

Association Of Management Of ... vs The State Of Maharashtra Through Its ... on 6 May, 2025

Author: A.S. Chandurkar

Bench: A.S. Chandurkar

2025:BHC-AS:20608-DB

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IN THE HIGH COURT OF JUDICATURE AT BOMBA

by

HUSENBASHA

HUSENBASHA RAHAMAN

RAHAMAN

CIVIL APPELLATE JURISDICTION

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Date:

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WRIT PETITION NO. 7248 OF 2014

WITH

INTERIM APPLICATION NO.10400 OF 2022

WITH

INTERIM APPLICATION NO.839 OF 2019

WITH

INTERIM APPLICATION (ST) NO.1149 OF 20

IN

WRIT PETITION NO.7248 OF 2014

Association of Management of]

Homoeopathic Medical Colleges of]

Maharashtra

Through its' Competent]

Authority Dr. Dhanaji Govind Bagal.]

having office at Association of]

Management of Homoeopathic]

Colleges of Maharashtra, 75,]

Mint Road, Fort, Mumbai-400001.]

Versus

1] The State of Maharashtra]

Through its Department of Medical]

Education & Drugs Mantralaya Mumbai.]

2] The Director of Medical Education]
and Research, having his office at]
St. George Hospital Compound,]
Near GPO, Mumbai-1]

3] Pravesh Niyantran Samiti]
Through its Office Secretary having]
office at 305, 3rd floor, Government]
Polytechnic Building 49, Kherwadi,]
Ali Yavar Jung Marg, Bandra (East)]
Mumbai - 400 051]

4] Maharashtra University of Health]

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WP-7248-2014 group (

Sciences, Nashik Through its Registrar,]
having Additional office at St. George's]
Hospital Compound, Near GPO,]
Mumbai-1]

5. Central Council for Homeopathy]
61-65, Institutional Area Opposite]
"D" Block, Janakpuri,]
New Delhi-110 058.]

6. Union of India]
Through Ministry of Health &]
Family Welfare, Department of]
AYUSH, AYUSH Bhavan, "B" Block,]
GPO Complex, INA, New Delhi-110 023.]

... Responders

WITH

WRIT PETITION NO.8128 OF 2015

WITH

WRIT PETITION NO.8129 OF 2015

WITH

INTERIM APPLICATION NO.2096 OF 2021

WITH

INTERIM APPLICATION NO.7683 OF 2024

WITH

INTERIM APPLICATION NO.1477 OF 2024

IN

WRIT PETITION NO.8129 OF 2015

WITH

WRIT PETITION NO.8233 OF 2015

WITH
CIVIL APPLICATION NO.1039 OF 2016
IN
WRIT PETITION NO.8233 OF 2015
WITH
WRIT PETITION NO.8130 OF 2015
WITH
INTERIM APPLICATION NO.2097 OF 2021
WITH
CIVIL APPLICATION NO.1038 OF 2016
IN

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WP-7248-2014 group (J)

WRIT PETITION NO.8130 OF 2015

Ms. Pooja V. Thorat a/w Mr. Amar Bodke & Ms. Trisha Choudhari, Advocates
for the Petitioner in all the above Writ Petitions.

Mr. N.K. Rajpurohit, Assistant Government Pleader for the Respondent-State.

Mr. Vijay Patil, Senior Advocate a/w Mr. Abhijit Patil, Advocates for
Respondent No.3 in Writ Petition Nos. 8129/2015 and 8130/2015.

Mr. Sameer Khedekar, Advocate for Respondent No.3 in Writ Petition No.7248
of 2014.

Mr. Rajshekhar Govilkar, Senior Advocate a/w Ms. Shaba N. Khan & Mr. Mihir
Govilkar, Advocates for Respondent No.4.

Mrs. Purnima Awasthi, Advocate for Respondent No.5.

Mr. Rui Rodrigues a/w Mr. D.P. Singh, Advocates for Respondent No.6 in all
the above writ petitions.

CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ.

RESERVED ON : 8TH April, 2025

PRONOUNCED ON : 6TH MAY, 2025

JUDGMENT (Per M.M. Sathaye, J.)

1. Rule is granted in all the Petitions in the years 2014 & 2015. The Petitions are connected raising common questions of fact and law and therefore are being heard finally together.

