

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

(1) S.B. Civil Writ Petition No. 6865/2021

Jayoti Vidyapeeth Womens University, Jaipur, Vedaant Gyan Valley, Village Jharna, Mahala Jobner Link Road, NH-8 Jaipur Ajmer Express Way, Jaipur, Rajasthan Through Its Registrar Smt. Meghna Singhal Wife Of Shri Ankur Singhal, Aged About 40 Years, R/o 142, Abhilasha Apartment, Vidyut Nagar C, Gandhi Path, Jaipur.

-----Petitioner

Versus

1. The Union Of India, Through The Secretary, Ministry Of Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homeopathy (Ayush), B-Block, Gpo Complex, Ina, New Delhi-110023.
2. The UG/PG Ayush Counseling Board, 112-113, 1St Floor, Administrative Building, Dr. Sarvapalli Radha Krishnan Rajasthan Ayurved University, Nagaur Road, Karwar, Jodhpur Through Its Chairman.
3. State Of Rajasthan, Through The Principal Secretary, Department Of Ayurved And Indian Medicine, Government Of Rajasthan, Secretariat, Jaipur.
4. The Central Council Of Homoeopathy (CCH), Jawaharlal Nehru Bhartiya Chikitsa Evam Anusandhan Bhawan, 61-65, Institutional Area, Opp. D Block Janakpuri, New Delhi Through Its Registrar.
5. The Central Council Of Indian Medicine (CCIM), 61-65 Institutional Area, Opposite D Block, Janakpuri, New Delhi Through Its Registrar.

-----Respondents

Connected With

(2) S.B. Civil Writ Petition No. 6880/2021

Federation Of The Rajasthan Homoeopathic Medical Colleges, Jai Villa, Narayan Singh Road, Near Trimurti Circle, Jaipur Through Its Secretary Dr. Pankaj Sharma, Aged About 62 Years.

-----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homeopathy (Ayush), B-Block, Gpo Complex, Ina, New Delhi-110023.
2. The State Of Rajasthan, Through Its Principal Secretary, Depatment Of Ayurved And Indian Medicine, Government Of Rajasthan, Secretariat, Jaipur.
3. The UG/PG Ayush Counseling Board, Rajasthan, 112-113, 1st Floor, Administrative Building, Dr. Sarvapalli Radha Krishnan Rajasthan Ayurved University, Nagaur Road, Karwar, Jodhpur Through Its Chairman.
4. The Central Council Of Homeopathy (CCH), Jawaharlal Nehru Bhartiya, Chikitsa Evam Anusandhan Bhawan, 61-65, Institutional Area, Opp. D Block, Janakpuri, New Delhi Through Its Registrar.

-----Respondents

(3) S.B. Civil Writ Petition No. 6901/2021

Rajputana Unani Medical College, Hospital And Research Centre, Gujar Mohalla, Kho Nagoriyan, Jagatpura Road, Jaipur Through Its Assistant Secretary Anees Ahmed Alvi, Aged About 61 Years, S/o Mohammed Amjad Ali.

-----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Ayurveda, Yoga Nad Naturopathy, Unani, Siddha And Homeopathy (Ayush), B-Block, Gop Complex, Ina, New Delhi-110023.
2. The State Of Rajasthan, Through Its Principal Secretary, Depatment Of Ayurved And Indian Medicine, Government Of Rajasthan, Secretariat, Jaipur.
3. The UG/PG Ayush Counseling Board, Rajasthan, 112-113, 1St Floor, Administrative Building, Dr. Sarvapalli Radha Krishnan Rajasthan Ayurved University, Nagaur Road, Karwar, Jodhpur Through Its Chairman.
4. The Central Council Of Indian Medicine (CCIM), 61-65, Institutional Area, Opp. D Block, Janakpuri, New Delhi Through Its Registrar.

-----Respondents

(4) S.B. Civil Writ Petition No. 7099/2021

1. The Taraqqe Tibbi Society, Saleem Manzil, Uncha Kuwa, Haldiyan Ka Rasta, Johari Bazar, Jaipur - 302003 (Rajasthan) Through Its Authorized Signatory Dr. Azam Ansari Aged About 56 Years.
2. Rajasthan Unani Medical College And Hospital, Jagdamba Colony, Paladi Meena, Agra Road, Jaipur Through Its Principal Dr. Azam Ansari Aged About 56 Years.

-----Petitioners

Versus

1. The Union Of India, Through The Secretary, Ministry Of Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homoeopathy (Ayush), B-Block, Gpo Complex, Ina, New Delhi - 110023
2. The State Of Rajasthan, Through The Principal Secretary, Department Of Ayurved And Indian Medicine, Government Of Rajasthan, Secretariat, Jaipur.
3. The Ug/pg Ayush Counseling Board, Rajasthan, 112-113, 1st Floor, Administrative Building, Dr. Sarvapalli Radha Krishnan Rajasthan Ayurved University, Nagaur Road, Karwar, Jodhpur Through Its Chairman.
4. The Central Council Of Indian Medicine (CCIM), 61-65 Institutional Area, Opposite D Block, Janakpuri, New Delhi Through Its Registrar.
5. Dr. Sarvapalli Radhakrishnan Rajasthan Ayurved University, Nagaur Road, Karwar, Jodhpur Through Its Registrar.

-----Respondents

(5) S.B. Civil Writ Petition No. 6211/2021

1. Simran Singh D/o Diler Singh Bhati, Aged about 19 Years, House No.105, Street No.4, Gulab Nagar, Near RTO Office, Jodhpur, Rajasthan.
2. Payalben Chaudhary D/o Ishvarbhai Chaudhary, Aged about 18 Years, Dhanera, Banaskantha, Gujarat.
3. Manya Yadav D/o Gaurav Yadav, Aged about 19 Years, Kheda, Ambabadi, Jaipur, Rajasthan.

