IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MARCH 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A PATIL

WRIT PETITION NO.1261 OF 2022 (EDN-RES)

BETWEEN:

1. KARNATAKA PRIVATE HOMOEOPATHIC MEDICAL COLLEGES MANAGEMENTS' ASSOCIATION
NO.103/6, 40 FEET BDA ROAD
NGEF LAYOUT, MALLATHALLI
BENGALURU-560056
REPRESENTED BY ITS GENERAL SECRETARY
SRI. K. CHANDRASHEKHAR
S/O SRI. HANUMANTHAPPA
AGED ABOUT 73 YEARS.

2. ANURADHA HOMOEOPATHIC MEDICAL COLLEGE AND HOSPITAL
SUNKADAKATTE, BENGALURU-560091
REPRESENTED BY ITS PRINCIPAL
DR. AMARAGOUDA PATIL
S/O LINGANAGOUDA
AGED ABOUT 63 YEARS.

3. FR. MULLER HOMOEOPATHIC MEDICAL COLLEGE AND HOSPITAL
DERALAKATTE, MANGALURU-575018
REPRESENTED BY ITS PRINCIPAL
DR. PRABHUKIRAN ESJ
S/O ISAIAH
AGED 53 YEARS.

4. ALVA'S HOMOEOPATHIC MEDICAL COLLEGE AND HOSPITAL, MOODABIDIRE-574225
D K DISTRICT
REPRESENTED BY ITS PRINCIPAL

DR. HERALD ROSHAN PINTO
S/O WILLIAM PINTO
AGED 50 YEARS.

5. ROSY ROYAL HOMOEOPATHIC MEDICAL COLLEGE
AND HOSPITAL, NELAMANGALA
BENGALURU RURAL DISTRIC-562162
REPRESENTED BY ITS PRINCIPAL
DR. SYED SADIQ AHMED
S/O SYED BASHIR AHMED
AGED 61 YEARS.

6. BHAGAWAN BUDHA HOMOEOPATHIC MEDICAL
COLLEGE AND HOSPITAL
MALLATHALLI, BENGALURU-560056
REPRESENTED BY ITS PRINCIPAL
DR. SEBASTIAN PRABHAKAR
S/O DORAI RAJ
AGED 57 YEARS.

...PETITIONERS

(BY SRI. M.R. NAIK, SR. COUNSEL FOR
SRI. SURAJ NAIK, ADV.,)

AND:

1. NATIONAL COMMISSION FOR HOMOEOPATHY
NO.61-65, D BLOCK
INSTITUTIONAL AREA
JANAKPURI, NEW DELHI-110058
REPRESENTED BY ITS SECRETARY.

2. UNION OF INDIA
MINISTRY OF AYUSH
AYUSH BHAWAN B BLOCK
GPO COMPLEX
INA NEW DELHI-110023
REPRESENTED BY ITS SECRETARY.

3. STATE OF KARNATAKA
HEALTH AND FAMILY WELFARE DEPARTMENT
VIKASA SOUDHA
BENGALURU-560001
REPRESENTED BY ITS PRINCIPAL SECRETARY.

4. DEPARTMENT OF AYUSH
GOVERNMENT OF KARNATAKA
DHANWANTARI ROAD
GANDHINAGAR, BENGALURU-560009
REPRESENTED BY ITS COMMISSIONER.

5. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCE
KARNATAKA, 4TH T BLOCK
JAYANAGAR, BENGALURU-560041
REPRESENTED BY ITS REGISTRAR.

6. KARNATAKA EXAMINATIONS AUTHORITY
18TH CROSS, SAMPIGE ROAD
MALLESWARAM, BENGALURU-560012
REPRESENTED BY ITS EXECUTIVE DIRECTOR.

...RESPONDENTS

(BY SRI. M. ARUNA SHYAM, SR. COUNSEL FOR
SRI. SUYOG HERELE E. ADV , FOR R1
SRI. JAYAKARA SHETTY, CGC FOR R2
SRI. LAXMI NARAYANA, AGA FOR R3 & R4
SRI. N.K. RAMESH, ADV., FOR R6
MS. FARAH FATHIMA, ADV., FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION, IN THE NATURE OF DECLARATION, DECLARING THAT RESPONDENT HAS NO AUTHORITY TO DIRECT ADMISSIONS IN PETITIONERS INSTITUTIONS, IMPARTING UG COURSES IN HOMOEOPATHY, ONLY ON THE BASIS OF NEET RANKING IN THE EXAMINATION CONDUCTED UNDER THE PROVISIONS OF SECTION 14 OF THE NATIONAL MEDICAL COMMISSION ACT 2019 (FOR MBBS AND BDS COURSES) AND, SAME AS ULTRA VIRES THE OPERATING REGULATIONS MADE UNDER STATUTE, AS ARBITRARY, UNJUST AND WITHOUT THE AUTHORITY OF LAW & ETC.,

THIS PETITION COMING ON FOR FINAL HEARING, THIS DAY ***ALOK ARADHE J.,*** MADE THE FOLLOWING:

ORDER

In the writ petition, the petitioner has prayed for the following reliefs:

> *1. Issue an appropriate writ, order or direction, in the nature of declaration, declaring that, Respondent has no authority to direct the admissions in Petitioners' Institutions, Imparting UG courses in Homoeopathy, only on the basis of NEET ranking in examination conducted under provisions of Section 14 of the National Medical Commission Act, 2019 [for MBBS & BDS Courses) and; same as ultra vires the operating Regulations made under statute, as arbitrary, unjust and without the authority of law;*
>
> *2. Further be pleased to direct to abide by and comply with the orders of this Hon'ble Court, dated 31st August 2021 in WP No.100652/2021 and connected case [per Annexure-N];*
>
> *3. Further be pleased to declare that, their admissions is to be regulated as per*

Regulations of 2015 that prescribes the academic eligibility.

2. This Court had passed the following interim order on 07.02.2022:

"Mr.Madhusudhan R.Naik, learned Senior counsel for the petitioners.

Mr.Sunil Narula, learned counsel for the respondent No.1

Mr.Jayakara Shetty, learned Central Government counsel for the respondent No.2.

Mr.Bhojegowda G.Koller, learned Additional Government Advocate for the respondent Nos.3 and 4.

Mr.N.K.Ramesh, learned counsel for the respondent No.6.

Heard on the question of interim relief.

Issue notice to the respondent No.5.