2. In this judgment, the Respondent No.2-Director of the Medical Education and Research is referred to as DMER. The Respondent No.3 Admissions Regulation Committee constituted after the directions of the Supreme Court called Pravesh Niyantaran Samiti, is referred to as 'the Samiti'.

WP-7248-2014 group (J) C4.doc The Respondent No.4 - Maharashtra University of Health Sciences, Nashik is referred to as 'MUHS'. Respondent No.5 Central Council for Homeopathy is referred to as 'CCH'. Common Entrance Test is referred to as 'CET' and National Eligibility cum Entrance Test (Undergraduate) is referred to as 'NEET- UG'. Academic Year is referred to as 'AY'. Bachelor of Homeopathic Medicine and Surgery is referred as 'BHMS'.

CASE

3. The case of the Petitioner as emerging from lead Writ Petition No.7248 of 2014, is as under.

3.1 The Petitioner Association is common in all Petitions which is an association of Homeopathic Colleges in Maharashtra which seeks to espouse the cause of said medical colleges. Apart from the Association, 4 individual homeopathy colleges are also Petitioners. The case of the Petitioner Association is that its member colleges have right to admit students of their own choice subject to criteria laid down by the CCH. The Petitioner Association has a right to conduct its own CET for admitting students to medical courses and such right is already recognized by the Hon'ble Supreme Court. If after admitting students in order of merit as per State CET or NEET- UG, seats remain vacant in the member colleges, there can not be any prohibition to admit the students on the basis of eligibility criteria as prescribed by the CCH, which is only HSC/12th Standard pass with Physics, Chemistry and Biology (PCB) subjects apart from age limit.

3.2 The Rules framed by the Respondent/State for conducting CET for admission to health sciences courses are provided under Rule 4.10 for admission to BHMS colleges. It does not mandate the students to secure any specific marks for being eligible for admission to member colleges. The said WP-7248-2014 group (J) C4.doc Rule simply mentions that a candidate will be selected on the basis of merit in CET. Thus CET is only a criteria for deciding inter-se merit and not an eligibility for being admission. In any case, CCH is the highest statutory body in the field and it does not prescribe admission through CET only and simply provide that admission should be effected on the basis of HSC marks. Under Rules, State Government can conduct only first round of admission and vacant seats thereafter were allowed to be filled by the Association or colleges for many years since 2007 till academic year 2012-13.

3.3 During AY 2012-13, on 30.10.2012, the State Government had informed the Samiti that the vacant seats in Homeopathic Colleges can be filled granting admission to those candidates who are qualified as per criteria laid down by the CCH. But by subsequent communication dated 05.12.2012, the State Government had stayed its earlier communication dated 30.10.2012. Therefore, the Petitioner Association had filed Writ Petition No.1695 of 2013 in this Court, in which the ad-interim

relief in terms of prayer clause (e) was granted on 08.04.2013 thereby directing MUHS to allow the students admitted by the Association and its member colleges to pursue BHMS course including to appear for annual examination. By order dated 26.08.2013, after hearing all parties including MUHS, this ad-interim order was continued as interim order.

3.4 For AY 2013-14, the State of Maharashtra conducted NEET-UG in routine course and forwarded select list of the candidates after first round of admission process to the member colleges, who were admitted. However, since seats remained vacant, the Petitioner Association issued advertisement and requested the candidates who appeared in CET to apply for vacant seats. However, even then, 58 seats remained vacant in various member colleges. The routine practice which was being followed by the Petitioner Association WP-7248-2014 group (J) C4.doc since 2005 was to make an application to the Samiti to permit the Association and/or its member colleges to admit students who are otherwise eligible as per the CCH requirement. The Petitioner therefore, as per prevalent practice, made applications to the Samiti on 08.05.2013, 06.07.2013 and 05.08.2013 seeking permission to admit students on the basis of PCB marks at HSC level. However, the Samiti did not respond this time for academic year 2013-14. The Petitioner Association in the meanwhile also made application for extension of cut off date for admission, which was extended till 30.11.2013. The seats were still vacant. The Petitioner Association again approached the Samiti by letters dated 20.10.2013 and 23.10.2013 seeking permission to admit students on the basis of PCB marks at HSC level. However, by letter dated 25.11.2013, the Samiti took a stand that it did not have jurisdiction to issue any such directions. Being aggrieved by the same, the Petitioner approached Aurangabad Bench of this Court by filing Writ Petition (L) No.32858 of 2013. The Petitioner relied upon the orders passed by this Court in Writ Petition No.1695 of 2013 on 08.04.2013 and 26.08.2013.