4. Asma Khanam D/o Mohd. Yunus Khan, Aged about 18 Years, Mahidas Colony, Dashara Maidan, Gangapur, Sawai Madhopur, Rajasthan.
5. Mubashshera Pathan S/o Mohd. Aslam, Aged about 20 Years, Ward No.27, Islampura, Gangapur, Sawai Madhopur, Rajasthan.
6. Joya Pathan D/o Mohd. Intjar, Aged about 19 Years, Ward No.27, Islampura, Gangapur, Sawai Madhopur, Rajasthan.

-----Petitioners

Versus

1. The Union Of India, Through Its Secretary, Ministry Of Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homeopathy (Ayush), B-Block, Gpo Complex, Ina, New Delhi-110023.
2. The Central Council Of Indian Medicine (CCIM), 61-65 Institutional Area, Opposite D Block, Janakpuri, New Delhi Through Its Registrar.
3. The Central Council Of Homeopathy (CCH), Jawaharlal Nehru Bhartiya Chikitsa Evam Anusandhan Bhawan, 61-65, Institutional Area, Opp. D Block, Janakpuri, New Delhi Through Its Registrar.
4. The UG/PG Ayush Counseling Board, Rajasthan, 112-113, 1st Floor, Administrative Building, Dr. Sarvapalli Radha Krishnan Rajasthan Ayurved University, Nagaur Road, Karwar, Jodhpur Through Its Chairman.
5. The State Of Rajasthan, Through Its Principal Secretary, Department Of Ayurved And Indian Medicine, Government of Rajasthan, Secretariat, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Akhilesh Rajpurohit] Mr. Kuldeep Mathur], through Cisco Webex App
For Respondent(s)	:	Mr. Mukesh Rajpurohit, ASG] Mr. Hemant Dutt] Mr. Nihar Jain] Mr. Himanshu Shrimali], through Cisco Webex App

JUSTICE DINESH MEHTA**Judgment****Reserved on : 24/05/2021****Pronounced on : 31/05/2021****Reportable**

(1) Out of the captioned writ petitions, cases mentioned at S.Nos.1 to 4 have been filed by the institutions, whereas case mentioned at S.No.5 has been filed by the students, seeking admission against the seats remaining vacant in these Institutions.

(2) The petitioners Nos.1 to 4 are conducting courses of Bachelor of Ayurvedic Medicine & Surgery (BAMS), Bachelor of Homeopathic Medicine & Surgery (BHMS), Bachelor of Naturopathy & Yogic Sciences (BNYS) and Bachelor of Unani Medicines & Surgery (BUMS) commonly known as AYUSH Courses. Petitioners-Institutions are having due approval from the respective statutory bodies.

(3) After the academic session 2019-20, the students in AYUSH Courses are being given admission through counseling, subject to condition of clearing National Eligibility cum Entrance Test (hereinafter referred to as 'the NEET'), through counseling, of course on the basis of their merit in such examination.

(4) All petitions involve common facts and question of law, hence, they are being decided conjointly. However, the facts from S.B. Civil Writ Petition No.6865/2021 [Jyoti Vidyapeeth Womens University Vs. The U.O.I. & Ors.] are being taken into consideration.

(5) The Central Council of Indian Medicine (hereinafter referred to as 'the Council' or 'the CCIM'), in exercise of powers conferred

upon it by the various clauses of sub-section (1) of Section 36 of the Indian Medicine Central Council Act, 1970, framed Regulations, which were published in the Official Gazette of India on 07.12.2018. These Regulations have been named as Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine)(Amendment Regulations), 2018 which hereinafter will be referred to as 'the Regulations of 2018' or 'the Regulations'.

(6) Regulation No.2 of the Regulations of 2018 prescribes required educational qualification and other eligibility criteria for admission in undergraduate course of Bachelor of Ayurvedic Medicines (BAMS) according to which, a candidate is eligible for admission, who has passed intermediate (10+2) or equivalent examination with subjects of Physics, Chemistry, Biology and English individually and has obtained minimum aggregate of 50% marks in Physics, Chemistry and Biology, subject to some relaxation carved out for the candidates belonging to SC, ST, OBC Categories and persons with benchmark disability.

(7) Clause (d) of Regulation No.2 of the Regulations of 2018 provides that in order to be eligible for admission to undergraduate course in an academic year, it shall be necessary for a candidate of unreserved category to secure minimum of marks at 50th percentile in the NEET held for such academic year. Relaxation in this requirement has also been provided to the candidates belonging to SC, ST, OBC and persons with disabilities and accordingly, in case of candidates of SC, ST and OBC, the minimum passing marks is 40th percentile and for persons with disabilities it is 45th percentile for general category and 40th percentile for SC, ST, OBC.

(8) A proviso is appended with above referred clause (d) of Regulation No.2 of the Regulations, which postulates that in case substantial number of candidates in respective categories fail to secure minimum marks in the NEET held in a particular academic year, the Central Government, in consultation with the CCIM may at its discretion lower the minimum marks required for admission to undergraduate course, however, with a condition that such relaxation would be applicable for that academic year only.