Learned Senior counsel for the petitioners submitted that in exercise of powers under Section 14(2) read with Section 26 of the National Commission for Homeopathy Act,

2020 (hereinafter referred to as 'the Act' for short), the regulations have not been framed. Therefore, it is further submitted that the regulations under the old Act namely Homeopathy Central Council Act, 1973 applies to the fact situation of the case in view of Section 59(2) of the Act. It is also submitted that on previous occasions, various Division Benches of this Court had passed interim orders on 11.10.2018 in W.P.No.41486-534/2018 as well as 20.09.2019 in W.P.No.41486-534/2018 and on 26.02.2021 in W.P.No.100650/2021. It is also pointed out that all the aforesaid interim orders were not interfered with by the Supreme Court. It is also urged that a Division Bench of this Court vide judgment dated 31.08.2021 passed in W.P.No.100650/2021 has held that the amended regulations gazetted on 14.12.2018 and 19.06.2019 have been set aside. It is pointed out that in contravention of the order passed by the Division Bench, Ministry of Ayush issued an executive order dated 30.03.2021 and Central Council for Homeopathy was directed to fill up the seats

in accordance with 2018 Regulations which has been held by the Division Bench of this Court to be not applicable. It is further submitted that the petitioners are ready and willing to make admission to all NEET qualified students. However, it is urged that the petitioners be permitted to make admission to Homeopathy Under Graduate course for the year 2021-22 which has remained unfilled after all NEET qualified students have been admitted to aforesaid courses.

On the other hand, learned counsel for the respondent No.1 submitted that the old Act along with its regulations is not enforceable now and therefore, the petitioners were required to challenge the validity of Section 14(1) of the Act which provides for admission to the course through NEET only.

We have considered the submissions made on both sides and have perused the record. A Division Bench of this Court in W.P.No.100650/2021, by a judgment dated 31.08.2021 has held that the amended regulations which were gazetted on

14.12.2018 and 19.06.2019, are not applicable to the petitioners. In the aforesaid writ petition, the petitioners are the parties. Therefore, the aforesaid judgment is applicable to their case. However, the Ministry of Ayush has issued the impugned communication dated 30.03.2021 by which the regulations to the Under Graduate Ayurveda, Siddha, Unani and Homeopathy courses is directed to be made through NEET (UG) 2021 as per the Amended Regulations 2018 and Homeopathy (Degree Course) Amendment Regulations 2018. The aforesaid executive order issued by the Ministry of Ayush is prima facie in violation of directions issued by the Division Bench of this Court in W.P.No.100650/2021. The 2015 Regulations apply by virtue of Section 59(2) of the Act.

For the aforementioned reasons and taking into account the interim orders passed by this Court on 11.10.2018 in W.P.No.41486/2018 as well as 20.09.2019 in W.P.No. 41486/2018 and on 26.02.2018 in W.P.No.100650/2021 which have not been interfered with by the Supreme Court and with

a view to maintain parity, it is directed that the petitioner - Institutions shall be permitted to make admissions for Homeopathy Under Graduate courses for the academic years 2021-22 which remained unfilled after all NEET qualified candidates have made their choices, by any other candidate, subject to the result of the writ petition."

3. Admittedly, in pursuance of the aforesaid interim order, the students have been admitted to homeopathy under graduate courses for the academic year 2021-22 who are pursuing their courses.

4. Learned Senior counsel for the respondent No.1, on instructions, submits that the admission of the aforesaid students who have been admitted in pursuance of the interim order dated 07.02.2022, shall not be disturbed.

5. In view of aforesaid submission, nothing survives for adjudication in this petition.

Therefore, keeping open the questions of law involved in the writ petition, the petition is disposed of.

Consequently, the pending interlocutory application is also disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE VIJAYKUMAR A. PATIL

W.P. No.25723 OF 2022 (EDN-RES)

BETWEEN:

1. KARNATAKA STATE PRIVATE HOMEOPATHIC
MEDICAL COLLEGE MANAGEMENTS
ASSOCIATION (R)
103/6, 40 FEET BDA ROAD, NGEF LAYOUT MALLATHALLI,
BANGALORE - 560056
REP BY ITS SECRETARY
SRI. K. CHANDRASHEKAR
S/O SRI. HANUMANTHAPPA
AGED 73 YEARS
R/AT BENGALURU.

2. FR. MULLER HOMOEOPATHIC MEDICAL
COLLEGE AND HOSPITAL
DERALAKATTE, MANGALURU - 575018
REP BY ITS PRINCIPAL
DR. PRABHUKIRAN ESJ
S/O ISAIAH
AGED 53 YEARS
R/AT MANGALURU.

3. ALVA'S HOMOEOPATHIC MEDICAL
COLLEGE AND HOSPITAL
MOODABIDIRE - 574225
D K DISTRICT
REP BY ITS PRINCIPAL
DR. HERALD ROSHAN PINTO

S/O WILLIAM PINTO
AGED 50 YEARS
R/AT MOODABIDIRE.

4. ROSY ROYAL HOMOEOPATHIC MEDICAL
COLLEGE AND HOSPITAL
NELAMANGALA
BENGALURU RURAL DISTRICT - 562162
REP BY ITS PRINCIPAL
DR. SYED SADIQ AHMED
S/O SYED BASHIR AHMED
AGED 61 YEARS
R/AT BENGALURU.

5. BHAGAWAN BUDHA HOMOEOPATHIC MEDICAL COLLEGE
AND HOSPITAL
MALLATHALLI, BENGALURU - 560056
REP BY ITS PRINCIPAL
DR. SEBASTIAN PRABHAKAR
S/O DORAI RAJ
AGED 57 YEARS
R/AT BENGALURU.

... PETITIONERS

(BY MR. M.F. NAIK, SR. COUNSEL FOR
MR. SURAJ NAIK, ADV.,)

AND:

1. THE UNION OF INDIA
MINISTRY OF AYURVEDA, YOGA, UNANI,
SIDDA AND HOMOEOPATHY
AYUSH, AYUSH BHAWAN, B BLOCK
GPO COMPLEX, INA
NEW DELHI - 110 023
REP BY ITS SECRETARY.

2. THE NATIONAL COMMISSION FOR HOMOEOPATHY
61-65, INSTITUTIONAL AREA
OPPOSITE TO D BLOCK
JANAKAPURI

NEW DELHI - 110058
REP BY ITS SECRETARY.