3.5 In the Petition before the Aurangabad Bench, the Court was of the opinion that since similar matter of previous academic year was pending before this Court at principal seat, it would be appropriate if Writ Petition (L) No.32858 of 2013 was also heard along with Writ Petition No.1695 of 2013. Therefore, the writ Petition at Aurangabad Bench was withdrawn with liberty to file fresh Petition.

3.6 The Petitioner Association and its member colleges filled the vacant seats by candidates who have passed qualifying HSC examination and they were admitted on merits. The colleges invited applications and decided to grant admission subject to decision of High Court.

WP-7248-2014 group (J) C4.doc 3.7 When the colleges sent the forms of students admitted on the basis of PCB marks to MUHS for eligibility, by its letter dated 05.12.2013, eligibility was not sanctioned but it was informed that it is necessary to have sanction/permission from the DMER. The Officials of the Petitioner's Association thereafter met officials of MUHS, when it was indicated that eligibility certificates cannot be issued to the students admitted on the basis of PCB marks because requirement for admission is that students must come through CET. Officials of both DMER and MUHS showed inability to help the Petitioner Association. In these circumstances, the Petitioner filed the lead Petition challenging communication dated 05.12.2013.

3.8 The remaining Petitions are filed by the Petitioner Association on the basis of same contentions, however in respect of admissions in academic year 2014-15. In these cases, the respective colleges accepted the students allotted through CET / NEET-UG for first round. However, only a handful of the students were allotted through CET / NEET-UG and many seats remained vacant. Therefore, the colleges conducted their own rounds as permitted by the Association by issuing advertisements in local newspapers and received further students but still, certain seats remained vacant. When the students admitted via its own round (after first round of CET/NEET-UG) were sent for approval to the Respondents, either the Samiti or the MUHS has raised objections and therefore the remaining Petitions are filed for particular students, as indicated below.

3.9 Writ Petition No.8128 of 2015 is filed challenging the decision dated 10.02.2015 by the Samiti disapproving admission of 3 students admitted by the Petitioner No.2-College therein, on the basis of HSC marks.

3.10 Writ Petition No.8130 of 2015 is filed challenging the same decision WP-7248-2014 group (J) C4.doc dated 10.02.2015 by the Samiti, disapproving admission of 2 students admitted by the Petitioner No.2-College therein, on Association-CET marks.

3.11 Writ Petition No.8129 of 2015 is filed to quash and set aside the order dated 11.12.2014 issued by MUHS refusing to grant eligibility certificates in favour of 28 students, who had appeared for Gujarat CET and also to challenge the same decision dated 10.02.2015 by the Samiti.

3.12 Writ Petition No.8233 of 2015 is filed challenging the decision dated 27.03.2015 by the Samiti disapproving admission of 2 students admitted in the Petitioner No.2 College therein on the basis of HSC marks.

3.13 During pendency of these Petitions, various interim applications are filed for either releasing result of students or issuance of internship completion certificate or degree certificate or to declare the result of the students, which are pending.

3.14 During course of arguments, on 10.03.2025, Writ Petition No. 1695 of 2013 has been de-tagged from this group of matters.

4. An affidavit-in-reply has been filed on behalf of the Respondent No.3- the Samiti contending inter alia that the present issue is conclusively decided by the order of this Court dated 13.12.2013 in Writ Petition No.11495 of 2012 along with connected Petitions, where it is held that students coming through channels de-hours entrance test is matter beyond purview of the Samiti. This has attained finality in view of dismissal of the Special Leave Petition as well as review. It is contended that relief claimed in this Petition is in contravention of the scheme of admission as expounded by the Hon'ble Supreme Court. It is contended that the Samiti was only a body meant for recommending to the State about admission process. It was the obligation of WP-7248-2014 group (J) C4.doc the Samiti to supervise and ensure that test and admission are conducted in fair and transparent manner. It is admitted that recommendation of the Samiti are not binding on the State. It is further contended that the Samiti does not have jurisdiction regarding admission of non-CET students. Regarding

orders passed by this Court in Writ Petition No.1695 of 2013, it was submitted that, that was a case where under communication dated 30.10.2012, the State Government had expressly permitted filling up vacant seats on the basis of criteria laid down by the CCH.