(9) Before proceeding further, it would be apt to sail through the Regulation No.2 of the Regulations of 2018, which reads as under:-

"2. Eligibility for Admission.- The eligibility to seek admission in Bachelor of Ayurvedic education shall be as under:-

(a) The candidate must have passed (10+2) or its equivalent examination recognised by the concerned State Government and Education Board with the subjects of Physics, Chemistry, Biology and English individually and must have obtained minimum of fifty per cent. marks taken together in Physics, Chemistry and Biology at the aforesaid qualifying examination in the general category and forty per cent. Marks in the case of the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

(b) In respect of persons with disability candidate specified under the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the minimum qualifying marks in the said qualifying examination in Physics, Chemistry and Biology shall be forty-five per cent. in the case of general category and forty per cent. in the case of the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

(c) No candidate shall be admitted to B.A.M.S. Degree Course unless he has attained the age of seventeen years on or before the 31st December of the year of admission in the first year of the course:

Provided that the upper age limit may be relaxed by five years in the case of the Scheduled Castes, Scheduled Tribes, Other Backward Classes and physically handicapped candidates.

(d) (i) There shall be a uniform entrance examination for all medical institutions at the under-graduate level, namely the National Eligibility Entrance Test (NEET) for admission to under-graduate course in each academic year and shall be conducted by an authority designated by the Central Government.

(ii) In order to be eligible for admission to under-graduate course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility Entrance Test for under-graduate course' held for the said academic year.

Provided that in respect of -

(A) candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, the minimum marks shall be at 40th percentile.

(B) Candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the minimum marks shall be at 45th percentile in the case of general category and 40th percentile in the case of the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Explanation.- The percentile shall be determined on the basis of highest marks secured in the all India common merit list in the National Eligibility Entrance Test for under-graduate courses.

Provided further that when sufficient number of candidates in the respective categories fail to secure minimum marks in the National Eligibility Entrance Test, as specified above, held for any academic year for admission to under-graduate courses, the Central Government in consultation with the Central Council may at its discretion lower the minimum marks required for admission to under-graduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for that academic year only.

(iii) An all India common merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in the National Eligibility Entrance Test and the candidates, within the respective categories, shall be admitted to under-graduate course from the said merit lists only.

(iv) The seat matrix for admission in the Government, Government-aided Institutions and Private Institutions

shall be fifteen per cent. for the all India quota and eighty-five per cent. for the State and Union territories quota.

(v) The designated authority for counseling for all admissions to under-graduate course in all Ayurveda educational institutions in the States and Union territories including institutions established by the State Government, University, Deemed University, Trust, Society, Minority Institution, Corporation or Company shall be the respective State or Union territory in accordance with the relevant rules and regulations of the concerned State or Union territory Government, as the case may be.

(vi) The counseling for all admission to B.A.M.S. Course for seats under all India quota as well as for all Ayurveda educational institutions established by the Central Government shall be conducted by the authority designated by the Central Government.

(vii) No candidate who has failed to obtain the minimum eligibility marks as specified above shall be admitted to under-graduate course in the said academic year.

(viii) No authority or institution shall admit any candidate to the under-graduate course in contravention of the criteria or procedure as laid down by these regulations in respect of admissions and any candidate admitted in contravention of the said criteria or procedure shall be discharged by the Central Council forthwith.

(ix) The authority or institution which grants admission to any student in contravention of the aforesaid criteria or procedure shall be liable to face action in terms of the provisions of the Act.

(e) For foreign national candidate any other equivalent qualification to be approved by the Central Government may be allowed and clause (d) shall not be applicable for said foreign national candidate."

(10) For the academic year 2020-21, after getting intake of students as per the merit of the NEET, based on the requisite percentile, fixed by the Regulations of 2018, some of the seats remained vacant in different AYUSH Courses in various colleges of Rajasthan. According to the averments made by the petitioners,

for academic year 2020-21, following number of seats in different AYUSH Courses are lying vacant in the colleges of Rajasthan:-

Subject	Total Seats	Vacant Seats
Ayurvedic	770	77
Unani	153	83
Homeopathic	745	482
Naturopathy & Yoga	700	606

(11) The petitioner No.1 to 4 had earlier also preferred writ petitions before this Court for seeking direction/permission to fill-up the vacant seats. Writ petition filed by the petitioner – Jyoti Vidyapeeth and other connected matters came to be disposed by a Coordinate Bench of this Court, vide its order dated 25.03.2021.

(12) Referring to the judgment **dated 08.02.2021** passed by Hon'ble the Supreme Court, in the case of **Harshit Agarwal Vs. Union of India & Ors. [Writ Petition (C) No.95/2021]**, while expressing its concern about the seats remaining vacant, the Coordinate Bench of this Court directed the respondents to take a considered decision in accordance with law, particularly in light of the Regulations of 2018 and to consider reduction in minimum percentile so as to enable the colleges to have more students in BAMS, BHMS and MD Homeopathy Courses.

(13) In furtherance of the above referred order (dated 25.03.2021), the petitioner submitted a representation dated 27.03.2021 before the Secretary, Union of India, Ministry of AYUSH, with a request to reduce minimum percentile as mandated by the Regulations of 2018. Such request to reduce the required percentile was made in terms of the proviso to Clause (d) of Regulation No.2 of the Regulations. The petitioner, in its

representation, highlighted that out of total 770 seats, 77 seats are lying vacant so far as BAMS Course is concerned. The representation was simultaneously addressed to the Registrar, CCIM also.

(14) The Central Government, in turn, however, rejected petitioner's above referred representation vide its order dated 08.04.2021. While refusing to reduce the percentile, the Central Government observed that further reduction of percentile criteria in NEET qualification for Ayurveda Course will lead to inviting less qualified candidates. It was inter alia indicated in the order that vide letter dated 15.01.2021, the Ministry has already relaxed the percentile criteria by 10th percentile points for each category and that sufficient number of NEET qualified candidates (9,09,776) are available. It was ruled by the Ministry that lowering of marks may adversely affect the life and health of general public.