3. STATE OF KARNATAKA
HEALTH AND FAMILY WELFARE DEPARTMENT
M S BUILDING, DR. AMBEDKAR VEEDHI
BANGALORE - 560001
REP BY ITS PRINCIPAL SECRETARY.

4. DEPARTMENT OF AYUSH
GOVT OF KARNATAKA
ANAND RAO CIRCLE
BENGALURU - 560009
REP BY ITS DIRECTOR.

5. KARNATAKA EXAMINATION AUTHORITY
18TH CROSS, SAMPIGE ROAD
MALLESHWARAM WEST
BENGALURU - 560012
REP BY ITS EXECUTIVE DIRECTOR.

6. FEE REGULATORY COMMITTEE
(STATUTORY BODY CONSTITUTED
UNDER SECTION 6 OF THE KARNATAKA PROFESSIONAL
EDUCATIONAL INSTITUTIONS REGULATION OF ADMISSION
AND
DETERMINATION OF FEE ACT 2006)
KARNATAKA EXAMINATION AUTHORITY
PREMISES, 18TH CROSS
SAMPIGE ROAD, MALLESHWARAM
BENGALURU - 560012
REP BY ITS MEMBER SECRETARY.

... RESPONDENTS

(BY MR. SHANTHI BHUSHAN H, DSGI FOR R1
MR. ARUN SHYAM M, SR. COUNSEL FOR
MR. SUYOG HERALE, ADV., FOR R2
MR. LAKSHMINARAYAN, AGA FOR R3 & R4
MR. K.M. PRAKASH, ADV., FOR R5
R6 SERVED)

THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF DECLARATION, DECLARING THAT SECTIONS 3, 4, 10, 12, 14, 43, 44, 55(2)(i)(m) OF THE NATIONAL COMMISSION OF HOMEOPATHY ACT, 2020 (CENTRAL ACT NO.15/2020) (VIDE ANNEXURE-A) ARE MANIFESTLY ARBITRARY, UNWORKABLE AND UNCONSTITUTIONAL AND STRIKE DOWN THE AFORESAID PROVISIONS. ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, ORDER, OR DIRECTION TO DECLARE THAT THE REGULATIONS OF 2022 (VIDE ANNEXURE-N) NOTIFIED BY THE RESPONDENT NO.2, IN SO-FAR AS THEY SEEK TO REGULATE, FINDING IT NECESSARY AND PERMITS ADOPTING NEET OF NATIONAL MEDICAL COMMISSIONER AND COUNSELLING PROCESS AND A SEAT MATRIX STIPULATING QUOTAS FOR ADMISSION IN PRIVATE INSTITUTIONS, AS MANIFESTLY ARBITRARY AND ILLEGAL & ETC.,

THIS W.P. COMING ON FOR ORDERS, THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

ORDER

The petitioner No.1 is an Association of Private Homeopathic Medical Colleges in the State of Karnataka. The members of petitioner No.1 - Association with an intent to impart education in Homeopathy system of medicine have established Colleges and teaching hospitals under the provisions of Homeopathic Central Council Act, 1973, in different parts of the State. In the said colleges, education is imparted in homeopathy in Under Graduate and Post

Graduate courses. The petitioners in this writ petition seek the following reliefs:

> *(a) Issue a writ in the nature of declaration, declaring that Sections 3, 4, 10, 12, 14, 43, 44, 55 (2)(i)(m) of the National Commission of Homeopathy Act, 2010 (Central Act No.15/2020) (vide Annexure A) are manifestly arbitrary, unworkable and unconstitutional and strike down the aforesaid provisions.*
>
> *(b) Issue a writ of certiorari or any other writ, order or direction to declare that the Regulations of 2022 (vide Annexure N) notified by the respondent No.2, in so far as they seek to regulate, finding it necessary; and permits adopting NEET of National Medical Commissioner and counselling process; and a seat matrix stipulating 'quotas' for admission in private institutions, as manifestly arbitrary and illegal.*
>
> *(c) Issue a writ of Certiorari or any other writ, order, or direction to declare that 'the Addendum' dated 13.12.2022 bearing No.*

AKUKA 253 PIM 2022 (vide Annexure P) issued by the respondent No.3 is illegal, unreasonable and unenforceable; and quash the same.

(d) Issue a writ directing that, counselling for the 'Management Quota' of 60% as of last academic year having been completed by the members of the 1st petitioner Association based on NEET merit list and G.O. dated 13.10.2022 same be permitted and continued; the KEA filling the balance of Government quota seats to sub serve the reservation policy of the state per 'seat sharing' Annexure K; and these petitioners be permitted to conduct 'counselling for NRI / Management Quota seats' based on inter se merit of applicants to the individual institutions at their level; subject to a rider that 'the fee notified' is tentative, that 'the fee fixation committee' would examine some of the fee proposal that may be filed and approved; on which event, said 'fees' determined would be applicable for the current year on-words as well. Further be pleased to direct the KEA to inform the students to likely increase in the fees which they would be liable to

pay, in the event of determination of higher fees by the committee.

(e) Issue a writ of mandamus or any other appropriate writ,; directing the 6th respondent - Fee Regulatory Committee to determine the fee for the Homeopathy colleges for the Academic year 2022-23, within a fixed time frame taking into consideration the balance sheets of a few colleges to arrive at an average fee to be applied to all the institutions in the State in view of the counselling process commencing and, also to take into consideration the comprehensive guidelines issued by the NCH for determination of fee and;

(f) Issue a writ of mandamus or any other appropriate writ, directing the state to cause determination of 'tuition fee' payable by a committee in terms of Section 6 and 7 of 2006 Act and that till 'the Fee Regulatory Committee' take the decision fixing the fee, amounts indicated in Govt. Order dated 13.10.2022 (vide Annexure K) be operated.

(g) Grant such other order or reliefs as this Hon'ble Court deems fit to grant in the facts and circumstances of this case.

2. The relevant facts need mention, which are stated hereinafter. The State Government issued a notification dated 27.01.2018, wherein it was provided that in view of decision taken by ministry of Ayurveda, Yoga, Unani, Sidda and Homeopathy, it has decided to adopt National Eligibility Entrance Test (NEET) in place of Common Entrance Test for Ayush course in Government as well as private colleges in the State of Karnataka from the academic session 2018-19 and the admission shall be based on the rank in NEET examination. The petitioners thereupon challenged the said order in a writ petition viz., W.P.No.41486-534/2018 in which an interim order was granted on 11.10.2018, by which petitioners were permitted to admit students who were meeting the academic qualifications prescribed in the Regulations but have not appeared in NEET.

