

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 6456 of 2023**

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SWANIRBHAR HOMOEOPATHIC MEDICAL COLLEGE SANCHALAK  
MAHAMANDAL, GUJARAT STATE

Versus  
UNION OF INDIA

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**Appearance:**

MR DHAVAL DAVE, SENIOR ADVOCATE WITH MR UDIT N VYAS(9255) for  
the Petitioner(s) No. 1

MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 2

MS MANISHA LAVKUMAR SHAH, SENIOR ADVOCATE WITH MR. KM  
ANTANI(6547) for the Respondent(s) No. 3

MRS KRISHNA G RAWAL(1315) for the Respondent(s) No. 1

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.  
JUSTICE A.J.DESAI  
and  
HONOURABLE MR. JUSTICE BIREN VAISHNAV**

**Date : 06/06/2023**

**ORAL ORDER**

**(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE  
A.J.DESAI)**

1. Rule. Ms. Krishna Rawal, learned advocate appearing for respondent no. 1, Mr. Harsheel Shukla, learned advocate appearing for respondent no. 2 and Mr. K.M. Antani, learned advocate appearing for respondent no. 3 waive service of notice of rule.

2. So far as interim relief is concerned, we have heard learned advocates for the respective parties.

3. It is the case of the petitioner which is an association of self financed homeopathy colleges in the State of Gujarat that the respondents no. 1 and 2, particularly respondent no. 2 i.e. The National Commission for Homeopathy have not granted admission in the colleges of the association to those students who have not obtained minimum of marks of 50 percentile in the All India AYUSH Post Graduate Entrance Test (AIAPGET) held for the academic year 2022-23 as per sub-regulation 2 of Regulation 4 of the Homeopathy (Post Graduate Degree Course) M.D. (Hom.) Regulations, 1989 (as amended in 2018) (for short 'PG Regulations') though the same has been quashed and set aside by the Division Bench of the Karnataka High Court vide its judgement and order dated 31.08.2021 in the case of **The Karnataka Private Homeopathic Medical Colleges Management Association and Others vs. Union of**

**India and others rendered in Writ Petition No. 100650 of 2021 (EDN-MED) with Writ Petition No. 100652 of 2021 (EDN-MED).**

4. Initially, the matter was listed before the learned Single Judge of this court. On 13.04.2023, notice came to be issued to the respondents. Since the provisions of the PG Regulations were challenged, the matter was listed before this court. On 25.04.2023, Mr. Harsheel Shukla, learned advocate for respondent no. 2 requested for time to file reply. Accordingly, the matter was adjourned to 01.05.2023. On 01.05.2023, the petition was listed before the vacation bench, however, at the request of learned advocate Mr. Shukla, matter came to be adjourned to today.

5. Affidavits-in-reply have been filed by learned advocates appearing for respondents no. 1 and 2. No reply has been filed on behalf of respondent no. 3.

6. Mr. Dhaval Dave, learned Senior Counsel appearing with Mr. Udit Vyas, learned advocate for the petitioner association would submit that respondent no. 2 i.e. The National Commission for Homeopathy is fully aware about the decision dated 31.08.2021 delivered by the Division Bench of the Karnataka High Court in the case of **The Karnataka Private Homeopathic Medical Colleges Management Association and Others** (supra) by which amended Regulation 4(2) of the PG Regulations which imposes additional condition of admission came to be quashed and set aside on the ground that provisions of Section 20 of the Homeopathy Central Council Act, 1973 (for short 'the Act,1973') was not followed and amendment was carried out. He would further submit that since there was no requirement of passing the entrance examination and having marks of 50 percentile, those students who have graduated as provided under Regulation 4(1) of the PG Regulations could have been granted admission. He would submit that the decision of the Karnataka High Court though has

been challenged before the Hon'ble Apex Court, no stay has been granted against the implementation of the impugned judgement and order. Therefore the authority is supposed to follow the decision of the Division Bench of the Karnataka High Court by which sub-regulation 2 of Regulation 4 was quashed and set aside. He would further submit that the said regulations are applicable to all Homeopathy colleges established in India and is similarly applicable to the authority.

6.1 Mr. Dave would submit that for the academic year 2022-23, the respondents have not granted admission to those graduate students who had not obtained 50 percentile or more and therefore they preferred another petition before the Karnataka High Court. The Karnataka High Court by an interim order dated 06.04.2023 directed the authority to grant admission relying upon the earlier Division Bench decision dated 31.08.2021 in the case of The Karnataka Private Homeopathic Medical Colleges Management Association and Others (supra). By

taking the court through the order dated 06.04.2023 passed by the Division Bench of the Karnataka High Court, Mr. Dave would submit that specific statement has been made on behalf of respondent no.2 that subsequent to the judgement dated 31.08.2021 in the case of The Karnataka Private Homeopathic Medical Colleges Management Association and Others vs. Union of India and others rendered in Writ Petition No. 100650 of 2021 (EDN-MED) with Writ Petition No. 100652 of 2021 (EDN-MED), no procedure has been followed and therefore the regulations have yet not been amended. Mr. Dave would therefore submit that interim order may be passed in the present petition so that the students may not suffer if the hearing of the matter takes more time.

