He would as such urge that in view of the provisions of section 20(2) of the Homeopathy Central Council Act, 1973 once the Karnataka High Court in the above referred judgment delivered in in WP/100650/2021 has held that the said notification is illegal, the admissions of the petitioners must be regularized.

12. In addition to above, Mr. Naik would further urge that the Division Bench of this Court in WP/6565/2021 with connected matters decided on 23/02/2022 has granted the relief of regularizing the admission and also permitting them to appear for the examination. According to him, the said relief is granted which is in tune with the judgment of Apex Court delivered in Civil Appeal No. 603 of 2020. As such, Mr. Naik would urge that the petitioners are entitled to claim the relief *at par* with the students who are granted relief by the Apex Court in the judgments

delivered in Civil Appeal No. 603 of 2020 so also in WP/6565/2021 referred supra.

13. Further contentions of Mr. Naik are, the petitioners when approach this Court in WPST/94490/2020 (Sayali A. Sadafule & Ors vs. Union of India) with other connected matters, by consent an order was passed thereby directing the respondent-colleges to submit the proposal for verification and scrutiny of documents of the students who have been admitted to respondent-colleges for academic year 2019-20 to the respondent-Director, AYUSH, State of Maharashtra within a week. He would urge that the Director, AYUSH was directed to scrutinize the proposals and forward the same with its recommendations to Admission Regulatory Authority (ARA) i.e. respondent no. 7 within one week. The ARA thereafter was directed to examine and verify the proposals within two weeks from the receipt of the same and it is further directed that while dealing with the claim of the students like the petitioners, regard be had to order of the Apex Court dated 20/02/2020 in Civil Appeal No. 603 of 2020.

14. Mr. Naik accordingly would invite our attention to the subsequent order passed in aforesaid writ petition on 02/02/2021 so as to claim that since the process as was directed by this Court

on 22/12/2020 was already undertaken, the said petitions were disposed of. According to Mr. Naik, respondent no. 7-ARA in relation to claim of the petitioners for academic year 2019-20, in view of the aforesaid order passed in the petitions had made petitioners eligible for the homeopathy course which was though initially approved by the respondent no. 7-ARA, however incorporated a rider of requirement of the approval of the State Government. He would further urge that the ARA had reviewed its order dated 18/08/2021 and approved admissions of 22 students, as mentioned in the aforesaid orders of the High Court, subject to payment of fine of Rs.30,000/- to be paid by the colleges. In view of above, Mr. Naik would urge that the petitioners were held to be eligible and accordingly rightly so admitted by the respondent-colleges to the BHMS Course

15. In this background, the contentions of Mr. Naik is, once the admissions of the petitioners were regularized by the Directorate of AYUSH, the Admission Regulatory Authority, the MUHS as such was justified in permitting the petitioners to appear for the examination of 1st and 2nd year BHMS Course. As such, Mr. Naik would urge that this Court needs to allow the Writ Petitions of the petitioners in accordance with the prayer clauses thereby not only

declaring the admissions of the petitioners to be regularized but also by permitting them appear for the requisite examination after their results are declared.

16. As far as WP/5556/2022, WP/5558/2022 and WP/8126/2022 for the purpose of deciding the issue, we need to consider the reliefs claimed in the one of the lead writ petition i.e WP/5556/2022. The prayer in the said petition reads thus:

(a) This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of direction and thereby direct the Respondent Authority i.e. Respondent No. 5. ARA to grant approval to the admissions of the present petitions for the 1st year of BHMS Degree Course for the academic year 2020-2021 in the Respondent No. 9 Homeopathic Medical College in view of the Hon'ble Supreme Court's order dated 03.02.2021 passed in Civil Appeal No. 867/2021 and other civil Appeals.

(b) This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of direction and thereby direct the Respondent no. 5 ARA & Respondent No. 7 University i.e MUHS Nashik to accept the 1st year BHMS exam application forms and allow all the Petitioners to appear and/or to face the 1st year BHMS (2015) examination for the academic year 2020-2021 which will be held in the month of January/February 2022 or soon thereafter subject to the outcome of the present writ petition.

(c) Pending the hearing and final disposal of this writ petition, direct the Respondent No. 5 ARA & Respondent No. 7 University i.e. MUHS, Nashik to accept the 1st year BHMS exam application forms and allow all the Petitioners to appear and/or to face the 1st year BHMS (2015) examination for the academic year 2020-2021 which will

be held in the month of January/February 2022 or soon thereafter subject to the outcome of the present Writ Petition.