3. For the academic year 2019-20, the Council for Homeopathy amended the Homeopathy (Degree Course) Regulations, 1983. Regulation 4A was substituted with Regulation 4A(i), which provided that there shall be uniform entrance examination to all medical institutions at the under graduate level viz., NEET for admission to under graduate courses, which was to be conducted by an authority designated by Central Government. The petitioners thereupon once again filed an application in W.P.No.41486-534/2018 to pass an interim order for academic session 2019-20. A division bench of this court by an order dated 20.09.2019 passed an interim order permitting the petitioners to make admission to the seats which remained unfilled after all NEET qualified students had made their choices.

4. The aforesaid interim order was challenged by Central Council of Indian Medicine before Hon'ble Supreme Court by way of Special Leave Petition. The Civil appeal viz.,

Civil Appeal No.603/2020 was decided by an order dated 20.02.2020. The Hon'ble Supreme Court did not disturb the admission already made but upheld the validity of the notification prescribing NEET for admission to ayurveda courses. However, validity of the notification issued by Homeopathic Central Council was not decided and the petitioners were granted the liberty to raise the issue before the High Court. In view of order passed by Hon'ble Supreme Court, this court by an order dated 11.12.2020 disposed of the writ petition.

5. For the academic session 2020-21, several institutions were unable to admit the students from merit list of NEET. The institutions therefore, approached the Central Government for redressal of their grievance. The Central Government by a communication dated 15.01.2021 brought down the minimum percentile from 50 to 40-30 percentile depending on the category of candidates.

6. The Karnataka Examination Authority by an order dated 25.01.2021 issued a notification dated 25.01.2021 for counseling for admission to Ayush courses for the academic year 2020-21. A division bench of this court in W.P.No.100650/2021 and other connected matters, by an order dated 31.08.2021 allowed the writ petition and quashed the Regulations and directed the respondents to approve the admission made in pursuance of the interim order passed in the writ petition.

7. The Homeopathy Central Council Act, 1973 was repealed by a new enactment viz., the national Commission for Homeopathy Act, 2020 (hereinafter referred to as 'the 2020 Act' for short), which received the assent of the President on 20.09.2020. The Central Government by an order dated 05.07.2021 issued under Section 3 of the 2020 Act constituted National Commission for Homeopathy. The National Testing Agency issued a public notice dated 13.07.2021 inviting online applications for National

Eligibility cum Entrance Test as per Section 14 of the National Medical Commission Act, 2019.,

8. The National Testing Agency notified the conduct of NEET examination for academic year 2022-23 on 17.07.2022. The National Commission for Homeopathy on 09.09.2022 circulated two letters inviting comments and suggestions over the draft Regulations for National Commission for Homeopathy (Homeopathy Degree Course - B.H.M.S) Regulation, 2022 and the National Commission for Homeopathy (Minimum Standards of Requirement for Homeopathy Colleges and Attached Hospitals) Regulations, 2022. The State Government by a communication dated 13.10.2022 convened a meeting to arrive at a consensual arrangement for providing appropriate fee structure and seat sharing. The petitioner No.1 thereupon submitted representations on 09.11.2022 and 05.12.2022 to re-consider the fee structure.

9. The State Government after holding meeting with members of petitioner No.1-Association and other stake holders passed an order on 13.10.2022 providing for annual fee structure and seat matrix in respect of admissions to graduate and post graduate courses in Homeopathic colleges for academic year 2022-23. The Ministry of Ayush issued an advisory on 18.10.2022, which was treated as National Commission for Homeopathy as guidelines for grant of admission to academic year 2022-23. The National Commission for Homeopathy, however, on 06.12.2022 notified the Regulations viz., National Commission for Homeopathy (Homeopathy Graduate Degree Course - Bachelor of Homeopathic Medicine and Surgery (B.H.M.S.)) Regulations, 2022 (hereinafter referred to as '2022 Regulations' for short). Thereafter, on 06.12.2022, the calendar was notified regulating imparting of courses of study. It was directed that courses shall commence from 1st October of the year. An addendum was issued vide

government order dated 13.12.2022 by which it was provided that seats for Homeopathy courses shall be filled as per the Regulations of 2022 notified on 06.12.2022 through Karnataka Examination Authority.

10. For the academic session 2022-23 also, large number of seats were vacant. Thereupon the petitioners once again filed an interlocutory application in W.P.No.1261/2022. Thereafter, a division bench on 22.11.2022 passed an interim order, permitting admissions to students academically qualified but without NEET ranking. The said order was challenged by National Commission for Homeopathy before Hon'ble Supreme Court. The Civil Appeal was decided by an order dated 13.02.2023 by which order passed in W.P.No.1261/2022 dated 22.11.2022 was set aside and the matter was remitted to the High court to decide the same on merits finally before last date proposed for admission, which was to be extended by National Medical Council. The petitioners thereafter filed an application for early hearing

20.02.2023 which was listed before this Court on 22.02.2023. Thereupon, this Court directed the petition to be listed for final hearing on 01.03.2023. The arguments were heard on 02.03.2023 as well as today. Admittedly, the last date for admission to B.H.M.S. course is tomorrow i.e., 04.03.2023. In the aforesaid factual background, this petition arises for our consideration.

11. Learned Senior Counsel for the petitioners submit that the fundamental rights acknowledged and recognized which are available to private educational institutions on account of decision of Hon'ble Supreme Court viz., Right to admit and to impart secular education is subject to reasonable restrictions and is not permissible to impose any restriction by subordinate or delegated legislation, as is sought to be done by the guidelines issued by Ayush Department of Central Government. Section 14 of 2020 Act is wholly disproportionate to the object sought to be achieved and suffers from manifest arbitrariness. It is also urged that

provisions of the Act suffer from doctrine of non retrogression and hit by principles of proportionality. It is contended that Section 14 of the 2020 Act providing for uniform NEET can operate only in the manner prescribed and such a manner is required to be specified by the Regulations.