5. An affidavit-in-reply is also filed on behalf of the Respondent No.5 - CCH taking a clear stand that it is a statutory body constituted by Government of India under provisions of the Homeopathy Central Council Act, 1973 ('the Act of 1973' for short), having power for prescribing minimum standards of education in Homeopathy required for granting recognized medical qualification by University, Board or medical institution in India. Under the provisions of Section 33 of the Act of 1973, the Council is authorized to make Regulations with previous sanction of Central Government to carry out purpose of the Act of 1973. Accordingly Regulations are formed. Relying on judgment of Supreme Court, it is contended that in case of conflict between Central and State Acts, only the Central Act will prevail. Stand of the Council, CCH, is that the prescribed eligibility of candidates for admission to BHMS Decree Course is passing of Intermediate Sciences or its equivalent (HSC for State of Maharashtra) with Physics, Chemistry and Biology as subjects and attaining age of 17 years by the year-end of admission. Only concern of the Council is that students who have been given admission to Homeopathic colleges should fulfill said eligibility criteria.

6. An affidavit-in-reply is also filed on behalf of Respondent Nos. 1 & 2 (DMER) taking a stand that whether to give approval for Homeopathic WP-7248-2014 group (J) C4.doc colleges on the basis of marks obtained in HSC / 12 th standard is not within the purview of the State Government, but within the purview of the Samiti. Clause 9.2.6 of the Information Brochure is relied upon to highlight that as per directions of the High Court in Writ Review (ST.) No.8634 of 2007, only one round of private Homeopathic medical colleges will be carried out during first round admission for 85% seats of total intake capacity.

7. An affidavit-in-reply is filed on behalf of the Respondent No.6 - UOI through Ministry of AYUSH taking a stand that relief prayed does not come under the purview of the Respondent No.6 as the matter of admission of students is not related to the Department of AYUSH and as such no cause of action arises against it.

SUBMISSIONS

8. Ms. Pooja Thorat, learned counsel appearing for the Petitioner Association submitted that even assuming that the State of Maharashtra has prescribed the criteria for admission to BHMS course through CET, it would apply only by students selected in first round of admission. Neither the State of Maharashtra in its Rule nor the CCH by its regularization have mandated the students to secure certain number of marks in CET and therefore, the Petitioner Association and its member colleges had every right to admit students on vacant seats on the basis of PCB marks of HSC examination in the AY 2013-14 and 2014-15. She has relied upon T.M.A. Pai Foundation & Ors. V/s State Of Karnataka & Ors. [2002 (8) SCC 481] in support of her case, contending that right of private unaided Homeopathic Colleges to adopt any criteria for selecting students to its course, is recognized. She submitted that the CCH who is highest body for dealing with the issue of Homeopathic education, the only eligibility is on the basis of PCB marks at the HSC level or

WP-7248-2014 group (J) C4.doc equivalent and therefore the CCH does not make participation in CET or particular marks in CET as eligibility criteria. That the Petitioner colleges have admitted students as per eligibility criteria prescribed by the CCH, who were entitled to continue their medical education including grant of mark-sheets, results of examination and passing certificates as well as degrees. She submitted that all such students, totally 93 in number, have continued their education, appeared in examination and have passed the final examination under the orders of the Court and therefore, the Respondents must be directed to recognize their degrees letting them practice medicine honourably.

9. Mr. Rui Rodrigues, learned Counsel for the Respondent No.6/UOI at the outset relied upon the following Judgments :

1. 2021 SCC OnLine SC 3552 : Prince Jaibir Singh V/s UOI & Ors.
2. 2021 SCC OnLine Bom. 3772 : Prince Jaibir Singh V/s UOI & Ors.
3. Judgment dtd. 3.02.2025 In WP No. 10643/2023 : Harshi Ramjiyani V/s State of Maharashtra & Ors.
4. (2004) 5 SCC 1 - Tirupati Balaji Developers (P) Ltd. & Ors. V/s State of Bihar & Ors.
5. (2008) 3 SCC 655 - State Of Himachal Pradesh V/s Paras Ram & Ors.
6. (2012) 6 SCC 152 - SC Bar Asso. & Ors. V/s D. B. Kaushik.
7. (1985) 1 SCC 260 - Asstt. Collector of Central Excise, West Bengal V/s Dunlop India Ltd. & Ors.
8. 2009 SCC OnLine Guj 9693 : Chowdhary Navin Hemabhai & Ors. V/s State of Gujarat & Ors.
9. SC Judgment dtd. 18.02.2011 in Civ. Appeal No. 1925/2011 - Chowdhary Navin Hemabhai & Ors. V/s State of Gujarat & Ors.
10. (2003) 6 SCC 697 : Islamic Academy of Education& Anr. V/s State of Karnataka & Ors.
11. (2005) 6 SCC 537 P.A. Inamdar & Ors. V/s State of Maharashtra & Ors.
12. (2016) 7 SCC 353 - Modern Dental College & Research Centre & Ors. V/s State of Madhya Pradesh & Ors.

