

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JUNE, 2021

PRESENT

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

AND

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

W.P.No.29798/2018

C/W. W.P.No.27993/2018 (EDN-MED)

In W.P.No.29798/2018

BETWEEN:

1. DR. SONTAKKE KANCHAN RAMRAO
DAUGHTER OF RAMRAO SONTAKKE,
AGED ABOUT 26 YEARS,
RESIDING AT C/O DR. SAJJAL BALTE,
H.No.4-5-39, KHANDRE GALLI,
GUNJ AREA,
BHALKI DISTRICT,
BIDAR – 585 328.
2. DR. AJAHAT KHANAM,
DAUGHTER OF AKBAR KHAN,
AGED 25 YEARS,
RESIDING AT C/O SYED MAZHAR HASHNI,
H.No.8-9-149,
BEHIND DISTRICT JAIL,
BIDAR – 585 401.
3. DR.CH.ANIL KUMAR,
SON OF MANAIAH,
AGED 39 YEARS,
RESIDING AT H.No.23-89,
SHIVAJI ROAD,

JOGIPET DISTRICT,
SANGAREDDY – 502 270,
TELANGANA STATE.

... PETITIONERS

(BY SRI. MOHAMMED TAHIR.A, ADV.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF AYURVEDA,
YOGA AND NATUROPATHY,
UNION SIDDHA AND
HOMOEOPATHY [AYUSH],
'AYUSH BHAWAN', 'B' BLOCK,
G.P.O COMPLEX, INA,
NEW DELHI – 110 023.
REPRESENTED BY ITS SECRETARY/
SPECIAL SECRETARY.
2. THE CENTRAL COUNCIL OF INDIAN MEDICINE,
61-65, INDUSTRIAL AREA,
JANAKAPURI,
NEW DELHI – 110 058.
REPRESENTED BY ITS SECRETARY.
3. THE RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES,
4TH 'T' BLOCK, JAYANAGAR,
BENGALURU – 560 041.
REPRESENTED BY ITS REGISTRAR.
4. THE STATE OF KARNATAKA,
DIRECTORATE OF AYUSH,
DHANAVANTRI ROAD,
BENGALURU – 560 009.
REPRESENTED BY ITS DIRECTOR.
5. N.K.JABSHETTY AYURVEDIC MEDICAL COLLEGE
& P.G. CENTRE.
SIR SIDHAROODH MATH, GUMPA,

BIDAR – 585 403
REPRESENTED BY ITS PRINCIPAL.

... RESPONDENTS

**(BY SMT. BIRDY AIYAPPA, GCG FOR R-1 (ABSENT);
SMT. MANASI KUMAR, ADV., FOR R-2;
SRI. N.K.RAMESH FOR R-3;
SRI. G.V.SHASHIKUMAR, AGA FOR R-4;
R-5 SERVED AND UNREPRESENTED)**

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED:09.04.2018 ISSUED BY THE RESPONDENT No.1 VIDE ANNEXURE-L, ETC.

In W.P.No.27993/2018

BETWEEN:

DR. B.S.SHUCHITHA,
D/O B.R.SHIVAKUMARA SWAMY,
AGED ABOUT 24 YEARS,
R/O 'GURUKRUPA', 1ST MAIN,
4TH CROSS, VIJAYANAGARA,
TUMKUR – 572 102.

... PETITIONER

(BY SRI. ABHISHEK MALIPATIL, ADV.,)

AND:

1. THE UNION OF INDIA,
MINISTRY OF AYURVEDA,
YOGA AND NATUROPATHY,
UNANI SIDDHA AND HOMOEOPATHY [AYUSH],
'AYUSH BHAWAN', 'B' BLOCK,
G.P.O COMPLEX, INA,
NEW DELHI – 110 023.
REPRESENTED BY ITS SECRETARY/
SPECIAL SECRETARY.

2. THE CENTRAL COUNCIL OF INDIAN MEDICINE,
61-65, INDUSTRIAL AREA, JANAKAPURI,
NEW DELHI – 110 058.
REPRESENTED BY ITS SECRETARY.
3. THE RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES,
4TH 'T' BLOCK, JAYANAGAR,
BENGALURU – 560 041.
REPRESENTED BY ITS REGISTRAR.
4. THE STATE OF KARNATAKA,
DIRECTORATE OF AYUSH,
DHANAVANTRI ROAD,
BENGALURU – 560 009.
REPRESENTED BY ITS DIRECTOR.
5. J.S.S. AYURVEDA MEDICAL COLLEGE,
LALITHADRI PURA ROAD,
MYSORE – 570 028
REPRESENTED BY ITS PRINCIPAL.

