

Union Of India vs Federation Of Self Financed Ayurvedic ... on 20 February, 2020

Equivalent citations: AIRONLINE 2020 SC 251

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Bench: Deepak Gupta, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.603 of 2020
(Arising out of SLP (C) No.26267 of 2019)

UNION OF INDIA

.... Appellant(s)

Versus

FEDERATION OF SELF-FINANCED AYURVEDIC COLLEGES
PUNJAB & ORS.

.... Respondent (s)

With

Civil Appeal No. 589 of 2020
(Arising out of SLP (C) No. 25464 of 2019)

W.P.(C) No. 1395 of 2019

W.P.(C) No. 1461 of 2019

Civil Appeal No.602 of 2020
(Arising out of SLP (C) No. 29172 of 2019)

Civil Appeal No. 605 of 2020
(Arising out of SLP (C) No.29792 of 2019)

Civil Appeal No.606 of 2020
(@ SLP (C) No.2493 of 2020 @ Diary No(s). 18 of 2020

Civil Appeal No. 607 of 2020
(Arising out of SLP (C) No. 29 of 2020)

Civil Appeal No.608 of 2020
(@ SLP (C) No.2494 of 2020 @ Diary No(s). 356 of 2020

Civil Appeal No. 604 of 2020
(Arising out of SLP (C) No.26724 of 2019)

Civil Appeal No. 609 of 2020
(Arising out of SLP (C) No. 518 of 2020)

Civil Appeal No. 610 of 2020
(Arising out of SLP (C) No.1155 of 2020)

JUDGMENT

L. NAGESWARA RAO, J.

1. The validity of the Notifications issued by the Central Council of Indian Medicine (hereinafter referred to as, ‘ the Central Council’) and Central Council of Homeopathy prescribing an all-India National Eligibility cum Entrance Test (for short, ‘NEET’) for admission to Under Graduate courses (BAMS, BUMS, BSMS and BHMS) and minimum qualifying marks in the said examination, arise in the above Appeals and Writ Petitions. These notifications shall apply to admissions for AYUSH Under Graduate courses from the academic year 2019-2020. Similarly, validity of the Notification introducing the AYUSH Post Graduate Entrance Test (AIA-PGET) for admissions to Post Graduate courses (MD-Ayurveda) and prescribing minimum qualifying marks also arises in the above appeals.

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2. The Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha, Sowa Rigpa and Homoeopathy (for short, ‘ AYUSH’), instructed all the State Governments, Union Territories and the Universities concerned to admit students in AYUSH Under Graduate courses for the academic year 2018-2019 only on the basis of merit list of the NEET, conducted by the Central Board of Secondary Education (CBSE) in accordance with the existing rules and reservation policies of the concerned State Governments. A minimum qualifying mark for eligibility to admissions in the Under Graduate courses was prescribed at 50 th percentile. The minimum marks for the Scheduled Castes and Schedules Tribes and Other Backward Classes was prescribed at 40 th percentile. The percentile shall be determined on the basis of marks secured in the all India Common merit list in NEET. Thereafter, by a notification dated 07.12.2018, the Central Council introduced the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2018 (hereinafter referred to as, ‘the 2018 Regulations’). The Indian Medicine Central Council (Minimum Standards of Education 3 | Page in Indian Medicine) Regulations, 1986 were amended by the 2018 Regulations. Regulation 2 (d) of the 2018 Regulations provides that there shall be a uniform entrance examination for all medical institutions, namely the National Eligibility Entrance Test (NEET) for admission to under-graduate courses in each academic year and that the NEET examination shall be conducted by an authority designated by the Central Government. The minimum eligibility mark for admission to Under Graduate courses has been prescribed at 50th

percentile for General category candidates and 40th percentile for Scheduled Castes and Schedules Tribes and Other Backward Class candidates. The Indian Medicine Central Council (Post Graduate Ayurvedic Education) Amendment Regulations, 2018 were issued making amendments to the Indian Medicine Central Council (Post Graduate Ayurvedic Education) Regulations, 2016. An all India entrance examination (AIA-PGET), on the lines of the examination prescribed for the Under Graduate courses, was introduced by the said regulations for Post Graduate courses.