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13. (2002) 8 SCC 481 - T.M.A. Pai Foundation & Ors. V/s State of Karnataka & Ors.
14. (2000) 7 SCC 746 - Maharishi Dayanand University V/s M.L.R. Saraswati College of Education.
15. (2012) 10 SCC 770 - Rajan Purohit & Ors. V/s. Rajasthan University of Health Sciences and Ors.

10. Mr. Rodrigues submitted that in these cases the colleges and their association have approached the Court and not students themselves. That it is the ploy to project sympathy card. That many times in order to protect the students from suffering academic loss, interim orders are granted and by efflux of time these students complete their courses and it becomes a fait accompli to allow Petitions. That there are Judgments in which liberty is granted to the students to take appropriate action against the Management. That under various Judgments of the Supreme Court, necessity of holding common entrance exam has been stressed and no exemption is granted to the Homeopathic colleges. That the orders passed in these Petitions by earlier Benches of this Court are without any reference to the Judgments of TMA Pai Foundation (supra), Islam Academic of Education & Anr. (supra), and P.A. Inamdar (supra). That Article 141 of the Constitution of India binds the High Courts and Article 144 equally binds the authorities such as Central Council of Homeopathy as well as High Courts. That Supreme Court has not recognised the Authority of either the State or CCH to dilute the eligibility criteria and the only Authority for admission is the Samiti in the present case as set up under Article 142 of the Constitution of India. He submitted that the Samiti has acted in consonance of the Supreme Court rulings. Judgments of Prince Jaibir Singh (supra) and Chowdhary Navin Hemabhai (supra) are relied upon to contend that relief such as the one sought in present Petitions was either refused by the High Court or granted by the Supreme Court. Relying on the Judgment of Maharishi Dayanand University (supra), it is submitted that WP-7248-2014 group (J) C4.doc this Court cannot issue directions which are contrary to the Rules. Relying on the judgment of Rajan Purohit (supra) it is submitted that there is a difference between eligibility and procedural infirmity and when the eligibility itself is under question, admissions cannot be regularised.

11. Learned Senior Advocate Mr. Govilkar appearing for Respondent MUHS submitted that in the present group of matters, not only students are admitted on the basis of their HSC marks but in one of the Petitions, students who have appeared for Gujarat State CET have also been admitted and therefore, the stand of the University about their eligibility is justified. He submitted that the very purpose of centralised admission, which is to ensure common application of merit based test, is compromised in the present Petitions. He submitted that merely because the concerned students of the Petitioner colleges or association were admitted and permitted to appear for examination or their results have been declared under orders of this Court is no ground per se, to hold in favour of the Petitioners. He supported the arguments that pendency of the litigation should not be permitted to result in fait accompli. He relied upon the following Judgments.

1. (2021) 2 SCC 564 : A.P.J. Abdul Kalam Technological University and Anr. V/s Jai Bharat College of Management and Engineering Technology and Ors.
2. WP 2223/2022 & Connected : Jumrani Gautam Anilkumar & Ors. V/s Union of India & Ors.

3. (2016) 9 SCC 401 : State of Maharashtra & Ors. V/s D. Y. Patil Vidyapeeth & Ors.

4.(2020) 8 SCC 705 : Chritian Medical College Vellore Association V/s Union of India & Ors.

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12. Learned Counsel Mr. Khedekar appearing for Respondent No.3 - the Samiti, submitted as per the contentions raised in its Affidavit-in-Reply. He submitted that the impugned communications issued by Respondent No.3 are justified. He has relied upon Priya Gupta Vs. State of Chhattisgarh - (2012) 7 SCC 433 to contend that the Samiti was bound to follow it. He has also relied upon the Judgment of Association of Self Financing Institutions and Anr. v/s. Guru Govind Singh Indraprastha University and Anr. - 2014 SCC OnLine Del 2971 and submitted that the rationale for CET is to ensure minimum standard of excellence on merit and the purpose is not to fill up the seats. He submitted that the for the business interest of the private institution, merit based process cannot be sacrificed.

