

(2018) 10 Raj CK 0098
In the Rajasthan High Court
Case No : Civil Writ No. 16431 of 2018

**Mangilal Nirban Homoeopathic Medical College @APPELLANT@Hash State
Of Rajasthan**

Date of Decision : 24-10-2018

Acts Referred:

Citation : (2018) 10 Raj CK 0098

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Judgement

In the present writ petition, the petitioners have questioned the validity of the stipulation indicated in Annexure-16 dated 12.02.2018 issued by the

Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) providing that all concerned Universities shall admit students

in AYUSH under Graduate courses for Academic Year 2018-19 on the basis of the merit list of National Eligibility cum Entrance Test (NEET) only.

It is, inter-alia, submitted that based on the said stipulation made in the direction dated 12.02.2018, the counseling has been held by the respondent

No.3. Despite holding two rounds of counseling based on the requirements of having NEET alongwith the other eligibility criteria, majority of seats are

lying vacant in the colleges, inasmuch as, in some institutions almost all the seats are lying vacant. The respondent â?" Counseling Board has again

issued an advertisement for holding last round of counseling on 28th & 29th October, 2018 as the admissions have to be granted before 31.10.2018.

Submissions have been made that the stipulation made in the order dated 12.02.2018 has already been struck down by Patna High Court in Civil Writ

Jurisdiction Case No.16541/2018 : Vihar Private Unani Medical Colleges & Anr. v. The Union of India & Ors., decided on 10.10.2018 and on account

of the stipulation made in this regard again by the respondent- Counseling Board would result in the seats remaining vacant on account of non-availability of NEET qualified candidates.

A prayer has been made that the petitioners-Institutions may be permitted to admit the students on their own by issuing advertisement in the news-

paper based on merit of 10+2 examination, which is the qualification indicated in the BHMS Regulations, 1983 (Annex.11). Learned counsel appearing

for the respondent No.3 on caveat made submissions that the Board had well in advance issued advertisement on 15.02.2018 regarding the

requirement of the candidates having cleared NEET examination and that the NEET was held in the month of June, 2018 and therefore, apparently

there was no reason for the candidates not to appear for NEET. Further submissions have been made that irrespective of the submissions made, the selection of candidates cannot be left to the petitioners under any conditions.

The Patna High Court in the case of Vihar Private Unani Medical Colleges (Supra) after hearing all the parties inter-alia held as under :-

“In view of the discussions, as above, I am of the considered view that NEET could not be said to be compulsory for AYUSH (UG) Courses till

necessary amendments are introduced in the Act and Regulations governing admission. The decision of the Union Government to provide NEET as

compulsory for admission to AYUSH (UG) Courses, in my view, is unauthorised and contrary to the Regulations framed under Indian Medicine

Central Council Act, 1970. Letter dated 12.02.2018 of the Central Government is accordingly set aside. The press communique dated 23.03.2018

issued by the State Government of Bihar (Annexure-11) is consequently not sustainable and is accordingly quashed.”

A perusal of the above order would indicate that the communication dated 12.02.2018 of the Central Government already stands set-aside and

therefore, prima facie at this stage, it can be said that the stipulation as made by the Ministry of AYUSH regarding the NEET qualification is not

sustainable. There is substance in the submissions made by learned counsel for the petitioners that in case, the admissions are not completed by

31.10.2018 and the condition ultimately is found to be illegal as has been found by the Patna High Court, same cannot cure the deficiency, which

would result on account of non-admission of requisite students with the

petitioners-colleges.

In view of the submissions made, issue notice. Issue notice of stay application also. Both are made returnable within a period of four weeks. Notices,

when issued, be given â??dastiâ?? to learned counsel for the petitioners. As respondent No.3 is already represented by the counsel, no need to issue

notice to the respondent No.3. In the meanwhile, the respondent No.3 is directed to issue an advertisement regarding counseling for grant of admission

in BHMS, BUMS & BNYS courses with the stipulation that those fulfilling the eligibility conditions other than NEET, would be eligible for grant of

admission and hold the counseling of such candidates alongwith the pre-scheduled counseling on 28th & 29th October, 2018.

However, it is made clear that while holding the counseling and granting admissions to the students including the students who have not cleared NEET,

the preference would be given to candidates, who have the NEET eligibility. The students without NEET eligibility, who are granted admission, a

specific stipulation would be indicated that the same would remain subject to final outcome of the present writ petition.