(15) It will not be out of place to reproduce the entire order passed by the Ministry, which is short and succinct yet full of substance:-

"Sub: NEET percentile criteria in order to be eligible for admission in Ayurveda UG Course for academic year 2020-21-reg.

Sir,

I am directed to refer to your this representation dated 30.03.2021 regarding relaxation of minimum eligibility percentile criterion in NEET UG-2020 for admission to Ayurveda UG (BAMS) course for academic year 2020-21.

2. Your representation has been considered and examined in view of the prevailing situations and status of NEET qualified candidates. It is found that, as per the percental criterion required as per regulations namely the Indian Medical Central Council (Minimum Standards of Education in Indian Medicine) amendment Regulations, 2018, approximately 7,71,511 NEET qualified candidates were available against the approximately 38,814

permitted seats in Ayurveda, Siddha, Unani and Homoeopathy UG Courses for A.Y.2020-21 and out of which **total permitted seats in UG Ayurveda Course are approximately 21,135**. Further, Ministry vide its letter dated 15.01.2021 (**copy attached**) has relaxed the percentile criteria by reducing 10 percentile for each category for academic session 2020-21 due to prevailing COVID-19 pandemic and various reasons, which has resulted in availability of total number of 9,09,776 NEET-2020 qualified candidates. As per present relaxed criteria, marks required for unreserved (UR) category candidates at 40th percentile is **113 of 720 (15.69%)**, for Schedule Castes (SC)/the Scheduled Tribes (ST)/Other Backward Classes (OBC)/SCPwd/OBCPwd candidates at **30th percentile is 87 out of 720 (12.08%)** and for URPwD Candidates at 35th percentile is **99 out of 720 (13.75%)** and maximum of the seats are filled up in the most of the States. Thus, it may be seen that, sufficient number of NEET qualified candidates are available.

3. Further, reducing of percentile criterion further in NEET qualification for UG Ayurveda Course will be inviting a lower qualified candidates below 15.69% for General category and 12.08% for reserved category and it would affect the vary purpose of rendering quality medical education and health services. Lowering of qualification marks may compromise standard of qualified Medical Practitioners, which may adversely affect the life and health of general public.

4. In view of the above, your request for further reducing the percentile criteria cannot be agreed to.

5. This issues the approval of competent authority."

(16) Oppugning the order dated 08.04.2021, passed by the Central Government, Mr. Akhilesh Rajpurohit, learned counsel for the petitioners, argued that the Central Government has seriously erred in not reducing minimum percentile marks in the NEET Examination. He argued that impugned decision of the respondents in refusing to exercise the discretion vested in it, has led to huge number of seats lying vacant, which is a national loss and loss of resources and the same is, thus, irrational.

(17) It was pointed out that prior to introduction of NEET, the candidates were given admission on the basis of their marks in intermediate examination only. Learned counsel urged that the petitioners, in any case, are not seeking relaxation of percentage obtained in intermediate examination, which is the fundamental educational qualification required – they are seeking relaxation or reduction of minimum marks required in NEET Examination, so that more students can be accommodated/admitted in AYUSH Courses.

(18) He contended that so far as minimum level of standard is concerned, same would be secured inasmuch as, no candidate having lesser prescribed marks in intermediate examination (of course according to his/her category) will be given admission. However, if the minimum marks required under clause (d) of Regulation No.2 of the Regulations of 2018 are reduced, the same would hardly have any bearing on the quality of students getting admission in the AYUSH Courses.

(19) Learned counsel placed strong reliance upon the judgment rendered in the case of Harshit Agarwal (supra) and in order to draw simile, he pointed out that for the purpose of admission in Bachelor of Dentistry (BDS) Course also, a student is picked through NEET and that analogous provisions, as are applicable in the present case, are applicable in terms of Regulation XII of the Dental Council of India Revised BDS Course Regulations, 2007 (for short, 'the Regulations of 2007') including the proviso, giving the Central Government a power to relax. He submitted that Hon'ble the Apex Court, in the judgment of Harshit Agarwal (supra) has set aside the decision of Union of India, which refused to reduce the minimum marks for admission to BDS Course, observing that

the same suffered from the vice of illegality and irrationality, while holding thus:-

"13. There are about 7,000 seats available for admission to the first-year BDS course during the year 2020-21. We are not impressed by the argument of the learned Additional Solicitor General that there are sufficient number of Dentists in the country and, therefore, there is no harm in the seats being unfilled. However, we find force in the submission made by the learned Additional Solicitor General that the fee charged by the private dental colleges is a deterrent for the seats not being filled up. Only 265 out of 7,000 seats are vacant in government colleges. All the other unfilled seats are in private Dental colleges. The Managements of private Dental Colleges shall consider reducing the fee charged by them to encourage students to join the Colleges. Reliance was placed by the first Respondent in an order passed by this Court in **Union of India v. Federation of Self-Financed Ayurvedic Colleges, Punjab (2020) SCC 115** to submit that non-availability of eligible candidates for admission to AYUSH (UG) courses cannot be a reason to lower the standards prescribed by the Central Council for admission. The facts of this case are entirely different as the Central Council of India itself recommended for lowering the minimum marks. That apart, the first Respondent has exercised its discretion and lowered the minimum marks for admission to first-year BDS Course for the year 2019-20.