6.2 Mr. Dave would submit that though it is the case of the respondent no. 2 that admissions were completed on 08.04.2023, the said dates were never declared by respondent no. 2. Even otherwise he would submit that even subsequent to the commencement of the Post

Graduate course, there is summer vacation in the colleges and therefore the authority may extend the term for those students who may be granted admission in post graduate courses. He therefore would submit that appropriate orders may be passed.

7. On the other hand, Mr. Harsheel Shukla, learned advocate for respondent no. 2 would submit that the last date for admission for academic year 2022-23 was 08.04.2023. He would submit that the admissions have already been granted to those students who were meritorious and had obtained more than 50 percentile. He would submit that the decision of the Division Bench of the Karnataka High Court has already been challenged before the Hon'ble Apex Court and the matter is pending. He would submit that the Division Bench of the Karnataka High Court has granted admission and mandatory order considering the cut-off date and therefore the same would not be applicable.

8. The challenge in the present case is to the amended provision of Regulation 4. Regulation 4(1) of the said Regulations reads as under:

“4. (1) No candidate shall be admitted to M.D. (Hom.) course unless he possesses the degree of: -

(i) Bachelor of Homoeopathic Medicine and Surgery or equivalent qualification in Homoeopathy included in the Second Schedule to the Act, after undergoing a course of study of not less than five year and six months duration including one year compulsory internship; or

(ii) Bachelor of Homoeopathic Medicine and Surgery (Graded Degree) or equivalent qualification in Homoeopathy included in the Second Schedule to the Act, after undergoing a course of study of not less than two years duration.”

8.1 Sub-regulation 2 of Regulation 4 came to be amended in the year 2018.

“[(2) (i) There shall be a uniform entrance examination to all medical institutions at the postgraduate level namely, the All India AYUSH Post Graduate Entrance Test (AIA-PGET) in each academic year and shall be conducted by an authority designated by the Central Government:

Provided that the said All India AYUSH Post Graduate Entrance Test (AIA-PGET) shall not be applicable for foreign national's candidates.



(ii) In order to be eligible for admission to postgraduate course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'All India AYUSH Post Graduate Entrance Test (AIA-PGET)' held for the said academic year:

Provided that in respect of -

(a) candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, the minimum marks shall be at 40th percentile;

(b) candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the minimum marks shall be at 45th percentile for General Category and 40th percentile for the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

[(c) Five percent of the annual sanctioned intake capacity in Government or Government aided higher educational institutions shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 (49 Of 2016), based on the merit list of 'All India AYUSH Post Graduate Entrance Test (AIA-PGET)'. For this purpose, the "Specified Disability" contained in the Schedule to the Rights of Persons with Disabilities Act, 2016 (49 of 2016) is annexed in Annexure 'I' and the eligibility of candidates to pursue a course in homoeopathic medicine with specified disability shall be in accordance with Annexure 'II'. If the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats shall be included in the annual sanctioned seats for the respective Category.]

*Explanation.* - The percentile shall be determined on the basis of highest marks secured in the all India common merit list in the All India AYUSH Post Graduate Entrance Test (AIA-PGET):

Provided further that when sufficient number of candidates in the respective categories fail to secure minimum marks in the All India AYUSH Post Graduate Entrance Test (AIA-PGET), as specified above, held for any academic year for admission to postgraduate courses, the Central Government in consultation with Central Council may at its discretion lower the minimum marks required for admission to postgraduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for that academic year only.

(iii) An all India common merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in the All India AYUSH Post Graduate Entrance Test (AIA-PGET) and the candidates, within the respective categories, shall be admitted to post graduate course from the said merit lists only.

(iv) The seat matrix for admission in the Government, Government-aided Institutions and Private Institutions shall be fifteen per cent. for the all India quota and eighty-five per cent. for the States and Union territories quota.

[Provided that the seat matrix for admission in any Deemed Universities shall be hundred percent for the all India quota and those Universities and Institutes which are already having more than fifteen percent all India quota seats, shall continue to maintain that quota.]

