

managed to gain only 49 out of 720 marks. This is undisputed because it is part of the Petition itself as can be seen from Exhibit “F” which is at page 53 and the tabulation at page 54. This is therefore not a question of a regulation that raises the issue of a percentile although that might also apply. This is a question of whether the Petitioner meets a minimum qualifying level or standard at all on any metric. The Petitioner has not been allotted a seat at the 8th Respondent College through the usual process but has gained direct admission from the 8th Respondent College against apparently some vacancy. This was apparently done after all rounds of counselling and admission were over.

2. The fact that there is a vacancy, and this aspect of the law is also well settled by the Supreme Court, does not mean that students who do not meet a minimum standard can be admitted. Indeed, Supreme Court decisions indicate that the view preferred is that it is better to let a seat remain vacant rather than have it filled up at any cost. The attempted reliance by the Petitioner on decisions of the Karnataka High Court (Exhibit “L”) and orders of the Delhi High Court (Exhibit “M”) are of no avail. The Delhi High Court Division Bench order is an interim order and is not a judgment properly so called. The Karnataka High Court order is under challenge in a Special Leave Petition before the Supreme Court. The argument before the Division Bench in Karnataka High Court turned on a question of doctrine of proportionality and one of the submissions seems to have been (internal page 18, brief page 144) that the Petitioner should be allowed to be admitted on the basis of academic eligibility. Even decisions of the Supreme Court cited before and reflected in the Karnataka High Court judgment echo

what we have said above, namely that while institutions have certain rights, they have corresponding responsibilities to select meritorious and suitable candidates.

3. For reasons that it set out, the Karnataka High Court held that the Ayush Ministry Guidelines dated 18th October 2022 and the Regulations framed by the National Commission for Homeopathy on 6th December 2022 would not apply to the admission process to Bachelor of Homeopathic Medicine and Surgery (“**BHMS**”) undergraduate courses that had already commenced from 19th July 2022. Secondly, the Division Bench held that the Government Order of 13th December 2022 making the 2022 Regulations applicable to admissions to BHMS undergraduate courses for the academic session 2022-2023 were quashed.

4. We do not understand how the decision of the Karnataka High Court Division Bench this can be invoked in this particular case. The only Government Order that was quashed was the one of 13th December 2022 in regard to the 2022 Regulation. But the Petitioner’s admission here is not for the academic year 2022-2023 but precedes it by at least one year and is of 2021. That is clear from the Petition itself.

5. The Petitioner’s admission is of 7th May 2021 and the challenge in the Petition is to a letter of 21st November 2022 issued by the 7th Respondent, University of Health Sciences that was a warning. We fail to understand how from 7th May 2021 until June 2023 this Petitioner has even been allowed to continue in any

educational institution. The attempt before us to suggest that the NEET marks are totally irrelevant, and one should only consider SSC or HSC marks is obviously unpersuasive. By this reasoning, the entire NEET structure would have to be eradicated; and a person with only one mark out of 720 (or, for that matter zero marks) could be admitted by a college directly against a vacancy and would be entitled to continue without meeting even a minimum standard of passing. That submission has only to be stated to be rejected.

6. In our view this Petition is thoroughly misconceived. It is rejected. There will be no order as to costs.

7. We leave it to the University to take all necessary steps and actions in accordance with law.

8. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)