14. For the aforementioned reasons, we set aside the decision of the first Respondent dated 30.12.2020 to not reduce the minimum marks for admission to BDS course as it suffers from the vices of illegality and irrationality. We direct that the vacant seats in first year BDS Course for the year 2020-21 shall be filled up from the candidates who have participated in the NEET (UG) courses for the year 2020-21 after lowering the percentile mark by 10 percentile. The candidates belonging to general category who have secured 40 percentile shall be eligible to be considered for admission in the first year BDS course for the year 2020-21. Likewise, students belonging to the SC/ST/OBC categories shall be qualified if they have secured 30 percentile. In so far as General candidates with bench mark disabilities specified under the Rights of Persons with Disabilities Act, 2016 they would be eligible if they have secured 35 percentile. The admissions shall be made strictly in accordance with merit and the admission process shall be completed by 18.02.2021. Any other student who has qualified in NEET (UG) – 2020 even without lowering the minimum

marks and is willing to participate in the admission process shall also be considered for admission to BDS Course.”

(20) Relying upon the judgment aforesaid, learned counsel for the petitioners contended that the judgment of the Supreme Court applies on all fours to the facts of the present cases and thus, present writ petitions also deserve to be allowed. He emphatically submitted that impugned order of the Central Government deserves to be quashed as the same suffers from identical irrationality or non-application of mind.

(21) Reliance was also placed upon the judgment dated 03.02.2021, rendered in the case of **Index Medical College, Hospital & Research Centre Vs. The State of M.P. & Ors. [Civil Appeal No.867/2021]**, particularly para No.25 thereof to buttress his argument that not filling up of the medical seats is not a solution to the problem and seats being kept vacant results in huge financial loss to the management of the educational institutions, apart from being a waste of national resources.

(22) Para No.25 of the judgment aforesaid is extracted hereunder:-

“25. The right to admit students which is a part of the management’s right to occupation under Article 19(1) (g) of the Constitution of India stands defeated by Rule 12(8) (a) as it prevents them from filling up all the seats in medical courses. Upgradation and selection of subject of study is pertinent only to postgraduate medical course. In so far as undergraduate medical course is concerned, the upgradation is restricted only to a better college. Not filling up all the medical seats is not a solution to the problem. Moreover, seats being kept vacant results in huge financial loss to the management of the educational institutions apart from being a national waste of resources. Interest of the general public is not subserved by seats being kept vacant. On the other hand, seats in recognised medical colleges not being filled up is detrimental to public interest. We are

constrained to observe that the policy of not permitting the managements from filling up all the seats does not have any nexus with the object sought to be achieved by Rule 12(8)(a). The classification of seats remaining vacant due to non-joining may be based on intelligible differentia but it does not have any rational connection with the object sought to be achieved by Rule 21(8)(a). Applying the test of proportionality, we are of the opinion that the restriction imposed by the Rules is unreasonable. Ergo, Rule 12(8)(a) is violative of Articles 14 and 19(1)(g) of the Constitution."

(23) It was also argued with vehemence that in any case, NEET Examination is nothing more than a screening test and the requirement of obtaining minimum percentile cannot be said to be mandatory and such requirement can be ignored given that number of seats are lying vacant. This argument of learned counsel stemmed from the **judgment dated 20.04.2018**, passed by a Coordinate Bench of this Court in a batch of writ petitions, led by **S.B. Civil Writ Petition No.13776/2017 [Mahendra Mension & Ors. Vs. State of Rajasthan & Ors.]**, especially from the following observations:-

"In view of the above discussion, it is evident that although it was necessary to take the NEET examination for entrance to the courses, its purpose was only short-listing the candidates. Therefore, attaining 50th percentile minimum marks was not mandatory as the same could be reduced as per the discretion to be exercised by the Central Government in consultation with Dental Council of India, in case of inadequate number of available candidates."

(24) Learned counsel for the petitioners, having advanced above arguments, prayed that impugned decision dated 08.04.2021, taken by the AYUSH Department of Central Government be quashed and set aside and the petitioners be permitted to fill-up the vacant seats, subject of course to the eligibility of students based on their marks in the intermediate examination, as per

clauses (a) and (b) of Regulation No.2 of the Regulations of 2018, and fulfilling other eligibility criteria and appearance in NEET Examination, however, without insisting upon minimum percentile marks in terms of clause (d) of Regulation No.2 of the Regulations of 2018.

(25) These cases were listed on 13.04.2021, on which date, upon hearing rival counsel at some length, this Court prima facie felt that proviso to clause (d) of Regulation No.2 of the Regulations confers a discretion with the Central Government and it is not mandatory to reduce the minimum marks. Judgment of Hon'ble the Apex Court in the case of Harshit Agawral (supra) was also brought to the notice of the Court, for which, it was deemed appropriate to have the opinion or view point of the concerned Council (respondents Nos.4 and 5) so as to arrive at a final conclusion after considering the stand of the CCIM. Learned counsel Mr. Dutt was, therefore, directed to ascertain whether the Council was consulted in relation to the request/representation of the petitioner institution for reduction of percentile marks and what is the Council's point of view on this issue.

(26) It will not be out of place to reproduce the proceedings of 13.04.2021, which reads thus:-

"1. By way of the present writ petitions, petitioners have challenged decision of the Central Government dated 08.04.2021/13.04.2021, whereby they have refused to reduce minimum requisite percentile for admission to Ayush Courses, while dealing with Institutions' request in this regard interms of proviso to Regulations of 2018 and 2019.

2. In prima facie opinion of this Court, the proviso does not mandate the Central Government to reduce the percentile, it rather confers a discretion which is evident by the use of expression 'may at its discretion'.