13. Learned counsel Mrs. Awasthi, for the Respondent CCH, has supported the case of the Petitioners.

REASONS AND CONCLUSIONS

14. We have considered the rival submissions and perused the record with the assistance of the learned counsel for the parties.

15. The core dispute between the parties is that the Petitioner Association and its member colleges are seeking to regularize admissions given to 93 students who were admitted during academic year 2013-14 and 2014-15. This has happened because, the earlier existing practice of permitting the private Homeopathy colleges to fill in vacant seats on the basis of eligibility criteria issued by the CCH, was not followed. It was a time when NEET-UG was introduced in 2013.

16. We are aware and completely agree with the proposition of law that the purpose of creating central and merit based selection process is at the WP-7248-2014 group (J) C4.doc heart of maintaining minimum standard of excellence and merit. We respectfully agree with the said principle and do not dispute it. But we sadly note that the opposition shown in the present matter by learned counsel for the Samiti, MUHS and Union of India, though based on correct principles of law, is misplaced in the facts of this case. We say so for following reasons.

17. This is a peculiar case where as many as 93 students and their academic journey of becoming a homeopathy doctor through various colleges, who are Petitioners along with their Association, is at the centre of the consideration.

18. What we gather from the record is that till Academic Year 2013-14, private homeopathic colleges were routinely permitted to admit students after the first round of CET process, in case seats remain vacant. In such cases, either association's CET or even HSC marks were permitted as basis of

eligibility and such non-CET students did not face any difficulty in eligibility and other sanctions necessary for completion of course. It appears that in Academic Year 2013-14 for the first time, the Petitioner association or its member colleges, as the case may be, who applied to the Samiti or DMER seeking permission to admit students on the basis of eligibility other than CET basis, faced friction and opposition. During earlier academic year 2012-13, the State of Maharashtra had granted express permission under communication dated 30.10.2012 to admit non-CET students, which was later on stayed by order dated 05.12.2012. This was challenged in Writ Petition No. 1695/2013 in which, by a reasoned order after hearing both the Samiti and MUHS, by order dated 26.08.2013, the ad-interim relief granted on 08.04.2013, was continued. The relief that was granted since 08.04.2013 reads as under:

WP-7248-2014 group (J) C4.doc "(e) Pending the hearing and final disposal of this Writ Petition, Respondent No.4- Maharashtra University of Health Sciences be pleased to direct to allow the students admitted by the Petitioner-

Association and its' affiliated Private Unaided Homeopathic Medical Colleges to pursue the BHMS course including to appear for annual examination." [Emphasis supplied]

19. Therefore, it is clear that this Court, on being satisfied, granted ad- interim relief protecting the students. This Writ Petition No. 1695/2013 is still pending, which is in respect of students of Academic Year 2012-13, which has been de-tagged on 10.03.2025.

20. Thereafter, in Academic Year 2013-14, the association faced the hurdle of the impugned communication dated 05.12.2013, which resulted in filing of the lead Writ Petition No. 7248 of 2014, seeking prayers for as many as 58 students. Thereafter, for remaining students from different colleges, the remaining 4 Petitions have been filed challenging objections raised by either Respondent Samiti or Respondent MUHS.

21. This group of Petitions is restricted to 93 students, who have started their academic journey either in 2013-14 or 2014-15. We note that under various orders passed in this Petition, following developments have taken place :

i) By order dated 29.09.2014 it is recorded that Respondents have no objection if interim relief is granted in terms of prayer clause (d) which directed Respondent MUHS to allow the students admitted by the Petitioner association and its affiliated colleges to pursue BHMS course including to appear for annual examination. At that time, the Respondent the Samiti has taken a stand that it has no jurisdiction to WP-7248-2014 group (J) C4.doc deal with situation like this. At that time, the question was only of permitting these students to fill examination form of which last date was approaching.

ii) On 30.09.2014, the lead Petition was admitted and relying on pendency of Writ Petition No. 1695/2013 and no objection given by Respondent No.5 CCH, Respondent University was directed to accept the form of students of the Petitioner

Colleges by keeping all points open and by clarifying that there is no question of claiming equity by the Petitioners or students.

iii) By order dated 19.11.2014, it was recorded that the Respondent University has already issued hall tickets to the concerned students and therefore further hearing was not found necessary.

iv) By order dated 23.04.2015, the results of the students involved were directed to be declared subject to further order of the Court and again clarifying that there is no question of claiming equity.

v) By order dated 17.06.2016, the Respondents were directed to declare results of some of the student subject to final outcome of the Petition.

vi) By order dated 01.03.2022, the results of some more students were directed to be declared by clarifying that it will not create any equity in favour of the concerned students.