17. The petitioners therein have appeared for NEET under graduate, 2020 examination conducted by the Central Board of Examination, New Delhi. According to them, the petitioners were admitted on 31/03/2021 alleging to be at the college level counselling round. According to the petitioners, on the date of their admission i.e 31/03/2021 they have paid their requisite fees for admission to first year BHMS Decree Course for the academic year 2021. The Petitioners further claim that the respondent no. 5 in the said petition i.e. ARA has provisionally approved the admissions of 67 students. In the light of above, according to them MUHS vide communication dated 30/09/2021 has informed that since petitioners are not fulfilling the NEET percentile and PBC marks, hence they are not eligible for the admission.

18. Mr. Desai, learned senior counsel in addition to the arguments canvassed by Mr. Naik would continue to urge that even if the admissions of the petitioners are after cut-off date i.e. 15/10/2019, the regard must had to the fact that the students academic career is at stake. It is claimed that it is not in the interest of the students so also the academic institutions to waste

the valuable medical seats particularly when the country is short of qualified doctors.

19. He would further urge that in view of the judgment of Karnataka High Court, once condition of requirement of qualifying marks in NEET examination i.e. 50% is set aside, only option left is to consider the marks obtained in physics, chemistry and biology as was existing before amendment to the Central Regulations by clause 4.

20. He would further urge that the admissions in all the petitions including the petitions, which are argued by Mr. Naik, learned senior counsel are within the sanctioned strength and complete transparency is maintained at the time of granting admissions at the college level. As such, he would urge that the benefit of the judgment of the Apex Court in the matter of ***Index Medical College, Hospital and Research Centre vs. State of Madhya Pradesh & Ors.*** decided on 03/02/2021 needs to be appreciated.

21. He would urge that the none filling of the medical seats is not a solution to the problem as the seats being kept vacant results in financial losses to the management, education institutions apart from nation wide waste of resources. He would as such urge that admissions of the petitioners are need to be

regularized in the light of the the judgment of the Apex Court in Civil Appeal No. 603 of 2020 so also the orders passed by the High Court in WP/6565/2021 and WPST/94490/2020.

22. While countering the aforesaid submissions, learned counsel for the Central Government so also MUHS would oppose the prayer. According to them, the judgment in Civil Appeal No. 603 of 2020 will not come to the rescue of the petitioners particularly when the said judgment is deciding *right in personem and not right in rem*. It is claimed that the said judgment is delivered under the exceptional constitutional powers exercised by the Supreme Court under Article 142 of the Constitution of India to do complete justice.

23. It is settled principle of law that directions issued under Article 142 of the Constitution do not constitute a binding precedent. In support of the aforesaid proposition reliance can be placed on judgment of the Apex Court in the matter of State of *U.P. vs. Neeraj Avasthi (2006) 1 SCC 667*. Powers under Article 142 can be exercised for issuance of directions to do proper justice. In support of such directions, reasons recorded by the Apex Court cannot be considered to be a law laid down under Article 141 of the Constitution. In view of above, it cannot be said

that directions given under Article 142 by the Apex Court are binding under Article 141.

Powers of the High Court under Article 226 cannot be said to be at par with that of Article 142. In view of above, it cannot be said that this Court has jurisdiction to direct the regularization of admission or to evolve a procedure so as to redress the claim of the Petitioners in exercise of powers under Article 226 based on the above referred judgment of Apex Court in Appeal No.603 of 2020.

24. He would urge that the Apex Court in the aforesaid judgment has directed regularization of the admissions of such students who were admitted under the orders of the High Court. So as to substantiate the said claim reliance is placed on the observations made by the Apex Court in the judgment delivered in Civil Appeal No. 603 of 2020 so also the judgment of the Karnataka High Court.

25. Further contentions of learned counsel for the respondents are, the orders passed by consent in WPST/94490/2020 on 02/02/2021 is of hardly any consequence as the said judgment is not adjudicating rights of the parties but is only directing to take decision on the eligibility of the students.

26. According to learned counsel for the respondents, fees

regulatory authority or Director, AYUSH has hardly any control over the admissions to be regularized as these authorities are not armed with the powers to lower down the minimum qualifying criterias for the admission to the courses. The further contentions of learned counsel for the respondents are, the judgment of Karnataka High Court is restricted to the extent of the petitioners who were party to the petitions before the admissions of such petitioners which were made pursuant to the interim orders of the High Court, which is not the case in hand.