3. Mr. Rajpurohit relies upon the judgment of Hon'ble the Supreme Court dated 03.02.2021 rendered in the case of 'Harshit Agarwal vs. Union of India'. Upon perusal of this judgment, this Court deems it appropriate to ask the concerned Council (respondent No.4 and 5), as to what are/were its views in relation to Institutes' request for reduction of percentile in terms of the regulation of 2018.

4. The same is being considered necessary in view of the observation made by Hon'ble the Supreme Court in the judgment of Harshit Agarwal (supra), particularly para No.12 thereof, that respondent No.2 therein (the Council) had recommended deduction of percentile.

5. List these cases on 24.05.2021.

6. In case the council has not sent any opinion in relation to reduction of percentile in terms of the proviso, they would make their stand clear in this regard."

(27) In response to Court's query, Mr. Hemant Dutt, learned counsel appearing for respondents Nos.4 and 5, categorically stated that the Council has not recommended for lowering the percentile as the same would amount to lowering the minimum standard and reducing the minimum standard of education would result in half-baked doctors.

(28) Learned counsel for the respondents Nos.4 and 5, argued that though a discretion vests in the Central Government to reduce the minimum percentile, however, the proviso cannot be read to mean that in all cases, minimum percentile are to be reduced simply because certain seats remained unfilled in some of the colleges.

(29) Learned counsel submitted that the controversy involved in the present case is squarely covered by the judgment of Hon'ble the Apex Court in the case of **Union of India Vs. Federation of**

Self-Financed Ayurvedic Colleges, Punjab [(2020) 12 SCC 115].

(30) Citing the judgment aforesaid, he apprised the Court about the background facts that the Punjab & Haryana High Court had directed the Central Government to reduce the percentile, which judgment has been up-turned by Hon'ble the Supreme Court, while holding that non-availability of eligible candidates for admission to AYUSH Undergraduate Courses cannot be a reason to lower the standards prescribed by the CCMS for admission. He added that true it is, that Hon'ble the Supreme Court has protected the admissions granted to the students for the academic year 2019-20, as they were admitted on the strength of interim orders passed by the High Court, but any indulgence to the petitioners in this academic year would be contrary not only to the clear statutory provision but also to the judgment of the Hon'ble Apex Court, rendered in the case of Union of India Vs. Federation of Self-Financed Ayurvedic Colleges (supra).

(31) Mr. Mukesh Rajpurohit, learned Assistant Solicitor General for the respondent-Union of India, submitted that neither the institutions running the courses nor can the students claim relaxation in the minimum percentile marks as a matter of right. He submitted that the proviso appended with Clause (d) of Regulation No.2 of the Regulations of 2018 is not mandatory and the same conveys a discretion upon the Central Government to reduce the percentile marks. He emphasised that number of seats remaining vacant cannot be a factor to be taken into account. He, however, flagged that looking to the present situation, arising from COVID-19, the Central Government has already reduced the percentile by 10 points in each category. He argued that any

further reduction of percentile would be nothing but playing with health of the citizens.

(32) In a bid to defend the order dated 08.04.2021, passed by the Central Government, learned counsel argued that Central Government has taken a well considered and conscious decision giving crisp reasoning and since the petitioners have failed to point out any infirmity in the order, the writ petitions be dismissed with cost.

(33) Heard.

(34) After hearing learned counsel for the parties and upon consideration of the statutory scheme, this Court is of the opinion that the proviso to clause (d) of Regulation No.2 of the Regulations is nothing more than a discretionary power bestowed upon the Central Government to reduce the required percentile points when sufficient number of candidates in respective categories fail to secure minimum marks in NEET Examination. This discretion is required to be exercised on overall appraisal of relevant legends, one of which may be number of vacant seats, but it cannot be the sole factor to be reckoned or a driving force.

(35) Such opinion flows from the very language of the proviso, which lays down that the Central Government, in consultation with the CCIM may, at its discretion, lower the minimum marks required for admission. As such, the discretionary power of the Central Government can be solicited or invoked neither by the institutions imparting education nor by the enthusiastic or willing students, simply citing that some seats are lying vacant.

(36) The proviso under consideration permits the Central Government to reduce the minimum percentile points only in case,

sufficient number of candidates in the respective categories fail to secure minimum marks.

(37) Expression "sufficient" implies a state of affairs whose existence assure the existence of the another state of affairs. [Re.: Webster]. The word "sufficient" means "adequate", "enough, "as much as may be necessary to answer the purpose intended." It embraces no more than, that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from reasonable standard of practical and cautious men. [Re.: Benarsi Das Saraf & Ors. Vs. Dalmia Dadri Cement Ltd. & Ors. (AIR 1995 P&H 232)]

(38) In the opinion of this Court, the adjective "sufficient" is of a great significance and interpretation given in para No.(37) above clearly suggests that merely because 10%, 15% or even more seats in some of the colleges of the State of Rajasthan are lying vacant, the Central Government cannot be called upon much less compelled to reduce the minimum percentile. Because, if relaxation is to be given by the Central Government, it has to be given to all the candidates through out the length and breadth of the country and not to the candidates of State of Rajasthan only, as NEET examination is an all India level competition.

(39) The petitioners have not placed on record total number of seats in the entire country and the corresponding vacancy position and thus, based on petitioners' pleadings that number of seats, as indicated in para No.(10) above, in Rajasthan are lying vacant, neither can the Central Government be expected to grant relaxation, nor can a direction be sought from the High Court.

(40) Although the petitioners have not brought on record the vacant seat position of the entire country, but the Central

Government having undertaken such exercise, has recorded in its order under challenge that maximum number of seats are filled-up in most of the States. That being the position, the finding of the Central Government that sufficient number of seats have been filled, is an uncontroverted fact. The fulcrum of the decision of the Central Government is such indisputed fact. The same can neither be faulted with nor can it be alleged to be suffering from any infirmity much less irrationality.

