

**ASBJ & SHKJ:**  
11.10.2018

W.P.Nos.41486-534/2018 &  
W.P.Nos.43286-287/2018 &  
W.P.Nos.43304-308/2018

**ORDER**

The petitioners are before this court assailing the action of the respondents in insisting that only the National Eligibility-cum-Entrance Test – NEET candidates alone should be admitted for the AYUSH course. In that regard a contention has been urged in the petitions that the information that had been issued by the NEET for the Session 2018-2019 indicates the same was for the admission to the MBBS/BDS courses and did not specify it for AYUSH. Thus in that light it is contended that there are candidates who are under the bonafide impression that the process of NEET is not applicable to the AYUSH course and therefore such of those candidates not having appeared for the NEET, but being eligible to be admitted to the AYUSH course are to be permitted in that regard more particularly when more number of seats are available than

the candidates as otherwise the infrastructure will not be utilised.

2. Respondent No.4 has filed objections to the petitions while the contentions of the other respondents are to be placed on record and the petitions are to be ultimately considered after the pleadings are completed. In that context the question that arises for consideration is with regard to the interim prayer that is made in the petitions. In so far as that aspect of the matter what is required to be considered herein at this stage is as to whether the candidates who had not appeared for the NEET are also to be permitted to be admitted if available.

3. To that extent the position of law is well settled that the procedure of admission through NEET examination having been approved by the Hon'ble Supreme Court to be a valid process for admission for MBBS and BDA course is appropriate to be followed. However, the question that has arisen in the present case is in view of

the circumstance being contended on behalf of the petitioners that as against the seats available in the petitioners' institutions there are no sufficient NEET appeared candidates as there was no clarity on that aspect and candidates who possess the minimum qualification had not appeared for NEET under the bonafide impression as during the earlier academic year admission without NEET was permitted. Further having taken into consideration the fact that if a uniform procedure to appear for the NEET examination is provided, the same is required to be followed but the issue has arisen due to the discrepancy. In the present circumstance however in view of there being certain confusion with regard to this aspect of the matter and there being more number of seats available, a consideration is required.

4. Even though the respondents through their communication dated 26.04.2017 have indicated to the institutions that the admission for AYUSH course shall be compulsorily through NEET merit list for the academic year

2018-19 is taken note, the information Bulletin relating to NEET does not refer to the AYUSH course. To that extent, there is some confusion and a transition provision is required to be made only in so far as the admissions for the academic year 2018-19 is concerned as the process is due to conclude. In so far as 40% of the seats as per the seat matrix in respect of the institutions, the process of admission from among the NEET appeared candidates is made by the KEA. Even in that regard in so far as the number of seats available as per the list furnished, the seats have not been filled through the candidates sent from the KEA. The exact number of seats that has been filled through the KEA selected candidates from among NEET appeared candidates would ultimately be available after the admission process is completed. However at this point when the petitions are taken up for consideration, the final round of counseling by the KEA has been completed, yet there are unfilled seats. The details as contained in the

website of the KEA is furnished by the petitioners is as hereunder.

Name of the Courses		No. of seats available under Govt. Quota	No. of seats reported & confirmed admission under Govt. Quota	No. of seats vacant under Govt. Quota
B.A.M.S. (AYURVEDA)	a. Govt. and Govt. aided Colleges	476	408	68
	b. Govt., Seats in Private Ayurvedic Colleges	1006	457	549
B.H.M.S. (Homoeopathy Colleges)	a. Govt. Homoeopathy Colleges	100	66	34
	b. Govt., Seats in Private Homoeopathy colleges	260	136	124
B.U.M.S. (Unani)	a. Govt. Unani Colleges	50	29	21
	b. Govt. Seats in Private Unani Colleges	72	7	65