27. According to learned counsel for the respondents, particularly MUHS, the National Commission for Homeopathy i.e. respondent herein has already intimated about non-fulfilling the percentile prescribed by the rules and regularization and as such the ARA, Government of Maharashtra has no powers to regularize the admissions. It is also claimed that the petitioners cannot claim parity with the students who were benefited out of the judgment of the Apex Court, judgment of the Karnataka High Court and the orders delivered by this Court.

28. Our specific attention is invited to the another judgment of this Court delivered in WP/2277/2022 on 01/03/2022 wherein on identical lines this Court has already dismissed the similar

challenge. The further contentions of learned counsel for the respondents are, the respondent-colleges have already approached this Court questioning the legality of the clause 4 as amended by notification of 2018 and the association of colleges were not granted any reliefs by this Court. A specific reliance is placed on the order of this Court delivered in WP/91141/2019 with WP/10324/2019 and WP/26178/2019. As such, it is claimed that all the petitions are liable to be dismissed.

29. We have appreciated the rival submissions.

30. The claim of the petitioners in first group of petitions is that of based on the principle of parity, based on the judgment of Apex Court and Karanataka High Court. No other challenge in the petitions could be noticed.

31. The Apex Court in Civil Appeal No. 603 of 2020 was considering the validity of the notification issued by the Central Council of Indian Medicine and Central Counsel of Homeopathy prescribing an All India National Eligibility cum Entrance Test (NEET) for admissions to under graduate courses including BHMS. As per the aforesaid regulation, a minimum qualifying marks for eligibility to admissions to under graduate course was prescribed at 50%, minimum marks for scheduled casts, scheduled tribes and

OBC was prescribed at 40%. The percentile was to be determined on the basis of marks secured in all India common merit list in NEET. The notification dated 07/12/2018 was issued by the Central Council thereby introducing the Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) amendment Regulations, 2018. The Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) Regulation 1986 were amended by 2018 regulation. The regulation 2(d) of the 2018 regulation provide for uniform entrance examination for all medical institutions i.e NEET for admission to under graduate courses. The said NEET examination was to be conducted by the authority as shall be designated by the Central Government.

32. Admittedly, all the petitioners are not qualifying the aforesaid requirements and as such were not entitled for the admission based on their NEET qualification. That being so the petitioners were straightway admitted by the respondent-colleges to the under graduate BHMS Course.

33. The Apex Court in the said judgment was sensitive to the issue as to the cut-off date 15/10/2019 for admission to under graduate courses. We are concerned in the present petitions about the admissions to the under graduate course i.e BHMS. The Apex

Court in paragraph nos. 12 & 13 of the said judgment has observed thus:

"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.

13. The notification dated 14.12.2018 pertaining to the Homeopathy courses is similar to that of the AYUSH courses. It was contended on behalf of Homeopathy colleges that the procedure prescribed in Section 20(2) of the Homeopathy Central Council Act, 1973 (for short, '1973 Act') was not followed before the amendment was carried out to the Regulations. In view of the paucity of time, no response was filed by the Central Council of Homeopathy or by the Union of India clarifying the factual position pertaining to the non-compliance of the procedure prescribed under the 1973 Act for making Regulations. In view of the same, we are not in a position to decide the issue raised by the Petitioners in Writ Petition (C) No.1461 of 2019. We leave it open to the Petitioners to raise these issues before the High Court, if

they deem it fit and proper. It is not necessary to deal with various submissions made by the Appellants in view of the order passed by us permitting the students to continue their studies.

34. As a consequences of the aforesaid observations, the Apex Court in the backdrop of the admissions of large number of students to the AYUSH undergraduate course for the year 2019, **on the strength of the interim orders passed by the various High Courts was pleased to direct that the students may be permitted to continue their courses provided they were admitted prior to the last date i.e. 15/10/2019. The said relief was granted by the Apex Court as one time exercise in view of peculiar circumstances. The Apex Court has in categorical terms observed that the said order be not treated as a precedent.**

35. Though the Apex Court has left the issue as to non-compliance of section 20 sub-section 2 of the Homeopathy Central Council Act, 1973 to the High Court, however, the fact remains that the said judgment of the Apex Court is having regard to the powers conferred in it by virtue of Article 142 of the Constitution. Such powers are not available to the High Court under section 226 of the Constitution. In this background, it cannot be said the

petitioners are entitled to claim parity whose admissions were protected by the aforesaid order of the Apex Court.