12. It is argued that institutions imparting education in homeopathy courses are not of All India character and there is no excess demand over availability, giving scope for malpractices and therefore, requiring assessment of inter se merit for grant of admission to competing aspirants for admission does not arise. It is also urged that equating and comparing the study of homeopathy with allopathic medicine and dentistry and applying rigors of provision for grant of admission and standards of education provided for such courses is manifestly arbitrary and suffers from the vice of non application of mind. It is submitted that impugned legislation is violative of fundamental rights guaranteed to the petitioners.

13. It is pointed out that Sections 3, 4 and 10 2020 Act are hit by principles of non retrogression inasmuch as the aforesaid provision contemplate nominees of the Central Government only. It is submitted that Section 43 and 44 of the 2020 are enabling provisions and therefore, no direction to hold the NEET can be given under the same. It is contended that Section 55(2)(m) does not enable the Central Government to issue instructions. It is argued that Clause 4.2, 4.4, 4.5 to 4.7 of the 2022 Regulations are hit by doctrine of proportionality. It is further contended that Regulations notified on 06.12.2022 do not have any retrospective operation to govern the grant of admission for academic year 2022-23 which commenced from 19.07.2022.

14. It is urged that the Regulations of 2018 cannot be applied for admission for academic session 2022-23 as the same have been quashed by this court in W.P.No.10065/2021. It is argued that since, neither the

Regulations nor the guidelines apply for the academic session 2022-23, therefore, the petitioners be permitted to admit the students on the basis of their academic eligibility. In support of aforesaid submissions, reliance has been placed on decisions of the Hon'ble Supreme Court in ***'TMA PAI FOUNDATION VS. STATE OF KARNATAKA', (2002) 8 SCC 481, 'P.A.INAMDAR VS. STATE OF MAHARASHTRA', (2005) 6 SCC 537, 'CHRISTIAN MEDICAL COLLEGE VS. UNION OF INDIA', (2014) 2 SCC 305, 'UNION OF INDIA VS. FEDERATION OF SELF FINANCED AYURVEDIC COLLEGES PUNJAB & ORS.', CIVIL APPEAL NO.603/2020 DATED 20.02.2020, 'HARSHIT AGARWAL VS. UNION OF INDIA', (2021) 2 SCC 710', 'NEIL AURELIO NUNES VS. UNION OF INDIA', W.P.(C) NO.961/2021, 'NAVTEJ SINGH JOHAR VS. UNION OF INDIA', (2018) 10 SCC 1, 'JUSTICE K.S.PUTTASWAMY (RETD.) VS. UNION OF INDIA AND ORS', (2017) 10 SCC 1, 'MODERN DENTAL COLLEGE & RESEARCH CENTRE VS. STATE OF M.P.', (2016) 7 SCC***

353, 'INDEX MEDICAL COLLEGE VS. STATE OF M.P.', (2021) SCC ONLINE SC 318.

15. Learned Senior Counsel for respondent No.2 viz., National Homeopathy Commission submitted that the Act and the Regulations framed therein have been enacted with an object to provide medical education system, which includes access to quality and affordable medical education and there is no violation of either any fundamental rights of the petitioners or any other constitutional provision. It is also contended that under Section 59(2) of 2020 Act notwithstanding repeal of the old Act and the Rules, the Regulations made shall continue to be in force and shall operate till new standards or requirement are specified under the Act. It is also urged that Act 2020 empowers the Central Government under Sections 43 and 44 of the Act to issue the guidelines and directions to National Council for Homeopathy for effective implementation of the Act and the guidelines dated 18.10.2022 shall govern the process of admission for

academic session 2022-23. It is also submitted that requirement of holding a common examination has already been upheld by Hon'ble Supreme Court. In support of aforesaid submissions, reliance has been placed on decisions in ' ***MODERN DENTAL COLLEGE & RESEARCH CENTRE VS. STATE OF M.P.', (2016) 7 SCC 353, 'CHRISTIAN MEDICAL COLLEGE VELLORE ASSOCAITION VS. UNION OF INDIA AND OTHERS', AIR 2020 SC 4721*** and ***'DENTAL COUNCIL OF INDIA VS. BIYANI SHIKSHAN SAMITI, (2022) 6 SCC 65.***

16. Learned Deputy Solicitor General of India for Union of India supported the submissions made by Learned Senior Counsel for respondent No.2 and has submitted that the Act and the Regulations are valid. It is further submitted that prescription of minimum standards of education in respect of Ayurvedic, Unani and Homeopathic schemes have been upheld by Hon'ble Supreme Court by judgment dated 20.02.2020 in Civil Appeal No.603/2020 (***UNION OF INDIA***

VS. FEDERATION OF SELF FINANCED AYURVEDIC COLLEGES, PUNJAB AND ORS.). Reference has also been made to decisions of Hon'ble Supreme Court in ***'SHRI RAM KRISHNA DALMIA VS. S.R.TENDOLKAR', AIR 1958 SC 538, 'PARAYANKANDIYAL ERAVATH KANAPRAVAN KALLIANI AMMA (SMT.) VS. K.DEVI', (1996) 4 SCC 76, 'MYLAPORE CLUB VS. STATE OF T.N.', (2005) 12 SCC 752, 'UNION OF INDIA VS. ELPHINSTONE SPINNING AND WEAVIGN CO. LTD', (2001) 4 SCC 139*** and ***'GOVT. OF A.P. VS. P.LAXMI DEVI', (2008) 4 SCC 720.***

17. Learned Additional Government Advocate has supported the submissions made by Learned Senior Counsel for respondent No.1 and learned ASGI and has submitted that the order dated 13.12.2022 was issued in consonance with the Regulation framed by National Commission. Learned counsel for Karnataka Examination Authority has supported the stand taken by other respondents.

18. We have considered the submissions made on both sides and have perused the record. The Act 2020 was enacted inter alia with an object to provide for medical education system which improves access to quality and affordable medical education, ensures availability of adequate and high quality homeopathic medical professionals in all parts of the country. The fundamental challenge in this writ petition is to Section 14 of the Act, which provides that there shall be Uniform National Eligibility cum Entrance Test for admission to under graduate Homeopathy in all the institutions governed under the Act. Section 43 of the Act provides that the Commissions and Autonomous Boards shall be bound by the directions on the question of policy as the Central Government may give in writing to them from time to time. Section 44 deals with the power of the Central Government to give directions to State Government for carrying out the provisions of the Act. Section 55 deals with the power of the Commission to make Regulations. Section 55(2)(m) deals with

power to frame regulations in the manner of conducting common counselling by the designated authority for admission to the post graduate seats in all medical institutions under Section 16(3) of the Act. Section 14 of the 2020 Act is extracted below for the facility of reference:

> ***14.*** *(1) There shall be a uniform National Eligibility-cum-Entrance Test, for admission to the undergraduate in Homoeopathy in all medical institutions governed under this Act.*
>
> *(2) The Commission shall conduct the National Eligibility-cum-Entrance Test in English and in such other languages, through such designated authority and in such manner, as may be specified by regulations.*
>
> *(3) The Commission shall specify by regulations the manner of conducting common counselling by the designated authority for admission to all the medical institutions governed under this Act: Provided that the common counselling shall be conducted by the designated authority of —*
>
> *(i) the Central Government, for All India seats; and*

(ii) the State Government, for the remaining seats at the State level.