Total no. of available seats: 1964

Total no. of vacant seats : 861

5. From a perusal of the same though it is for the ultimate scrutiny after all the admission are completed, prima facie it indicates that there are number of vacant seats, but NEET appeared candidates are not available. In so far as the method to be followed for admission, the learned counsel for the respondents have referred to a consideration made by the Division Bench of the High Court of Gujarat in the case of ***Dhruti Kumari Bhagubhai Patel Vs. State of Gujarat***. In that circumstance, while taking note of the admission process relating to AYUSH ,

though it is indicated that the NEET process is the valid process for admission, the reason for which such process is followed keeping in view there being more number of candidates than the seats available is kept in view and a consideration has been made. In any event, in the earlier part of this order itself, we have arrived at the conclusion that the process of admission through NEET is a valid process, but a consideration herein is in a circumstance if there are no NEET qualified candidates and in that circumstance if there are more number of seats falling vacant, despite there being candidates who otherwise possess the qualification. It is in that view we propose to adopt a procedure by this interim direction to complete the further process of admission to the AYUSH course. While doing so, we have no doubt taken note of the decision as referred to by learned counsel for the respondents in the case of ***Rishab Choudhar Vs. Union of India - AIR 2017 SC 609*** and in the case of ***Dental Council of India Vs. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli and***

**others - AIR 2017 SC 1826.** We respectfully bow down to the nature of consideration that has been made therein and the circumstance in which the court has directed that the admissions are to be made in the process from the NEET candidates and noticed that the Hon'ble court had disapproved the admission made by a different process notwithstanding the NEET admission that had been prescribed.

6. Since in the instant facts, we have stated that the process of admission at the first instance has to be completed through the NEET process, the only consideration herein by way of interim direction is with regard to the seats that may remain vacant after all NEET qualified candidates have made their choices and if any further NEET qualified candidates are not available due to the confusion in the process. In that view since we have already taken note of the fact that the KEA has completed the counseling process in respect of the 40% of the seats to which they were required to make the admissions, even in

respect of the unfilled seats in such quota and to the seats which are to be filled by the Management, since the admissions are to be made initially from the NEET qualified candidates and at this stage in order to ensure that if any other candidates on the All India basis who have appeared for the NEET examination are available, we direct the respondent No.4 State Government to issue a paper publication on or before 15.10.2018 calling upon all NEET qualified candidates seeking admission for AYUSH courses to either approach the KEA and in respect of the seats which are to be filled by the respective colleges providing for AYUSH courses to approach the colleges before 25.10.2018. If during such period, the NEET qualified candidates make such applications at the outset they shall be considered on their order of merit for the seats which are available under all the categories to complete the admission. After the said process, if there are no NEET qualified candidates and the seats under the different quota remain vacant and subsequent thereto if the candidates who had not appeared



for the NEET examination, but have the minimum qualification to undergo the AYUSH course as provided, approach the colleges, the list of such candidates shall be prepared and on the order of their merit the admission shall be made thereafter. The list thereof shall be prepared by each of the colleges in respect of all categories and be dispatched to the University and KEA. As to whether such candidates possess the qualification would be taken note by the University and KEA. Such of those candidates would also be intimated that their admissions are being made in view of the absence of the NEET qualifying candidates and would ultimately remain subject to the result of these petitions. In any event, all admissions shall be completed before 31.10.2018 i.e., the last date that has been fixed. It is made clear that if any NEET qualified candidates approach any of the colleges before the last date for closure of the admissions they would be preferred over the candidates who have not appeared for the NEET examination notwithstanding that they have approached

after 25.10.2018 and in such event if it is found that no seat is available, the last of the non-NEET candidates having the least merit shall be deleted. It is made clear that even if the NEET appeared candidate has lesser merit in the NEET examination as well as the qualifying examination, such candidate shall be preferred over non-NEET despite higher marks in the qualifying examination.

7. It is further made clear that the process as indicated above would be applicable only to such of those petitioners' institutions who are otherwise qualified to make the admissions by possessing requisite infrastructure and if the competent authorities have taken any action against any of the colleges and restrained any of the colleges from making admissions for the present academic year, such of those colleges shall not make admission taking benefit of this order.

8. Needless to mention, if any of the colleges against whom action has been initiated has secured any interim

orders in their petition due to which admissions are permissible such of those admissions would ultimately remain for consideration in the appropriate petitions wherein such interim orders are granted as well as these petitions.

9. A copy of this order be made available to the Government Advocate for immediate compliance.

List in usual course.

Sd/-  
JUDGE

Sd/-  
JUDGE

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*S. S. S. S.*  
Court Officer CO, CHS  
High Court of Karnataka  
Bangalore