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3. The Guru Ravidas Ayurved University, Hoshiarpur, Punjab issued a prospectus on 31.07.2019 for admission to BAMS, BHMS and BUMS courses prescribing minimum marks in NEET and the criteria for admission to Under Graduate courses. In Civil Writ Petition No.23710 of 2019 filed by the managements of AYUSH colleges, the High Court of Punjab and Haryana passed an interim order on 06.09.2019 permitting admission of students to Under Graduate courses (BAMS, BHMS and BUMS) without insisting on the students getting the minimum requisite percentile in the NEET. Similar orders were passed by the High Court of Punjab and Haryana in other Writ Petitions. All the Writ Petitions filed by the Ayurvedic and Homeopathic colleges were dismissed by the High Court of Punjab and Haryana by its judgment dated 18.12.2019. Aggrieved by the said judgment, the Colleges as well as the students filed these Special Leave Petitions before us. There are other SLPs filed by the students seeking admission to Under Graduate courses (BAMS, BUMS and BHMS) for the academic year 2019-2020. Admission were granted to students in the Institutions on the basis of the 5 | Page interim orders of the High Court without insisting on the eligibility criterion fixed by the 2018 Regulations i.e. securing minimum marks in NEET. The Central Council has also filed some SLPs, aggrieved by the interim orders passed by the High Courts permitting admission of students without insisting on the NEET eligibility in Under Graduate as well as Post Graduate courses.

4. As stated above, the point that arises for our consideration is whether the students seeking admissions to Under Graduate courses (BAMS, BUMS, BSMS and BHMS) and Post Graduate courses can be denied admission on the ground that they did not take the NEET or that they did not get the minimum percentile prescribed by the 2018 Regulations. It would be convenient to refer to the facts in SLP (C) No.29 of 2020 which has been filed against the judgment of the High Court of Punjab and Haryana dated 18.12.2019 in Civil Writ Petition No.23710 of 2019 (O&M), as the lead matter.

5. In the High Court, it was contended on behalf of the Institutions which filed the Writ Petitions that the 2018 Regulations are ultra vires the Indian Medicine Central 6 | Page Council Act, 1970 (hereinafter referred to as, 'the Act'). It was argued that introduction of an all India examination in the form of NEET is beyond the regulation making authority of the Central Council under Section 36 of the Act. Reliance was placed by the Writ Petitioners on the fact that the NEET examination was introduced for the MBBS and BDS courses only after amending the provisions of the Indian Medical Council Act, 1956 and Dentists Act, 1948 respectively. Reference was made to the amendments carried out to Section 10 and Section 33 of the Act and introduction of Section 10-A in both the aforementioned Acts. It was contended that without conducting a similar exercise of amending the provisions of the Act empowering the Central Council to make regulations governing entrance

examinations, the Central Council hastily made the 2018 Regulations. The High Court dismissed the Writ Petitions by rejecting the contentions raised on behalf of the Institutions by holding that the impugned Regulations dated 07.12.2018 were well within the powers conferred on the Central Council by the Act. The admissions made to the Under Graduate courses 7 | Page for the academic year 2019-2020 to students without NEET eligibility were found to be unsustainable as they were contrary to the 2018 Regulations. The High Court held that the students cannot claim any equity because the interim orders on the basis of which admissions were given to the students stipulated that their admissions would be subject to the final result of the Writ Petitions.

6. It was contended on behalf of the Institutions and the students that the 2018 Regulations are ultra vires the Act. No power is conferred on the Central Council to make Regulations for introduction of an all India entrance examination under Section 36 of the Act. Assuming that the Regulations were made under the general rule making power, the submission on behalf of the Institutions and the students was that the 2018 Regulations are not in conformity with “purposes of the Act” under Section 36 (1) of the Act. In support of the submissions, reference was made to the amendments that were carried out to the Indian Medicine Council Act, 1956 and the Dentist Act, 1948 before making Regulations by which the all India examinations for admission to Under Graduate and Post 8 | Page Graduate courses were introduced. The further submission of the students and the Institutions was that NEET is not structured for Ayurvedic courses as the syllabi for AYUSH courses is completely different from syllabi for MBBS or BDS courses.