19. In exercise of powers conferred in Section 55(2) of the 2020 Act, the Regulations viz., Regulations 2022 have been framed. The said Regulations were framed on 06.12.2022.

20. It is well settled in law that validity of an Act can be assailed either on the ground of lack of legislative competence or on the ground that the same contravenes either any of the fundamental rights or the constitutional provisions. The Act 2020 has been enacted in exercise of powers under Entry 65 and 66 of List 1 of VIIth Schedule to the Constitution of India. There is no challenge to the provisions of the Act on the ground that Parliament lacks legislative competence to enact the Act.

21. A Constitution Bench of Supreme Court in ***PREETI SRIVASTAV (Dr.) Vs. STATE OF M.P. (1999) 7 SCC 127*** has

held that norms for admission can have a direct impact on standards of education. Similar view was taken in ***VETERNARY COUNCIL OF INDIA Vs. INDIAN COUNCIL FOR AGRICULTURAL RESEARCH (2000) 1 SCC 750*** and it has been held that power to regulate standard of education casts a corresponding duty to conduct an All India Examination. Thus, even in the absence of a specific provision, it has been held that power to regulate standard of education casts a corresponding duty to conduct an All India Examination. However, in the instant case, Section 14 of the 2020 Act expressly prescribes NEET for admission to under graduate in Homeopathy in all Medical Institutions. Thus, the legislature in its wisdom, has taken a view that merit based admission can be ensured to a common entrance test namely NEET.

22. The right to admit the students is an essential facet of right to administer educational institution. However, the same is not absolute and could be regulated. In ***T.M.A. PAI***

FOUNDATION Vs. STATE OF KARNATAKA (2002) 8 SCC 481, the Hon'ble Supreme Court has held as follows:

> ***50***. *The right to establish and administer broadly comprises of the following rights:*
>
> *(a) to admit students:*
>
> *(b) to set up a reasonable fee structure:*
>
> *(c) to constitute a governing body:*
>
> *(d) to appoint staff (teaching and non-teaching): and*
>
> *(e) to take action if there is dereliction of duty on the part of any employees.*
>
> *Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?*
>
> *Admission of students to unaided minority educational institutions, viz., schools and undergraduates colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of*

eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution....

23. Similarly, in ***P.A.INAMDAR Vs. STATE OF MAHARASHTRA (2005) 6 SCC 537***, it has been held as follows:

76. *So far as the admissions based on common entrance test are concerned, it is submitted that paragraphs 58 and 59 of Pai Foundation permit regulations to be framed for admission in professional institutions by State agency to ensure admission on merit. In the absence of CET and centralized counselling, private educational institutions would pick and choose candidates ignoring merit, as has been evident from the Karnataka experience. If the private professional educational institutions conceive that merit cannot be ignored in granting admission, direction to make selection based on CET does not in any manner adversely affect the character of the minority institution. The State regulation providing for CET is a reasonable restriction and it will pass the test of Article 19(6) both in respect of aided and unaided non-minority institutions. Private unaided institutions have also to admit students on the basis of merit in a fair and transparent manner in the interest of student*

community. Right of private educational institutions to admit students can be regulated. Such regulations if in national and public interest do not in any manner impinge on the right of minority.

92. *As an occupation, right to impart education is a fundamental right under Article 19(1)(g) and therefore, subject to control by clause (6) of Article 19. This right is available to all citizens without drawing a distinction between minority and non-minority. Such a right is, generally speaking, subject to laws imposing reasonable restrictions in the interest of the general public. In particular, laws may be enacted on the following subject: (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business: (ii) the carrying on by the State, or by a corporation owned or controlled by the State of any trade, business, industry or service whether to the exclusion, complete or*

partial of citizens or otherwise. Care is taken of minorities, religious or linguistic,, by protecting their right to establish and administer educational institutions of their choice under Article 30. To some extent, what may be permissible by way of restriction under Article 19(6) may fall foul of Article 30. This is the additional protection which Article 30(1) grants to the minorities.

24. In ***MODERN DENTAL COLLEGE AND RESEARCH CENTRE VS. STATE OF M.P., (2016) 7 SCC 353***, it has been held that right to administer an institution includes a right to admit students and to set up a reasonable fee structure. However, the same is subject to Regulation. Thus, from perusal of judgments of Supreme Court in ***T.M.A. PAI FOUNDATION***, *supra* as well as ***P.A.INAMDAR*** *and* ***MODERN DENTAL COLELGE AND RESEARCH CENTRE***, *supra,* it can safely be gathered that right to administer an educational

institution which includes a right to admit students, is not an absolute right and can be regulated.

25. In ***ABDUL AHAD AND ORS. Vs. UNION ON INDIA (2020) 1 SCC ONLINE SC 627,*** a three Judge Bench of Supreme Court has approved the principles laid down by a Constitution Bench of the Supreme Court in ***MODERN DENTAL COLLEGE AND RESEARCH CENTRE supra,*** upholding the introduction of common entrance examination for the following reasons:

> *1. The legislature in its wisdom has taken the view that merit-based admissions can be ensured only through a common entrance test followed by centralised counselling either by the State or by an agency authorised by the State.*
>
> *2. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15, and 16 of the Constitution of India, legislature by the impugned legislation introduced the system*

of common entrance test (CET) to secure merit-based admission on a transparent basis.

3. If private unaided educational institutions are given unfettered right to devised their own admission procedure and fee structure, it would lead to situation where it would impinge upon the "right to equality" of the students who aspire to take admission in such educational institutions.

4. Common entrance test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors.

5. Having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb malpractices, it would be permissible for the State to regulate

admissions by providing a centralised and single-window procedure.

