

Ravi Kumar & Anr vs Union Of India & Ors on 12 April, 2022

Author: Vipin Sanghi

Bench: Navin Chawla, Vipin Sanghi

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P. (C) 5963/2022
RAVI KUMAR & ANR.

..... Petitioner

Through: Mr.Animesh Kumar, Mr.Nishant
Kumar, Mr.Rishabh Gupta &
Ms.Rushali Agarwal, Advs.

versus

UNION OF INDIA & ORS.

.....
Through: Mr.Nidhi Raman, CGSC for U
with Mr.Zubin Singh, Adv.
Ms.Archana Pathak Dave, Mr
Prashant, Mr.Parmod Kumar
& Mr.Avnish Dave, Advs. fo
Mr.Sanjay Khanna & Ms.Prag
Bhushan, Advs. for R-3.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVIN CHAWLA
ORDER

% 12.04.2022 CM APPL. 17950/2022 (Exemption) Allowed, subject to all just exceptions.

1. By this application, the petitioners seek right to participate in the counselling for admissions in Ayurveda Courses for the academic session 2021-22 without insisting on the NEET qualification. The petitioners also seek the alternative relief of a direction to the respondent to prepare a separate merit list of the students willing to take admissions in Ayurveda Courses for academic session 2021-22.

2. The learned counsel for the petitioners places heavy reliance on the order dated 25.02.2022 passed by this Court in W.P. (C) 451/2022 titled Priyanshu Undaviya and Ors. vs. Union of India and Ors., wherein this Court had considered the aspect of grant of interim relief to the petitioners therein, who were candidates applying for seats in admission to the Homeopathic undergraduate course. The submission of the learned counsel for the petitioners is that this Court had examined the pari materia provisions of the law and directed that the respondent no. 3 therein would carry on counselling for admission to the undergraduate courses in the Homeopathic stream to those candidates who had qualified in the NEET alongwith other candidates under the prevailing regime.

In case any surplus seats are left, the concerned institutions will be permitted to provisionally admit students in the Homeopathy stream qua undergraduate courses vis-à-vis academic year 2021-2022. At the same time, the Court made it clear that the admission of the petitioners therein, by the concerned institutions, by adopting the route as delineated in the said order, would be provisional and they would not be allowed to claim any equities in case they fail in the writ petition.

3. The submission of the learned counsel for the petitioners is that it is unfair on the part of the respondent to subject the petitioners to the same NEET examination which is held for admission to the MBBS Course. The submission is that by fixing the minimum percentile for grant of admission to the MBBS Course as well as the courses covered by the National Commission for Indian System of Medicine Act, 2020, that is, the Ayurveda, Unani, Siddha courses etc., admission for the candidates who are desirous of seeking admission to the courses which fall under the Indian Medicine System is being made difficult. The learned counsel submits that the result could be that a large number of seats in such institutions which are imparting education in the Indian System of Medicine would be left unfilled, while there are many candidates who are willing to offer their candidature.

4. The submission of the petitioners proceeds on the assumption that the courses for Indian System of Medicine are in a way inferior to the MBBS Courses. The learned counsel for the respondent no. 2 has drawn to our notice the comparative statement filed by the petitioner itself with regard to the course structure of the MBBS Course vis-à-vis the Ayurveda under-graduate course. She submits that the Ayurvedic Doctors are permitted to do surgical procedure and they have to study subjects such as Zoology, cardiovascular courses etc.

5. The minimum qualification prescribed for admission to the under-graduate Medical Courses that is the MBBS Course or those falling under the National Commission for Indian System of Medicine Act, 2020 is the same, that is, the 10+2 senior secondary qualification. Therefore, the pool of candidates drawn for all such courses is the same. Admissions are granted to all those courses on the basis of relative merit.

6. As far as plea of the seats going vacant, our attention has been drawn, by the learned counsel for the respondent, to the judgment dated 20.02.2020 rendered by the Supreme Court in Civil Appeal No.603/2020 titled Union of India vs. Federation of Self-Financed Ayurvedic Colleges Punjab & Ors. Similar submissions advanced before the Supreme Court were rejected in this case. We may extract paragraph 11 and 12 from this decision, which reads as under:

"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.

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."

7. We may also notice the judgment of the Supreme Court in Civil Appeal No. 4578/2021 titled North Delhi Municipal Corporation vs. Dr. Ram Naresh Sharma & Ors. rendered on 03.08.2021. In this case the prescription of different ages of superannuation for the Ayurvedic Doctors vis-à-vis the Allopathic Doctor was struck down by the Supreme Court as discriminatory. In that context, the Supreme Court observed in paragraph 22 and 23 as follows:

"22. The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24.11.2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31.05.2016.

23. The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry (F. No. D. 14019/4/2016EI (AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent doctors, in the

present appeals. All consequences must follow from this conclusion."

8. The aforesaid aspects were not brought to the notice of the Court while passing of the Interim Order dated 25.02.2022, which in any event dealt with admission to Homeopathy Courses and not the Ayurvedic Courses, like in the present case.

9. The submission of the petitioner that the Regulations framed under the Indian Medical Central Council Act, 1970 were not framed by following the procedure prescribed, that is, under Section 22 sub-clause 2 shall be examined by the Court after the respondent have filed their counter affidavit.

10. Moreover, Regulations have been framed under the National Commission for Indian System of Medicine Act, 2020 on 16.02.2022, which are called the National Commission for Indian System of Medicine (Minimum Standards of Undergraduate Ayurveda Education) Regulations, 2022, which came into force on 16.02.2022. These Regulations prescribe in, Regulation 5(2), that there shall be a uniform entrance examination for all medical institutions at the under-graduate level, namely the National Eligibility-cum-Entrance Test (NEET) for admission to undergraduate programme in each academic year and shall be conducted by an authority designated by the National Commission for Indian System of Medicine. It further provides that in order to be considered for admission to under- graduate programme for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the NEET for under-graduate programme held for the said academic year. There is a proviso to this Regulation, with which we are not presently concerned.

11. There is nothing to suggest that the word "uniform" used in Regulation 5(2)(i) should be read as "separate", as the petitioners would like us to read. Prima facie there appears to be no prohibition against holding of a common NEET examination for all medical courses, that is, the Ayurveda Courses as well as those courses which are covered by the Indian System of Medicine.

12. We, therefore, find no merit in this application and dismiss the same. W.P.(C) 5963/2022 & CM APPL. 17951/2022 Issue notice. Learned counsels mentioned hereinabove accepts notice on behalf of the respondents.

Let the un-served respondents be served by the petitioner for the 18th April, 2022 before the Joint Registrar (Judicial). He shall ensure completion of pleadings. The served respondents may file their counter affidavits in the meantime.

In the counter affidavit, the respondent shall specifically disclose the number of seats available under the Indian System of Medicine for different streams that is the Ayurveda, Unani, Siddha courses etc., and the number of seats which are filled in the ongoing process.

List before the Court on 19th July, 2022.

VIPIN SANGHI, ACJ NAVIN CHAWLA, J APRIL 12, 2022/rv/U.