36. There is one major distinguishing factor which needs to be noted is, all the students whose admissions were protected by the Apex Court in the aforesaid judgment were admitted under the orders of the Court and not like one in the case in hand where the admissions were carried out by the respondent-colleges at their own level.

37. This takes us to the next contention of learned counsel for the petitioners viz. seeking parity with other orders passed by this Court i.e. WP/6565/2021 with connected matters. No doubt, Division Bench of this Court has granted relief in favour of the students, however, it appears that the judgment of the Apex Court in Civil Appeal No. 603 of 2020 was not brought to the notice of the said Court while deciding the said petitions. Apart from above, the Respondent-ARA has supported the case in the petitioners based on the orders passed in WPST/94490/2020 with connected matter.

38. If we appreciate the observations made in WPST/94490/2020 with connected matters, what can be noticed is, the Division Bench of this Court has passed an order by consent only about the

submitting proposals for verification and scrutiny of the documents of the students. The respondent-authorities i.e. Central Council nor the MUHS has never consented for the regularization of the admissions of the petitioners.

39. As such, it cannot be said that this Court in the aforesaid WPST/94490/2020 had any intentions to order regularization of the admissions of the students particularly when said issue was at all not canvassed while disposing of the petition on 02/02/2021. Neither the order dated 22/12/2020 nor 02/02/2021 passed in the aforesaid WPST/94490/2020 orders regularization of the admissions.

40. Apart from above, the fact remains that the admissions of the petitioners cannot be regularized by the respondent no. 7-ARA or Director, AYUSH, State of Maharashtra particularly when no such powers are vested in the said authorities.

41. Even if the claim of the Petitioners are considered that the physics, chemistry and biology marks are required to be taken into account in regularization of their admissions, neither AYUSH Authority nor the ARA has relied on the physics, chemistry and biology marks of the petitioners for the purpose of regularization of the admissions. At least, no such materials to that effect is

brought on record.

42. This takes us to the last submission of the petitioners i.e. the judgment of the Karnataka High Court. The Karnataka High Court has protected the admissions of the petitioners who were admitted to the courses pursuant to the interim orders of the Court. Apart from above, the illegality as regards 2018 notification, even if it is upheld, the said matter is subject matter of challenge before Apex Court.

43. Be that as it may. That the protection granted in the order of the Karnataka High Court cannot be extended to the petitioners for the reasons that the petitioners were never admitted pursuant to the directions issued by Court. Rather the admissions of the Petitioners are carried out at college level that too after the cut-off date i.e. 15/10/2019.

44. In the second group of petitions which were argued by Mr. Desai, it is an admitted position that the admissions were carried out by the colleges almost after the six months of cut-off date i.e. 15/10/2019. Admittedly, it is claimed by the petitioners that their admission were made by the respondent-colleges on 31/03/2021.

45. In this background, neither of the petitioners case is *at par* with the one which was pleaded before the Apex Court nor before

the Karnataka High Court. As such, the petitioners cannot be extended the benefit of Article 226(2) of the Constitution of India.

46. This Court is further required to be sensitive to the judgment of the Division Bench in the matter of **Sayyed Alfya Fatima Ikhlas & Ors. Vs UOI** delivered in WP/2277/2022. The earlier view taken by this Court in WP/6565/2021 was corrected by the Division Bench of this Court particularly when the judgment of the Apex Court in Civil Appeal No. 603 of 2020 was brought its notice.

47. In view of above, what can be notice is, the respondent-colleges have carried out admission process of the petitioners in violation of the admission rules. The law as was existing on the date of the admissions of the students requires minimum 50% / 40% in NEET examination, which none of the petitioners have achieved. Rather the admissions of the students by the colleges in the second group of petitions is in contravention to the cut-off date of 15/10/2019 fixed by Apex Court as the students were admitted on 31/03/2021.

48. It is to be further held that in view of the admission regulations as were prevailing at the relevant time, neither the respondent-ARA nor the Director of AYUSH, State Government are authorized to relax the qualifying/eligibility category in the

admission to BHMS Course.

49. In this background, no case for exercising writ jurisdiction is made out. All the writ petitions sans merit and are accordingly dismissed.

(SHARMILA U. DESHMUKH, J) (NITIN W. SAMBRE, J.)