[(v) The designated authority for counseling of eighty-five percent State and Union territory quota for admissions to post-graduate course in all Homoeopathic educational institutions in the States and Union territories including institutions established by the State Government, University, Trust, Society, Minority Institution, Corporation or Company shall be the respective State or Union Territory in accordance with the relevant rules and regulations of the concerned

State or Union territory Government, as the case may be.]

[(vi) The counseling for all admission to postgraduate course for seats under the all India quota as well as for all Homoeopathy educational institutions established by the Central Government and any Deemed Universities shall be conducted by authority designated by the Central Government.]

(vii) No candidate who has failed to obtain the minimum eligibility marks as specified above shall be admitted to postgraduate course in the said academic year.

(viii) No authority or institution shall admit any candidate to the postgraduate course in contravention of the criteria or procedure as laid down by these regulations in respect of admissions and any candidate admitted in contravention of the said criteria or procedure shall be discharged by the Central Council forthwith.

(ix) The authority or institution which grants admission to any student in contravention of the aforesaid criteria or procedure shall be liable to face action in terms of the provisions of the Act.]”

## 8.2 Section 20 of the Act, 1973 reads as under:

“20. Minimum standards of education in Homoeopathy.  
—(1) The Central Council may prescribe the minimum standards of education in Homoeopathy, required for granting recognised medical qualifications by Universities, Boards or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall, before submitting the regulations or any amendment thereof, as the case may be, to the Central

Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.”

8.3 Both the aforesaid provisions came to be examined by the Division Bench of the Karnataka High Court in the case of The Karnataka Private Homeopathic Medical Colleges Management Association and Others vs. Union of India and others rendered in Writ Petition No. 100650 of 2021 (EDN-MED) with Writ Petition No. 100652 of 2021 (EDN-MED) and having found that the mandatory provisions of Section 20, particularly sub-section (2) of Section 20 has not been followed with regard to the post graduate courses, the same have been declared to be illegal, arbitrary and unenforceable. The conclusion of the Division Bench in the judgement reads as under:

**“15. CONCLUSION ON THE VALIDITY OF HTE IMPUGNED AMENDMENT REGULATIONS:**

(a) In the light of the above settled legal principles, particularly with regard to the non compliance of statute even as admitted by the respondent No. 2 in paragraph No.12 of the counter affidavit in W.P. No.100650/2021 and in paragraph No. 21 of the counter affidavit in W.P. No. 100652/2021, which is

extracted herein above, we are of the considered view that there has been no compliance of the mandatory requirement of sub-section (2) of Section 20 of the Act, 1973 (since repealed). This is an infraction of the mandatory provision of the Act, 1973.

(b) In the absence of the statute providing for imposition of qualification regarding eligibility for admission to the UG & PG Courses, it was all the more necessary for the respondent No. 2 to have complied strictly with the mandatory provisions of sub-section (2) of Section 20 of the Act, 1973 to have circulated draft regulations and the amendment thereof with all stake holders. This admittedly not having been done, needs to be set aside as illegal, arbitrary and unenforceable.

(c) It is also a settled law that failure to conform to the statute under which subordinate legislature is made or exceeding the limits of authority conferred by the enabling Act, would result in the same being rendered illegal and unenforceable. Hence, the first question is answered in the affirmative.”

9. In view of the above fact and when there is no stay granted against the said decision, it was expected from the respondent authority and particularly respondent no. 2 that equal treatment should have been granted to those students who are eligible for admission in post graduate course as per Regulation 4(1) and ought not to have compelled colleges of the State of Gujarat to approach this court. When the amended sub-regulation 2 of

Regulation 4 has been quashed and set aside after interpretation of the same which is applicable to all the homeopathy colleges in the entire country of India, it is not expected from respondent no. 2 to take illegal technical objection that admissions have been over on 08.04.2023. In fact, the authority ought to have granted admission to all students complying with the conditions referred in sub-regulation 1 of Regulation 4 of the PG Regulations and particularly when no student is affected if those students are admitted in the post graduate courses.

10. It is also pertinent to note that a statement has been made before the Division Bench of the Karnataka High Court in the recent past i.e. in the month of April that the respondents have not followed the procedure prescribed under Section 20 as far as post graduate course is concerned as is recorded in the judgement and order dated 06.04.2023.

11. Hence, we are of the opinion that the petitioner is entitled to interim relief as prayed for. The respondents are hereby directed to permit the colleges of the petitioner association to admit the students forthwith on vacant seats and may extend the course of post graduation keeping in mind the summer vacation in colleges. The admission shall be subject to the outcome of this petition. All the students who shall be admitted in the colleges pursuant to this order shall be informed about the pendency of the petition.

**(A.J.DESAI, ACJ)**

**(BIREN VAISHNAV, J)**

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