22. Perusal of the record shows that in the NEET-UG-2013 National Brochure which was introduced for regulating the admissions, following clauses will clarify the position between parties :

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i) Clause 4.5.1.3 provided that for BHMS course, clause 4.5.1.1 is not applicable which was exclusively applicable to the MBBS, BDS and BAMS courses which contemplated a particular minimum percentage in subject such as Physics, Chemistry and Biology. This requirement was not applicable to BHMS. In fact Clause 4.5.1.3 clearly stated that passing grade at HSC/12th Standard or equivalent examination is necessary. Therefore any particular percentage of marks in PCB was not required for BHMS course.

ii) Clause 4.10 of the said brochure provided that for BHMS college candidate will be selected on the basis of merit in NEET UG-2013. This clause is interpreted by the Respondent Samiti to mean that no student can be selected for BHMS outside of NEET-UG-2013 process.

iii) But this stand simply overlooks Clause 9.2.6 which provided that as per directives of the High Court, Mumbai in Review Petition No. 8634 of 2007 in Writ Petition No. 6332 of 2005 only one round of private Homeopathic Medical College will be carried out during first round of admission of 85% seats of the total intake capacity. This clause is important as the brochure itself recognises that only one round of private Homeopathic Colleges will be carried out during first round of admission.

iv) Clause 10.6 of the said brochure provided that seats that have arisen or fallen vacant after first round shall be made available at the second round of selection (except Homeopathic Colleges) on the basis of preference from already submitted. This clause makes it abundantly clear that an exception was carved out for Homeopathic Colleges and vacant seats after the first round for Homeopathic Colleges will not go WP-7248-2014 group (J) C4.doc back to the process under NEET UG-2013 and its insistence by both Respondent the Samiti and Respondent MUHS is unfounded and deserves to be rejected.

v) The exception carved out for BHMS course under clauses 9.2.6 and 10.6 at the relevant time, as explained above, distinguishes this case from the judgments relied upon by the Respondents, including that of the Nursing College Association's Writ Petition No. 11495 of 2012 and order passed therein dated 13.12.2013, which was about Nursing Course. Same is the case with Priya Gupta Vs. State of Chhattisgarh (supra), which was about admission to MBBS/BDS course.

vi) None of the contesting Respondents have submitted anything about the exception carved out in the above clauses about admissions to BHMS course.

23. We have perused the regulations of Respondent CCH which provides under clause 4 that minimum qualification for admission to BHMS degree course is passing intermediate science or equivalent with Physics, Chemistry and Biology as subjects. In State of Maharashtra this is equivalent to HSC/12th standard examination.

24. So far as admissions in AY 2014-15 is concerned, perusal of applicable MH-CET-2014 Brochure indicates that Clauses 4.5.1.1, 4.5.1.3 and 4.10 are identical. However, the remaining Clauses 9.2.6 and 10.6 are apparently absent. Even if it is so, in our opinion, since the concerned students from Writ Petition Nos.8128 of 2015, 8129 of 2015, 8130 of 2015 and 8233 of 2015 are concerned, who were admitted AY 2014-15, have been protected under the orders of the Court. Therefore only for these students, we are inclined to hold that they were eligible because the relevant eligibility under Clause 4.10 does WP-7248-2014 group (J) C4.doc not provide that the candidates be selected only on the basis of merit in MH- CET-2014. It is nobody's case that the concerned students are not eligible as per CCH requirement (12th Standard/HSC pass with PCB marks). The students in these 4 writ petitions are protected by the orders dated 17.06.2016 passed in Civil Application Nos.1038 of 2016, 1039 of 2016, 1036 of 2016 & 1037 of 2016 and order dated 10.06.2019 passed in Civil Application Nos.1126 of 2019 & 1128 of 2019 and order dated 29.09.2021 passed in Interim Application No.2526 of 2021.