6. Holding such CET followed by centralised counselling or single window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution.

7. While private educational institutions have a "right of occupation" in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community.

8. The freedom of private educational institutions to establish and run institution, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact.

26. In ***CHRISTIAN MEDICAL COLLEGE, VELLORE ASSOCIATION VS. UNION OF INDIA AND OTHERS, AIR 2020 SC 4721***, a three judge bench of Hon'ble Supreme Court while examining the validity of the notifications issued by Medical Council of India and Dental Council of India, which provided for NEET for admission to MBBS course has upheld the prescription of NEET to MBBS course and has held that prescription of NEET has been made to improve the quality of medical education and is a step in furtherance of a duty from the State enshrined under Article 47 of the Directive Principles of State Policy. The view taken in ***P.A.INAMDAR*** supra that admission based on merit are in national interest and strengthened the national welfare were also referred. The relevant extract of para 58 reads as under:

> ***58****. Thus, we are of the opinion that rights under Articules 19(i)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India do not come in the way of securing transparency and recognition of merits in the matter of admissions. It is open to*

regulating the course of study, qualifications for ensuring educational standards. It is open to imposing reasonable restrictions in the national and public interest. The rights under Article 19(1)(g) are not absolute and are subject to reasonable restriction in the interest of the student's community to promote merit, recognition of excellence and to curb the malpractices. Uniform Entrance Test qualifies the test of proportionality and is reasonable. XXXX

27. The prescription of NEET fulfils the twin tests of proportionality and reasonableness. The object of prescription of test is to ensure that qualified students take admission in B.H.M.S Course, which is in the interest of the patients whom they treat. Merely because number of seats are more and the candidates are less, the requirement of merit based admission cannot be dispensed with and the private educational institution cannot have an unfettered right to admit the students regardless of their merit. The doctrine of

non retrogression provides that State should not take any measures or steps that deliberately lead to retrogression on the enjoinment of rights either under the Constitution or otherwise.

28. In the instant case, by enacting Section 14, the right of the petitioners to admit students in educational institutions has merely been regulated and the same does not amount to violation of the rights of the petitioners under the constitution or any other enactment. Therefore, principle of doctrine of non retrogression is not applicable to the facts of the case. In view of aforesaid enunciation of law by Hon'ble Supreme Court, it is held that Section 14 of the Act neither suffers from manifest arbitrariness nor the test of proportionality or in violation of the doctrine of non retrogression. Therefore, the challenge to constitutional validity of Section 14 of 2020 Act is repelled.

29. Before adverting to the challenge made to Sections 3, 4 and 10, it is apposite to take note of the same, which are extracted below for the facility of reference:

> *(**3**) The following persons shall be appointed by the Central Government as ex officio Members of the Commission, namely:— (a) the President of the Homoeopathy Education Board; (b) the President of the Medical Assessment and Rating Board for Homoeopathy; (c) the President of the Board of Ethics and Registration for Homoeopathy; (d) Advisor (Homoeopathy) or Joint Secretary to the Government of India in-charge of Homoeopathy, in the Ministry of AYUSH; (e) the Director, National Institute of Homoeopathy, Kolkata; (f) the Director, North Eastern Institute of Ayurveda and Homoeopathy, Shillong; and (g) the Director-General, Central Council for Research in Homoeopathy, Janakpuri, New Delhi.*

*(**4**) The following persons shall be appointed by the Central Government as part-time Members of the Commission, namely:— (a) three Members to be appointed from amongst persons of ability, integrity and standing, who have special knowledge and professional experience in the areas of Homoeopathy, management, law, health research, science and technology and economics; (b) ten Members to be appointed on rotational basis from amongst the nominees of the States and Union territories in the Advisory Council for a term of two years in such manner as may be prescribed. (c) six members to be appointed from amongst the nominees of the States and Union territories, under clause (d) of sub-section (2) of section 11, of the Advisory Council for a term of two years in such manner as may be prescribed: Constitution of National Commission for Homoeopathy. Composition of Commission. 3 of 1956. 4 THE GAZETTE OF INDIA EXTRAORDINARY [PART II— Provided that*

no Member shall either himself or through any of his family members, directly or indirectly, own or be associated with or have any dealings with the managing body of a private or non-government medical institution which is regulated under this Act. Explanation.—For the purpose of this section and section 19, the term "leader" means the Head of a Department or the Head of an Organisation.

***10**. (1) The Commission shall perform the following functions, namely:— (a) lay down policies for maintaining a high quality and high standards in education of Homoeopathy and make necessary regulations in this behalf; (b) lay down policies for regulating medical institutions, medical researches and medical professionals and make necessary regulations in this behalf; (c) assess the requirements in healthcare, including human resources for health and healthcare infrastructure and develop a road map for*

meeting such requirements; (d) frame guidelines and lay down policies by making such regulations as may be necessary for the proper functioning of the Commission, the Autonomous Boards and the State Medical Councils of Homoeopathy; (e) ensure coordination among the Autonomous Boards; Meetings of Commission. Power and functions of Commission. SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY 7 (f) take such measures, as may be necessary, to ensure compliance by the State Medical Councils of Homoeopathy of the guidelines framed and regulations made under this Act for their effective functioning under this Act; (g) exercise appellate jurisdiction with respect to decisions of the Autonomous Boards; (h) make regulations to ensure observance of professional ethics in Medical profession and to promote ethical conduct during the provision of care by medical practitioners; (i) frame guidelines for determination of fees and all other charges in respect of fifty per cent. of seats in private

medical institutions and deemed to be Universities which are governed under the provisions of this Act. (j) exercise such other powers and perform such other functions as may be prescribed. (2) All orders and decisions of the Commission shall be authenticated by signature of the Secretary and the Commission may delegate such of its powers on administrative and financial matters, as it deems fit, to the Secretary. (3) The Commission may constitute sub-committees and delegate such of its powers to them as may be necessary to enable them to accomplish specific tasks.

30. The validity of aforesaid provisions is assailed on the ground that Central Homeopathy Council comprises of officers of the Government and the aforesaid provisions are in violation of doctrine of non retrogression. Section 3 of the 2020 Act deals with the power of Central Government to constitute National Commission for Homeopathy. Section 4 of the 2020 Act provides for composition of Commission. The

commission comprises of the persons to be nominated as *ex officio* members of the commission as well as the persons referred to in Section 4(4) of the Act, which can be appointed as part time members of the Committee. Section 10 of the 2020 Act, deals with powers and function of the Commission. The contention that Commission comprises only of officers of the Central Government is incorrect, as the Commission comprises part time members also. The Commission has been constituted under the 2020 Act to perform its functions under the Act. The aforesaid provisions by no stretch of imagination suffer from the doctrine of non retrogression. The aforesaid provisions have also not been shown to be per se arbitrary. Therefore, the contention that the aforesaid provisions are manifestly arbitrary or are unworkable cannot be accepted.