... RESPONDENTS

**(BY SMT. BIRDY AIYAPPA, CGC FOR R-1(ABSENT);
SMT. MANASI KUMAR ADV., FOR R-2;
SRI. N.K.RAMESH FOR R-3;
SRI. G.V.SHASHIKUMAR, AGA FOR R-4;
NOTICE NOT ORDERED IN R/O R-4)**

THIS PETITION FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED ORDER DATED 09.04.2018 ISSUED BY THE R-1
VIDE ANNEXURE-K.

THESE PETITIONS COMING ON FOR DICTATING
ORDERS THIS DAY, **SANJAY GOWDA, J.**, MADE THE
FOLLOWING:

ORDER

1. Petitioners in these writ petitions are students who were admitted to Post Graduate Ayurveda course in the academic year 2017-18. The admission of the petitioners into the Post Graduate courses were found fault with by the respondent-authorities on the ground that they had obtained admission without appearing for the entrance examinations namely All India AYUSH - Post Graduate Entrance Test (AIAPGET-2017).

2. It is the case of the petitioners that they were granted admission based on 20% weightage granted to the marks secured by them in their Under Graduate examination by virtue of Regulation 8(5) of the Indian Medicine Central Council (Post Graduate Ayurveda Education) Regulation, 2016 (for short, '2016 Regulation') and the subsequent communication of the Ministry of AYUSH which waived the requirement of appearing for entrance test and their admissions could not be therefore be found fault with.

3. These writ petitions, by an order dated 25.06.2019, were dismissed by this Court holding that requirement of appearing for entrance test had not been waived off and that it was necessary for the petitioners to have taken the entrance test.

4. Subsequently, a review petition was filed in R.P.No.302/2019 in W.P.No.29798/2018 and R.P.No.325/2019 in W.P.No.27993/2018, which was entertained and as a matter of fact, the review petitions were allowed after this Court came to the conclusion that the issue raised by the petitioners regarding the necessity of appearing for entrance test was considered by the Apex Court in the case of **UNION OF INDIA VS. FEDERATION OF SELF FINANCED AYURVEDIC COLLEGES PUNJAB AND OTHERS** in Civil Appeal No.603/2020 and though the Apex Court had held that it was necessary for the students to take up the entrance test, the Apex Court in its order dated 20.02.2020 had permitted the petitioners in that particular case to continue their studies.

5. This Court came to the conclusion that the judgment rendered in the aforementioned case by the Apex Court applied to this batch of writ petitions also and it was also noticed that in respect of similarly situated batch of students, a Co-ordinate Bench of this Court in WP.Nos.106948-950/2018 had also permitted them to prosecute and complete their studies notwithstanding the fact that they had not taken up the entrance test before they were admitted to their courses.

6. This Court further held that there was a conflict of the orders passed in WP.Nos.106948-950/2018 and the order that had been passed in these set of writ petitions on 25.06.2019 and it was therefore appropriate and proper to recall the order dated 25.06.2019 and restore the writ petitions to file.

7. These writ petitions having been thus restored are taken up for consideration.

8. Learned counsel appearing for the petitioners contends that in ***Federation of Self Financed Ayurvedic***

Colleges case (supra) decided by the Apex Court, question as to whether there was requirement to appear for entrance test had been considered and the Apex Court had held that regulations which had been framed in 2018 were *intra vires* the Act and therefore, the requirement for appearing in the entrance test was necessary. However, it is contended that in the very said judgment, the Apex Court had observed as under:

“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.”

9. It is contended that since the Apex Court had extended the benefit of continuing their courses as a one-time exercise to all the students who had admitted to Post

Graduate courses before 31.10.2019, petitioners, having been admitted prior to 31.10.2019, would also be entitled to continue and complete their course. He submitted that similar relief had been granted to a set of students, who had also been admitted without taking up the entrance test, by a Co-ordinate Bench of this Court in W.P.No.105310/2018 and W.P.Nos.106948-950/2018 which had applied the decision of the Apex Court and therefore, on parity, petitioners would also be entitled to the same relief.

10. Smt. Manasi Kumar, learned counsel appearing for respondent No.2, however, contended that the benefit granted by the Apex Court cannot be extended to the petitioners since that order was limited only to those students who had been admitted pursuant to the interim orders granted in the writ petitions. She submitted that in the instant case, petitioners had got themselves admitted without the intervention of the Court by grant of interim orders and the petitioners had chosen to take a chance by getting admissions on their own. She submitted that as

the petitioners had taken a risk by getting admitted to the Course despite being aware that they would be eligible for admission only if they had appeared in an entrance test, they would not be entitled to the relief extended by the Apex Court which was confined only to those students who had got admissions pursuant to interim orders granted by Courts.

