

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA CMP No.10419 of 2019
in CWP No.2664 of 2019 & CMP No.10424 of 2019 in CWP No.2665 of 2019 Reserved
on: 18.11.2019 Decided on:27.11.2019 CWP No.2664 of 2019 Abhilashi Ayurvedic College and
Research Institutepetitioner. Versus Union of India and othersrespondents CWP
No.2665 of 2019 Shiva Ayurvedic Medical Collegepetitioner. Versus Union of India and others
.....respondents Coram The Hon'ble Mr. Justice
L.Narayana Swamy, Chief Justice The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge Whether approved
for reporting?1 For the petitioners: Mr. K.D. Shreedhar, Sr. Advocate with Ms. Shreya Chauhan.
For respondents: Mr. Rajesh K. Sharma, ASGI, for respondents No.1 and 2. Mr. Ashok Sharma, Advocate
General with Mr. Ranjan Sharma, Ms. Ritta Goswami, Mr. Adarsh Sharma, Mr. Ashwani Sharma & Mr.
Nand Lal Thakur, Additional Advocates General, for respondent No.3. Mr. Neel Kamal Sharma, Advocate,
for respondent No.4. Jyotsna Rewal Dua, J . Petitioners in these two
writ petitions have prayed for a

direction to the respondents to allow them to fill up vacant seats 1 Whether reporters of the local
papers may be allowed to see the judgment?

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pertaining to State quota in their institutes for 2019-20 academic session
of BAMS course, from candidates who have appeared in NEET-UG 2019
and also from students who though have not appeared in NEET, but
possess minimum eligibility qualifications for BAMS course i.e. Physics,
Chemistry and Biology (XII) with 50% marks.

2. For convenience, facts of CWP No.2664/2019 are being
noticed hereinafter:

2(i) Petitioner institute was granted no objection certificate by
the respondent-State for establishing the college with 60 seats of under
graduate course of Bachelor of Ayurvedic Medicine & Surgery (BAMS),
vide letter dated 25.4.2013, subject to certain conditions stipulated
therein.

2(ii) The Government of India granted letter of intent in favour
of the petitioner on 12.5.2014 for establishing college with 60 seats in
BAMS course, after completion of all requisite formalities. Permission to

start the first academic session 2014-15 of BAMS course was granted to the petitioner on 20.10.2014. Thereafter, yearly permissions for subsequent academic sessions were granted by Government of India, after conducting inspections in accordance with law.

2(iii)(a) The grievance of the petitioner in this petition pertains to 2019-20 academic sessions of BAMS course. The permission was

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granted to the petitioner for academic session 2019-20 of BAMS course by all concerned authorities.

(b) The prospectus for admission in BAMS course was issued in June 2019 (Annexure P-7). The eligibility criteria prescribed in the prospectus for admission in BAMS course was NEET qualified with 50 percentile i.e. 134 marks out of the total of 720 marks. The minimum eligibility condition for admission in BAMS course was 50% marks in Class (XII) with Physics, Chemistry and Biology.

(c) Petitioner institute could not fill up all available seats specially under the All India Quota even after first and second round of centralized counselling. Therefore, respondent-State permitted conversion of All India Quota seats into State Quota seats and accordingly permitted the first mop up round of counselling from amongst NEET qualified candidates for the vacant seats, vide decision taken in the meeting dated 23.8.2019. After the first mop up round of counselling, petitioner college had 16 vacant seats. Therefore, on the

request of the petitioner second mop up round of counselling was allowed by the respondent-State. However, the first and second mop up round of counselling have been allowed only from NEET qualified candidate.

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(d) The contention of the petitioner is that the merit-list of NEET qualified candidates has already been exhausted; petitioner therefore prayed to the respondent for relaxing the admission criteria by allowing the admission of even NEET appeared candidates instead of NEET qualified candidates; in case the institute will have to carry on the academic session without filling the 16 vacant seats then it would have an adverse impact on its functioning as it is a self financed institute and does not receive any grant-in-aid from the Government; the survival of the institute is on the fee collected from the students; going ahead with the academic session without sanctioned intake would be detrimental to the petitioner as it would not be possible for it to maintain the quality of teaching and the huge infrastructure created for the sanctioned strength.

3. Learned counsel for the respondents submitted that allowing the prayer of the petitioners would be against the eligibility criteria mentioned in the prospectus, which is in tune with instructions issued by Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH).

4(i) In somewhat similar facts and circumstances, Karnataka

High Court in writ petition No.41486/2018 and connected matters has

vide its order dated 20.09.2019, issued following directions:

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“ Order (i) In the on-going counselling for the academic year 2019-20, after all NEET qualified students have made their choices and if seats remain unfilled, any other candidate who has not appeared for NEET examination, but has the minimum qualification to undergo the AYUSH courses (BAMS, BHMS and BUMS) as provided, shall be permitted to take part in the counselling. (ii) Such of those candidates would also be intimated that their admission are being made in view of the absence of NEET qualified candidates and would ultimately remain subject to the result of these writ petition. (iii) It is further made clear that the process as indicated above would be applicable only to such of those institutions who are otherwise qualified to make admissions by possessing requisite infrastructure and if the competent authorities have taken any action against any of the colleges and restrained them from making admissions for the present academic year, such of those institutions shall not make admissions by taking benefit of this order. (iv) If any of the institutions against who action had been initiated has secured any interim order permitting admissions and have already participated in the counselling, such institutions are eligible for making admissions in terms of this order.” 4(ii) Punjab and Haryana High Court in CWP No.23710 of 2019,

vide its order dated 6.9.2019, has also granted following similar

direction:

“Considering the facts and circumstances as also the order dated 26.10.2018 passed in an identical writ petition bearing CWP No.22482 of 2018, it is hereby provided 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 out of the present writ petition.” Similar directions have been issued by Uttrakhand, Allahabad and Rajasthan High Court.

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4(iii) We have been apprised that against some of the above

referred orders, Special Leave Petition is pending before the Hon’ble

Apex Court, however, the operation of the orders have not been stayed.

In light of the above and in the facts and circumstances of the case, we are also inclined to issue similar directions as were issued by the Karnataka High Court. Therefore, we direct that in case the seats in petitioners' colleges for 2019-20 academic session of BAMS course are unfilled after NEET qualified students have made their choices, then the same can be filled in from (i) NEET-UG 2019 appeared candidates and (ii) students who did not appear in NEET-UG 2019, but possess minimum eligibility for admission to undergo BAMS course. Admission of such students shall be provisional and will abide by the final outcome of these petitions.

List the petitions after eight weeks.

(L. Narayana Swami), Chief Justice

(Jyotsna Rewal Dua), Judge