7. Per contra, Ms. Pinky Anand, the learned Additional Solicitor General appearing for the Central Council submitted that the 2018 Regulations are perfectly valid having been made in the valid exercise of the power conferred on the Central Council under Section 36 of the Act. Ms. Anand submitted that Section 22 of the Act pertaining to the minimum standards of education in Indian Medicine includes the power to conduct entrance examination for admission to the Under Graduate courses. According to Ms. Anand, the Central Council is not denuded of the power to make Regulations as Section 36 of the Act enables the Council to make Regulations generally to carry out the purposes of the Act. She urged that the minimum qualifying percentile fixed for admission to the Under Graduate courses (BAMS, BSMS, BUMS and BHMS) is required to be maintained in order to ensure minimum 9 | Page standards of education. She contended that general standards for admission to professional courses are fixed on the basis of a detailed study and the correctness of such decision is beyond the ken of this Court.

8. It is relevant to refer to the provisions of the Indian Medicine Central Council Act, 1970. Section 22 of the Act confers power on the Central Council to prescribe minimum standards of education in Indian medicine which are required for granting recognised medical qualifications by Universities, Boards or medical institutions in India. Section 36 provides that the Central Council may, with the previous sanction of the Central Governments make regulations generally to carry out the purposes of the Act. Section 36 (i), (j), (k) and (p) are as follows:

“(i) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in any University, Board or Medical Institutions for grant of recognised medical

qualifications;

(j) the standards of staff, equipment, accommodation, training and other facilities for education in Indian Medicine;

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(k) the conduct of professional examinations, qualifications of examiners and the conditions of admissions to such examinations;

(p) any matter for which under this Act provision may be made by regulations.”

9. We are in agreement with the contention made on behalf of the students and the Institutions that introduction of an all India examination will not be covered by Section 36 (i), (j) and (k) of the Act. However, Section 36 (p) refers to any matter under the Act for which provision may be made by the Regulations. In our considered opinion, Section 22 which deals with the minimum standards of education in Indian Medicine, covers the topic of an all India common entrance examination. We are supported in this view by a judgment of this Court in *Veterinary Council of India v. Indian Council of Agricultural Research*¹. Section 22 of the Veterinary Council of India Act is in pari materia with Section 22 of the Indian Council of Medicine Act. An all India common entrance examination was introduced by Regulations made by the Veterinary Council of India in 1993 and an examination was conducted pursuant thereto from the academic year 1 (2000) 1 SCC 750 11 | Page 1995-1996. The dispute pertaining to the validity of the Regulations was resolved by this Court by holding that the Veterinary Council of India is authorized to frame regulations prescribing the standards of veterinary education and such power includes power to make Regulations relating to grant of admissions and veterinary qualifications. This Court observed that such authority to frame regulations regarding admissions is necessary for maintaining the standards of education. The instant case is squarely covered by the law laid down by this Court in *Veterinary Council of India* (supra) therefore, we are of the opinion that the 2018 Regulations cannot be said to be ultra vires the Act.

10. The last date for admissions to the Under Graduate courses for the academic year 2019-2020 was 15 th October, 2019 and 31st October, 2019 for Post Graduate courses. One of the contentions raised on behalf of the Institutions and the students is that a large number of seats in the first year Ayurvedic, Homeopathy and Unani courses are not filled up. To illustrate, Mr. P.S. Patwalia, learned Senior Counsel submitted that there are 540 seats 12 | Page available for admission to the first year BAMS course in Guru Ravidas Ayurved University. Only 27 seats could be filled up in the all India counselling held on 25.06.2019. In the second counselling which was held on 24.07.2019, only 28 candidates were found eligible. After the State counselling, 320 out of 540 seats remained vacant. On the basis of interim orders passed by the High Court of Punjab and Haryana, admissions were made without insisting on NEET and in the process, 275 seats were filled.

11. Similar statements were made on behalf of the Institutions and the students from the other States that insistence on the minimum qualifying marks in the NEET would render a large number

of seats in the Under Graduate courses for the academic year 2018-2019 vacant. A fervent plea was made by the learned counsel appearing for the students that they may be permitted to continue as they have already been admitted and they would lose a precious year in case their admissions are cancelled. In any event, the seats vacated by them cannot be filled up.

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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. 15 th October, 2019. The said direction is also applicable to students admitted to Post Graduate courses before 31 st October, 2019. This is a one-time exercise which is permitted in view of the 14 | Page 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.

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14. For the afore mentioned observations, all the Appeals and the Writ Petitions are disposed of.

.....J. [L. NAGESWARA RAO]J. [DEEPAK GUPTA] New Delhi, February 20, 2020.

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