11. She also submitted that these writ petitions having been dismissed earlier by the Order dated 25.06.2019, the interim orders granted by this Court had come to an end and despite this, petitioners had continued to prosecute their studies which indicated their complete disregard to the regulations. She submitted that extension of benefit to the petitioners would send wrong signals and the petitioners ought not be granted the benefit of an order of the Apex court which was granted on consideration of a particular set of facts and which itself clearly stated that the said order should not be treated as a precedent.

12. Sri N.K.Ramesh, learned counsel appearing for respondent No.3 adopted the arguments of learned counsel appearing for respondent No.2.

13. We have considered the submission of the learned counsel appearing for both parties and also perused the material on record.

14. It cannot be in dispute that the principal question involved in these writ petitions is as to whether the petitioners could have been admitted into Post Graduate Courses without having appeared for entrance test. It cannot also be in dispute that this question has already been decided by the Apex Court in the case referred to supra. As could be seen from the said judgment, while the requirement for appearing for entrance test for being admitted into a Post Graduate Ayurveda course has been held to be an absolute necessity, the Apex Court, however, as a one-time exercise, thought it proper to extend the benefit of permitting the students, who were admitted prior to 15.10.2019, to continue their studies.

15. In fact, the Apex Court while stating that large number of students had been admitted pursuant to interim orders were entitled to continue their studies, made the following distinct statement, immediately thereafter:

“The said direction is also applicable to students admitted to Post Graduate courses before 31st October, 2019.”

This statement categorically indicates that the Apex Court was not only considering the cases of students, who had been admitted pursuant to interim orders, but was also taking into consideration all the students who had been admitted prior to 31st October, 2019 and the Apex Court was primarily safeguarding the interests of all the students who had got an admission without taking an entrance test before 31st October, 2019.

16. The Apex Court by distinctly stating that it was extending the benefit not only to those students who had been permitted to continue their courses on the strength of interim orders, but also to all other students and the only

stipulation was that all of them should have been admitted before 31.10.2019, has clearly clarified that the benefit would be applicable to all the students who had been admitted prior to 31.10.2019. In our view, the subsequent statement of the Apex Court makes it clear that the benefit of continuing and completing the course would be available to all students who had been admitted prior to 31.10.2019 who had not taken the entrance test.

17. In view of this specific declaration by the Apex Court that the benefit was available to all the students admitted to Post Graduate courses before 31.10.2019, the arguments of learned counsel appearing for respondent No.2 that the benefit could be granted only to those students who had been admitted pursuant to an interim order granted by the Court cannot be accepted.

18. It may also be pertinent to state here that in the present case also, the petitioners have been permitted to continue their Post Graduate courses and also to appear for any examination that were scheduled to be held

thereafter by virtue of the interim orders granted in these writ petitions. In our view, since the Apex Court has extended the benefit not only to students who had been admitted under interim orders, but also to students who were admitted without the intervention of the Court, all the students who were admitted prior to 31.10.2019 without taking up the entrance test, would be entitled to the same benefit of continuing their courses.

19. Admittedly, all the petitioners herein have admittedly been admitted prior to 31.10.2019 and they would thus be entitled to the relief of continuing and completing their courses.

20. Furthermore, since a Co-ordinate Bench of this Court in W.P.No.105310/2018 and W.P.Nos.106948-950/2018 has already held that the decision of the Apex Court rendered in the aforementioned case, applies to students who had been admitted prior to 31st October 2019 and had also extended the said benefit to other students, it would be improper to deny the very same relief

to the petitioners, who stand on the same footing as those students in W.P.No.105310/2018 and W.P.Nos.106948-950/2018.

21. In fact, in the said writ petitions, this Court was dealing with students who had been admitted for the academic year 2018-19, while the petitioners in this case were admitted to the academic year 2017-18, which as a matter of fact, makes the case of the petitioners stand on a better footing.

22. In view of the above, these writ petitions are disposed of with a direction to the respondents to permit the petitioners to continue and complete their respective Post Graduate courses in Ayurveda.

23. The respondents shall also announce the results of the examinations taken by the petitioners pursuant to the interim orders granted by this Court in these writ petitions.

24. If the petitioners have already completed their courses successfully, the respondents are directed to issue them with necessary certificates in that regard.

Accordingly, writ petitions stand disposed off.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

PKS