(41) The basic foundation, on which learned counsel for the petitioners premised his case is, that reduction of requisite minimum percentile in NEET Examination would not adversely affect the educational standards of the candidates inasmuch as they are otherwise required to have at least 50% marks in their intermediate examination. According to him requirement of 50% in intermediate (10+2) examination provides enough check on the intelligence and proficiency of the students getting admission in AYUSH Courses. This Court is not impressed with such argument of Mr. Rajpurohit, for the reasons given in the following paragraph.

(42) A simple look at Regulation No.2 of the Regulations shows that following three criteria have been fixed by the Regulations for admission in undergraduate AYUSH Courses:-

- (i) a candidate must have obtained minimum 50% marks taken together in Physics, Chemistry and Biology in intermediate examination;
- (ii) he has attained the age of 17 years on or before the 31st December of the year of admission; and
- (iii) he should secure 50th Percentile marks in NEET held for the said year.

All the above three conditions are mandatory and need to be complied with before a candidate is admitted in AYUSH Courses.

(43) It is to be noted that the Regulations themselves have provided for relaxation of the above eligibility criteria. So far as criteria Nos.(i) and (ii) are concerned, the relaxation has been given on the basis of social background; whereas for criteria No. (iii) above, the Central Government has been clothed with the power to relax, however, in terms of proviso. If the argument of the petitioners is to be accepted, the third criteria, prescribed by Regulation No.2 of the Regulations will be rendered nugatory and the purpose of inserting clause (d) in Regulation No.2 of the Regulations in relation to uniform examination, based for all medical institutions for admission in undergraduate courses, namely, NEET, shall be otiose.

(44) Adverting to the judgment of the Apex court rendered in the case of Harshit Agarwal (supra), which was heavily relied upon by learned counsel for the petitioners; it is true that the Apex Court has directed the Central Government to reduce the percentile marks by 10th percentile in BDS Course and equally true is the assertion that the provisions of the Regulations of 2007 are analogous to the provisions of Regulations of 2018, but then, a careful reading of the judgment in the case of Harshit Agarwal (supra) reveals that the Apex Court was pleased to allow the writ petitions and direct the Central Government to grant relaxation, essentially because of the fact that the Dental Council of India itself had recommended for lowering the minimum marks.

(45) As against this, such is not the position when it comes to the cases at hand. In the teeth of categorical stance taken by the CCIM through its counsel that the CCIM does not approve of

lowering the requisite percentile, as the same would lead to reduction of requisite standards of education and result in half-baked doctors, the judgment, relied upon by Mr. Akhilesh Rajpurohit, is clearly distinguishable.

(46) Moving on to the judgment of Hon'ble the Supreme Court in the case of Index Medical College, Hospital & Research Centre (supra) and the observations made in para No.25 of the judgment aforesaid, pertinent it is to note that the said case related to the year 2017 and the admissions in question were of medical colleges of State of M.P., where the admissions were governed by M.P. Chikitsa Shiksha Pravesh Niyam, 2018 and the question before the Court was that of admissions through mop-up round and not with regard to reduction in minimum percentage or percentile points or eligibility criteria. While dealing with such issue of filling-up of the management quota seats, Hon'ble the Apex Court made the observations that seats remaining vacant in medical colleges results in huge financial loss to the management. This judgment too is clearly distinguishable as admission in the AYUSH Courses given on the basis of NEET result. And Central Government has already lowered the bar by 10 points even for this academic year.

(47) Furthermore, financial loss to one or more educational Institutions cannot be compared with the risk to the health of the citizens. If the financial loss of an institution is to be weighed against loss of health on account of lesser meritorious candidates, being given admission, in the opinion of this Court, the equity and justice warrants this Court to lean towards the interest of the health of the citizens, rather than being swayed by the vested interest of the institutions, who are moved or driven by their monetary motives and materialistic pleasures.

(48) Learned counsel for the petitioners relied upon judgment of this Court in the case of Mahendra Mension (supra) to contend that the NEET Examination is nothing more than a process of short-listing of the candidates and thus, the criteria of securing minimum percentile in NEET Examination can be ignored. In the opinion of this Court, such argument has no substance and the same deserves to be rejected. Though an observation has been made by this Court while dealing with somewhat similar controversy that NEET Examination for entrance to the course was only for short listing of the candidates but a careful consideration of the discussion made and purposive reading of the reproduced part of the judgment unravels that those observations were made by the Coordinate Bench, in view of the discretion vested in the Central Government to reduce the minimum percentile in case of inadequate number of available candidates.

(49) If those observations are read holistically, it clearly turns out that the same were made in the back-drop of the prevailing facts. Even if the same is taken to be a conclusion drawn by this Court, it cannot be said that minimum percentile, as fixed by the Central Government, are not mandatory and discretionary power to reduce minimum percentile can be enforced by issuing a writ, regardless of the contextual facts.