31. A challenge to the constitutional validity of Section 43 and 44 of the 2020 Act has been made on the ground that in exercise of aforesaid powers, no direction could be given to

hold NEET as the same are enabling provision. It is apposite to take note of Section 43 and 44 of the Act, which read as under:

> ***43***. *(1) Without prejudice to the foregoing provisions of this Act, the Commission and the Autonomous Boards shall, in exercise of their powers and discharge of their functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing to them from time to time: Provided that the Commission and the Autonomous Boards shall, as far as practicable, be given an opportunity to express their views before any direction is given under this sub-section.*
>
> *(2) The decision of the Central Government whether a question is one of policy or not shall be final.*
>
> ***44***. *The Central Government may give such directions, as it may deem necessary, to a State Government for carrying out all or any of the provisions of this Act and the State Government shall comply with such directions.*

32. The aforesaid contention need not detain us, as suffice it to say that Section 14 of the 2020 Act itself contains a provision for admission to B.H.M.S course through NEET. The Act itself requires holding of NEET for admission to the course. Therefore, in any case, the aforesaid contention made on behalf of the petitioners does not render the provision Sections 43 and 44 of the 2020 Act bad in law. Therefore, the challenge to the validity of the aforesaid provisions also fails.

33. The validity of Section 55(2)(m) of the 2020 Act has been assailed on the ground that the same does not permit the Central Government to issue advisory instructions to the National Testing Agency. Section 55(2)(m) reads as under:

> ***55****. (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.*
>
> *(**2**) In particular, and without prejudice to the generality of the foregoing power, such*

regulations may provide for all or any of the following matters, namely:—

***(m)** the manner of conducting common counselling by the designated authority for admission to the postgraduate seats in all medical institutions under sub-section (3) of section 16;*

34. Even assuming that Section 55(2)(m) of the 2020 Act does not authorize the Central Government to give advisory / instructions to National Testing Agency, the provision itself cannot be struck down. At the most, order, if any, issued under the said provision can be struck down. Therefore, challenge of the petitioners to the power to frame Regulations in the matter of conducting the common counselling by designated authority for admission to post graduate seats in all medical institutions does not suffer from any infirmity. The aforesaid challenge is also repelled.

35. Now we may advert to the challenge made to the Regulations on the ground that the same is hit by principles

of proportionality. It is trite law that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is on the person who challenges the same. A subordinate legislation can be assailed on any of the following grounds:

(i) Lack of legislative competence.
(ii) Violation of fundamental rights.
(iii) Violation of any provisions of the Constitution.
(iv) Failure to conform to the parent statute.
(v) Repugnancy to the laws of the land.
(vi) Manifest arbitrariness / unreasonableness to an extent where the Court might well say that legislature never intended to give authority to make such rules.

[See: ***'DENTAL COUNCIL OF INDIA VS. BIYANI SHIKSHAN SAMITI', (2022) 6 SCC 65***]

36. The 2022 Regulations have been framed in exercise of powers under Section 55(2) of the 2020 Act. The challenge to the Regulation made on behalf of the petitioners does not fall in any of the aforementioned grounds. Regulation 4 provides for eligibility criteria for admission and manner of

admission, which does not suffer from any infirmity much less by doctrine of proportionality. The challenge to the validity of the 2022 Regulations also fails and is hereby repelled.

37. Now we may deal with the contention of the petitioners that the guidelines dated 18.10.2022 as well as Regulations dated 06.12.2022 do not have a retrospective operation and cannot apply to admission process, which was already commenced on 17.07.2022. It is trite law that every statute shall be construed as prima facie prospective unless expressly or by necessary implication it is made to have a retrospective operation. A power conferred to make a subordinate legislation must be exercised in conformity with the parent Act. A subordinate legislation can be given a retrospective effect and operation if any power in this behalf contained in the main Act. [See: ***'HUKUM CHAND VS. UNION OF INDIA', (1972) 2 SCC 601, 'MAHABIR VEGETABLE OILS P. LTD. VS. STATE OF HARYANA', (2006) 3 SCC 620, VICE***

CHANCELLOR M.D.UNIVERSITY ROHTAK VS. JAHAN SINGH (2007) 5 SCC 77 and 'FEDERATION OF INDIAN MINERAL INDUSTRIES AND OTHERS VS. UNION OF INDIA AND ANOTHER', (2017) 16 SCC 186].

38. From perusal of Section 55 of the 2020 Act, which deals with power to make Regulations, it is evident that the same does not confer any power to frame Regulations with retrospective effect. The Regulations dated 06.02.2022 do not provide that they would operate from any anterior date. Similarly, the guidelines dated 18.10.2022 issued in exercise of powers under Section 43 and 44 of the 2020 Act also cannot apply to process of admission, which was already commenced on 17.07.2022. It is noteworthy that Government order dated 13.10.2022 was passed after consulting the petitioners The petitioners in pursuance of aforesaid order have admitted the students in their quota of seats. Therefore, the same binds the petitioners.

39. In view of preceding analysis, our conclusions are as under:

(i) Sections 3, 4, 10, 12, 14, 43, 44 and 55(2)(m) of the National Commission for Homeopathy Act, 2020 are valid and constitutional.

(ii) The National Commission for Homeopathy (Homeopathy Degree Course - B.H.M.S) Regulation, 2022 are also intra vires.

(iii) The guidelines framed by Ministry of Ayush dated 18.10.2022 and the Regulations framed by National Commission for Homeopathy dated 06.12.2022 do not apply to the process of admission to B.H.M.S under graduate course which have already commenced on 19.07.2022.

(iv) The Government Order dated 13.12.2022 making the 2022 Regulations applicable in respect of admission to B.H.M.S. under graduate course for academic session 2022-23 is quashed.

(v) The petitioners shall be permitted to admit students on remaining vacant seats on the basis of academic eligibility for the academic session 2022-23 only.

With the aforesaid directions, the writ petition is disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

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