25. Therefore in view of the clauses explained above, it is clear that the impugned communication dated 05.12.2013 was issued apparently without completely reading NEET UG-2013 brochure and merely one clause 4.10 was picked up without heeding any attention to clause 4.5.1.3 and 9.2.6 as well as 10.6. The Petitioner Association and its colleges have admittedly accepted students from first round of NEET-UG and for remaining rounds when the seats were vacant, permissions were sought. In the Academic Year 2012- 2013, the Respondent State had expressly permitted such admissions,

but it was stayed subsequently, which led to filing of Writ Petition No. 1695 of 2013. For next Academic Years 2013-14 as well as 2014-15, the stand taken by the Respondent Authority was to insist on admissions only through NEET-UG/MH- CET and students admitted either on the basis of their HSC marks or those who had not appeared through CET, where singled out and objected to, which has led to filing these Petitions.

26. We record here that the Central Council for Homeopathy, which is a Statutory Body established under the Act of 1973, has taken a clear stand that minimum qualification/eligibility for admission in Homeopathic college is passing of 12th standard/HSC examination.

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27. Respondent Nos. 1 and 2 has in fact highlighted Clause 9.2.6 of the NEET UG brochure (Order of this Court) and stated that the State Government has taken one CAP round for all private unaided Homeopathic Colleges and thereafter the admission process was handed over to individual homeopathic colleges to fill up the consequential vacant seats. A clear stand is taken by State that whether to give approval for admission to Homeopathic course on the basis of HSC/12th standard marks is not under its purview and it is only within purview of the Samiti.

28. We are surprised by the elaborate arguments advanced by Mr. Rodrigues in the present case, considering the affidavit-in-reply filed by his client - Respondent No-6 AYUSH Ministry. In its affidavit-in-reply, in paragraph no. 2.2, it is stated that the grievance in the Writ Petition and relief prayed does not come under the purview of the Respondent No. 6 and since the matter of admission of students is not related to Department of AYUSH, there is no cause of action for keeping the Respondent No. 6 as party. Similarly in paragraph no. 2.3, it is clearly stated that the present matter is not related to the Respondent No. 6 and therefore it is not in a position to respond to any of the averments. A prayer is made to delete the name of the Respondent No. 6. We wonder with such stand on the record, what was the reason for the learned Counsel to oppose the Writ Petitions. We could have appreciated numerous judgments of the Supreme Court replied upon by him, in a given case where such Respondent was contesting the matter. We say no more.

29. In view of the aforesaid facts and circumstances, we do not find any illegality committed by the Petitioner Association or its affiliated Colleges in admitting the students involved herein, especially during academic years 2013-14 and 2014-15, when NEET-UG was introduced for the first time and things were in a transitional stage for the entire admission process, resulting WP-7248-2014 group (J) C4.doc into ambiguity as well as lack of clarity.

30. We reiterate that the concerned students have already been protected by the interim orders of this Court, under which they have been permitted to appear for examination, their results have been declared and they have already passed the homeopathy course. After a period of about 10 years or more, concerned students of the Petitioner Colleges must get a closure and clarity about the cloud hanging over their eligibility.

31. In the aforesaid facts and circumstances and for the reasons recorded above, the Petitions succeed and following order is passed :

(A) The impugned communications dated 05/12/2013 issued by the Respondent No. 4-MUHS, dated 11/12/2014 issued by the Respondent

- MUHS, dated 27/03/2015 issued by Respondent-the Samiti and impugned decision dated 10/02/2015 by the Respondent-the Samiti, in respect of the concerned 93 students on whose behalf the Petitions were filed, are quashed and set aside.

(B) It is held that all the concerned 93 students, as admitted by the Petitioner colleges, were eligible to be admitted.

(C) The Respondent No. 4-MUHS is directed to issue/release all pending marksheets / degrees / other certifying documents and/or original documents of the concerned 93 students (whichever applicable depending on completion of course), if not already issued/released, within a period of four weeks from today.

(D) Such of the concerned students who have left the BHMS course mid-way unfinished will not be entitled to seek its continuation on the basis of this judgment.

WP-7248-2014 group (J) C4.doc (E) It is clarified that this judgment will apply only to admissions of the concerned 93 students for AY 2013-14 and 2014-15 and may not be used as a precedent.

32. All pending interim applications are disposed of in above terms.

33. Rule is made absolute in above terms, with no order as to the costs.

34. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

(A.S. CHANDURKAR, J.)