

# SUPREME COURT OF INDIA

Association of Managements of Homeopathic Medical Colleges of Maharashtra

Vs.

Union of India

C.A.No.1393 of 2019

(L.Nageswara Rao and M.R.Shah,JJ.,)

01.02.2019

## JUDGMENT

**L.Nageswara Rao,J.,**

SLP(Civil) No. 766 of 2019

1. Leave granted.

2. The Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha, sHomoeopathy (AYUSH), Government of India by letters dated 12<sup>th</sup> February, 2018 and 5th June, 2018 instructed all the State Governments and the concerned universities to admit students in AYUSH under-graduate courses on the basis of the in NEET merit list for the academic year 2018-19. By a letter dated 11th June, 2018, the Government of India informed the State Governments that a candidate seeking admission to AYUSH under-graduate courses shall obtain minimum of marks at 50th percentile in NEET. Pursuant thereto, Respondent No.3 by a notice dated 15th June, 2018 informed all the candidates about the changed eligibility criteria, namely, the introduction of the requirement of 50th percentile for open category and 40th percentile for reserved category. The Appellant-Association filed a Writ Petition in the High Court of Judicature at Bombay challenging the legality of the aforementioned letter dated 11th June, 2018 of Respondent No.1 and notice dated 15th June, 2018 of Respondent No.3 which was dismissed. Aggrieved thereby, these Appeals have been filed.

2. According to the Central Council of Homoeopathy (Degree Course) B.H.M.S. Regulations, 1983, a candidate should have passed the 10+2 or other equivalent examination after a period of 12 years' study with the last two years of study comprising of Physics, Chemistry and Biology for admission to 1st year BHMS course. On 5th February, 2018, an information brochure was issued by Respondent No.3 for NEET UG - 2018 for admission to Health Science courses i.e. MBBS/ BDS/ BAMS/ BHMS/ BUMS/ BPTH/ BOTH/ BASLP/ BP&O/ B.Sc. (Nursing) in all Medical Educational Institutions in a State/ Union territory, including Medical Educational Institutions established by the Central Government, State Government, University,

Deemed University, Trust, Society/ Minority Institutions/ Corporations/ Corporations or a company. The schedule for the entrance examination for admissions for the year 2018-19 was given in the information brochure. The entrance test was scheduled to be conducted on 6th May, 2018 and the results were to be declared by the first week of June, 2018. After the declaration of results of NEET UG - 2018, a notice was issued on 6th June, 2018 by Respondent No.3 for online registration. In the meanwhile, the eligibility criteria for admission to BHMS Degree Course was altered by Respondent No.1 by a letter dated 11th June, 2018 pursuant to which a notice was issued by Respondent No.3. As per the changed criteria in the letter dated 11th June, 2018, a candidate from the open category will be eligible for admission only if he/she secured not less than 50th percentile of the marks in NEET-2018. A candidate belonging to the reserved category should secure not less than 40th percentile of the marks which shall be determined on the basis of highest marks secured in the all India common merit list in NEET- 2018.

3. The Appellant-Association made a representation to the Respondent No.1 on 28th August, 2018 in which they stated that a large number of seats will remain unfilled if the altered standards are strictly followed. As there was no response from the Respondent, the Appellant-Association filed a Writ Petition in the High Court of Judicature at Bombay challenging the letter dated 11th June, 2018 of Respondent No.1 and the consequential notice of Respondent No.3. The main contention of the Appellant in the Writ Petition was that the altered standards for admission introduced by letter dated 11th June, 2018 should not be applied to the ongoing admission process and that the admissions for the year 2018-19 should be conducted in accordance with the information brochure which was issued on 5th February, 2018. The Appellant-Association was not aggrieved by the introduction of the NEET examination for admission into the BHMS course. The only submission made on behalf of the Appellant was that the percentile method should not have been prescribed after the commencement of the admission process. The High Court rejected the said submission by holding that the student community was aware about the criterion fixed for the admissions on 11th June, 2018 before the online process started much before the last date of registration on 17th June, 2018. As the selection is on the basis of merit, according to the High Court, introduction of minimum percentile cannot be said to be unjustified. The point urged on behalf of the Appellant that the relevant regulations have been altered or modified by an executive fiat was also rejected by the High Court.

4. Mr. K.V. Vishwanathan, learned Senior Counsel appearing for the Appellant-Management and Mr. Guru Krishna Kumar, learned Senior Counsel appearing for the students submitted that the grievance is regarding the introduction of the percentile method in June, 2018 in the midst of the admission process thereby making a large number of candidates ineligible for admission to the BHMS course. Such introduction of the percentile method resulted in a number of seats remaining vacant for the academic session 2018-19. They have referred to several orders passed by the various High Courts permitting admission of candidates on the basis of the marks obtained in the qualifying examinations without taking into account the result of NEET UG-2018. It was further submitted that it is to nobody's benefit that a large number of seats remain unfilled for this academic session. On the other hand, several aspiring students would be deprived of an opportunity for admission to the 1st year BHMS course. Ms. Pinky Anand, learned

Additional Solicitor General appearing for the Respondent No.1, supported the judgment of the High Court stating that the last date for admission to the AYUSH undergraduate courses was 15th November, 2018 and no relief can be granted to the Appellants. She supported the policy decision of the Respondents on the basis of which the minimum percentile was stipulated for admission to the 1st year BHMS course. She submitted that the minimum of 50th percentile in NEET was revised to 35th percentile on the basis of the representation made on behalf of the Appellants that several seats would remain unfilled. She further stated that any further reduction in the minimum percentile would adversely affect the standards of education. Mr. Katneshwarkar, learned counsel appearing for Respondent No.2, and Mr. Vinay Navare, learned counsel appearing for Respondent No.3, supported the learned Additional Solicitor General. They contended that the colleges should not be permitted to make admissions as the last date for admissions had expired long back on 15th November, 2018. Mr. Navare submitted that the students will not be able to complete the minimum number of working days.

5. 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.

6. Though the last date for admission to the BHMS course was 15th November, 2018, we are informed that the last date was extended till 20th December, 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 11th June, 2018 of Respondent No.1 and the consequential notice of Respondent No.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 5th February, 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.

7. As two months have passed after the last date of admission to the 1st year BHMS course i.e. 15th November, 2018, we direct the Appellants to complete the process of admissions strictly on the basis of the merit by 15th February, 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. Appeals are disposed of accordingly.

T Arising out of S.L.P. (Civil) No. 158 of 2019 1

9. Leave granted.

10. Ms. Pinky Anand, learned Additional Solicitor General for the Respondent No.1, pointed out that the Ayurvedic medical colleges stand on a different footing in comparison to the Homoeopathy medical colleges. We have carefully examined the material on record and we are convinced that the issue in this Appeal is the same as that of Homoeopathy colleges, namely, the introduction of minimum percentile in the NEET for admission to the UG courses for the year 2018-19. Therefore, this Appeal is disposed of in terms of the judgment in Civil Appeals @ SLP (C) Nos. 766 and 767 of 2019.