(50) Whereas, the judgment cited by Mr. Hemant Dutt is exactly on the point under consideration and clinches the issue against the petitioners. It will not be out of place to reproduce para No.15 of the judgment in the case of Union of India Vs. Federation of Self-Financed Dental Colleges (supra), which reads thus:-

“15. Prescribing a minimum percentile for admission to the undergraduate courses for the year 2019-2020

was vehemently defended by the Central Council and the Union of India by submitting that the minimum standards cannot be lowered even for AYUSH Courses. We agree. Doctors who are qualified in Ayurvedic, Unani and Homeopathy streams also treat patients and the lack of minimum standards of education would result in half-baked doctors being turned out of professional colleges. Non-availability of eligible candidates for admission to AYUSH undergraduate courses cannot be a reason to lower the standards prescribed by the Central Council for admission. However, in view of admission of a large number of students to the AYUSH undergraduate courses for the year 2019-2020 on the strength of interim orders passed by the High Courts, we direct that the students may be permitted to continue provided that they were admitted prior to the last date of admission i.e. 15.10.2019. The said direction is also applicable to students admitted to postgraduate courses before 31.10.2019. This is a one-time exercise which is permitted in view of the peculiar circumstances. Therefore, this order shall not be treated as a precedent."

(51) A perusal of above quoted para of the judgment clearly shows that non-availability of eligible candidates cannot be a reason to lower the standards prescribed by the Central Government for admission. It is true that in spite of having held this, Hon'ble the Apex Court has protected the rights of the students, who have been given admission for academic year 2019-20, but that was done because the students (respondents therein) were admitted to the courses on the strength of interim orders passed by the High Court.

(52) Issuing a direction to relax the eligibility condition(s) or passing an order to accord admission by way of interim order or otherwise would be clearly contrary to the unambiguous law on the subject laid down by the Apex court, apart from being contrary to facts involved in the extant case.

(53) It is pertinent to note that while deciding the case of Harshit Agarwal (supra), Hon'ble the Supreme Court has taken into

consideration the above referred judgment of Union of India Vs. Federation of Self-financed Dental Colleges (supra) and has taken a view somewhat different than the one taken in the case of Union of India Vs. Federation of Self-financed Dental Colleges (supra). But, such different view was taken because of the fact that Dental Council of India itself had recommended for lowering the minimum marks. The fact that the Dental Council of India had recommended for lowering the minimum marks was a very striking feature of the case, for which Hon'ble the Supreme Court was pleased to direct the Central Government to reduce the percentile.

(54) Having regard to the statement so assertively given by Mr. Dutt that the Council has neither recommended for reduction in minimum percentile nor does it approve of such reduction, this Court has no hesitation in holding that the petitioners cannot claim relaxation in minimum percentile points solely on the basis of judgment of Hon'ble the Supreme Court in the case of Harshit Agarwal (supra), as the direction was issued considering the peculiar factual matrix of that case.

(55) In the opinion of this Court, the impugned decision dated 08.04.2021, passed by the AYUSH Department of the Central Government is a well reasoned order. One cannot lose sight of the fact that the order dated 08.04.2021 records that the Ministry, vide its letter dated 15.01.2021, has already relaxed the percentile criteria by reducing 10th percentile points, for each category for academic session 2020-21 having due regard to the prevailing pandemic (COVID-19) and for other reasons.

(56) As the Central Government has already exercised its discretionary power and reduced minimum marks by 10

percentile, directing it to reduce it further would be nothing short of intruding in the affairs of academic bodies, which are experts in their own fields and are in a better position to strike a balance between the Institutions' thirst of getting students vis-a-vs the societal requirement of quality health care.

(57) No infirmity has been pointed out or even alleged by the petitioners in the decision dated 08.04.2021. Even petitioner's representation submitted pursuant to this Court's order dated 25.03.2021 also did not contain anything of substance – it contained a hollow request to reduce the minimum percentile, that too on the sole ground that 77 seats out of total 770 seats are lying vacant. Petitioner's point has been taken note of, duly pondered upon and then, debunked with sound reasoning. This Court hardly finds any reason to interfere in such decision of the Central Government.

(58) A perusal of the Central Government's order dated 08.04.2021 brings to fore that after reducing 10th percentile points vide its order/letter dated 15.01.2021, the minimum required percentile for unreserved category has been fixed at 40th percentile, whereas for SC/ST and Other Backward Classes, it has been reduced to 30th Percentile and 35th Percentile for Differently Abled Candidates. After bringing the bar down by the Central Government, as many as 9,09,776 candidates have qualified the NEET Examination. Thus, more than sufficient number of NEET qualified candidates are/were available. If those candidates, for their own reasons, do not choose to opt for the courses run by these colleges, the Central Government cannot be asked to keep on reducing the percentile and compromising with the educational standards.

(59) If the yardstick has been set at 40th percentile, it means that 60% of the students, who have appeared in the NEET examination have been declared successful. This is quite a number, given the large number of candidates who appeared in the NEET Examination. It is of common knowledge that these qualified candidates will be enjoined with the responsibility of diagnosing and curing the suffering populace. It is intriguing that out of 720 marks, the candidates who have scored 113 marks (15.69%) of the unreserved category; candidates having secured 87 marks (12.08%) of SC/ST and Other Backward Classes and candidates obtaining 99 marks (13.75%) out of the persons with disability category, have been declared qualified in NEET-2020.

(60) If the criteria for minimum percentile is further reduced, this Court is doubtful about the standard of the students taking admission and is wary of their potential to undertake the professional courses. They will really be half-baked professional, as stated by learned counsel for the Council. It may ultimately be fatal to the health of the citizens.

(61) In light of the foregoing discussion, this Court is of the firm view that sufficient number of students (9,09,776) have qualified NEET-2020. Simply because some seats have remained unfilled, the Central Government cannot be directed to relax the minimum percentile points in NEET-2020, particularly when the same has already been done (by reducing 10th percentile), for each category for this academic year itself.

(57) Writ petitions at S.Nos. 2 to 4 filed by the Institutions so also writ petition at S.No.5 by the students are almost identical. Though these petitioners impart Degree Courses in different streams and governed by different Regulations but the provisions

