Before Ravi Shanker Jha, C.J. & Rajiv Sharma, J.

FEDERATION OF PRIVATE SELF FINANCED AYURVEDIC COLLEGES ASSOCIATION, PUNJAB—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

CWP No.23710 of 2019

December 18, 2019

Constitution of India, 1950— Arts. 73, 163 and 226—Indian Medical Council Act, 1970, Section 36(1)—Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) Regulations, 1986, Clause 2(d)—Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of fee and making of Reservation) Act, 2006, Section 3(3)—Admission in BAMS/ BHMS /BUMS—Notification—Amendment in Central Regulation by Central Council to pass NEET—Constitutional validity—Held, Union of India has exclusive power to frame laws in respect of matters enumerated in Entry 66 and concurrent power along with States to frame laws in respect of matters mentioned in Entry 25 of List III of the 7th Schedule of Constitution of India—Thus, stand of State of Punjab and Haryana clear—that they are bound by and have followed regulations of Central Council—Hence, NEET mandatory for obtaining admissions in Ayush under Graduate courses—Amendment in regulation constitutional and not ultra vires—Admissions made to the contrary are illegal and cannot be sustained.

Held that, from the aforesaid analysis it is clearly established that the Union of India has the exclusive power to frame laws in respect of matters enumerated in Entry 66 and concurrent power along with the States to frame laws in respect of matters mentioned in Entry 25 of List III of the 7th Schedule of the Constitution of India, in other words, as the power to make laws conferred upon the Union of India is not confined to matters relating to coordination and determination of standards in institution of higher education alone but also extends to and co-exists with the legislative power of the State in respect of education including technical education and medical institutions, universities, vocational and technical training of labour etc., that is, the entire field covered by both the entries, and as in the facts of the present case there is no repugnancy between the impugned notifications dated

07.12.2018 and 14.12.2018 and the impugned letters issued by the Central Council on the one hand and the Punjab Act, the notification issued by the State of Punjab dated 28.05.2018 and the notification issued by the State of Haryana dated 01.08.2019 respectively, and as all the respondents i.e. Union of India as well as the States of Punjab and Haryana have equivocally and unanimously agreed and decided to grant admissions in BAMS, BHMS & BUMS courses on the basis of NEET, therefore, we are not required to delve into the question as to whether the impugned notifications fall within the scope of the Act of 1970 or the Act of 1973, in the facts of the present case.

(Para 44)

Rajiv Atma Ram, Senior Advocate with
Arjun Partap Atma Ram, Advocate and
Satyam Tandon, Advocate,
for the petitioners in CWP No. 23710 of 2019.

G.S. Attariwala, Advocate
for the petitioners in CWP No. 27723 of 2019.

Akshay Bansal, Advocate
for the petitioners in CWP No. 28287 of 2019 and 30610 of 2019.

Parvesh Jaglan, Advocate
for Kamal Sehgal, Advocate,
for the petitioners in CWP No. 29612 of 2019.

Manuj Nagrath, Advocate
for the petitioners in CWP No. 27641 of 2019.

Viren Jain, Advocate
for the petitioner in CWP 28282 of 2019.

Anant Bir Singh Sidhu, Advocate
for the petitioners in CWP No. 29261 of 2019.

Arun Gosain, Senior Panel Counsel for UOI.
R.Kartikeya, Advocate, for CCIM,&
for Guru Ravi Dass Ayurvedic University, Punjab.

Angel Sharma, Advocate
for the respondent No.2-CCIM, in
CWP No.s 29612 and 29517 of 2019.

Udit Garg, Advocate,
for respondent No.2 in CWP NO. 28282 of 2019.

Varun Issar, Advocate,
for respondent No.2 in CWP No. 27723 of 2019.

Bhuvan Vats, Advocate

for the respondent-Shri Krishna Ayush University in CWP Nos. 27723, 29517 and 29612 of 2019

Suveer Sheokand, A.A.G., Punjab.

Deepak Balyan, A.G.G, Haryana.

RAVI SHANKER JHA, CHIEF JUSTICE

(1) All these petitions involve a common question of law and issue and are, therefore, heard and decided concomitantly.

(2) The petitioners, who are all private Health Science Educational Institutions, being aggrieved by the act of the respondents in prescribing passing of the National Eligibility and Entrance Test (NEET) as a necessary condition for grant of admissions in the BAMS/BHMS/BUMS courses, have filed these petitions challenging the constitutional validity of the notification dated 07.12.2018 amending the Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) Regulations, 1986 (hereinafter referred to as "the Regulations") framed in exercise of the powers under Section 36(1) (i) (j) & (k) of the Indian Medical Central Council Act, 1970 (hereinafter referred to as "the Act of 1970") as well as the letters issued by the Government of India, Ministry of Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homeopathy (AYUSH) dated 11.06.2018, 03.01.2019, 25.02.2019, 12.04.2019 and 04.07.2019 on the ground that the notification dated 07.12.2018 amending the Regulations by inserting clause 2(d) which provides for holding a uniform entrance examination for all the medical institutions at the undergraduate level, namely, the National Eligibility and Entrance Test (NEET), is beyond the rule making power conferred by the parent Act of 1970.

(3) It is the assertion of the petitioners that admissions to BAMS and BUMS courses be made on the basis of the marks obtained by the candidates in the 10+2 examination or at best, an entrance test to be conducted by the respective States and not on the basis of the NEET.

(4) Learned senior counsel appearing for the petitioners submits that the impugned amendment in the regulations and the letters have been issued by the Ministry of AYUSH without authority of law and

beyond the regulation making power conferred by Section 36 of the Act of 1970. It is submitted that even if the regulations and letters are held to be valid, the impugned amendment in the regulations cannot be implemented for 2019-20 Session as the last date to apply for appearing in the NEET examination was 30.11.2018 whereas the Regulation was amended after the cut of date on 07.12.2018, as a result of which the candidates who were desirous of obtaining admissions in BHMS, BAMS and BUMS courses could not appear in the NEET examination as they had no information or knowledge as on the last date of submitting the application form for appearing in the NEET examination, that appearing and passing in the NEET examination was compulsory. It is submitted that in such circumstances the act of the respondents'/authorities in granting admission through centralized counseling on the basis of NEET is contrary to law and deserves to be quashed with a direction to the authorities to permit the petitioners to fill up the vacant seats at the college level or by the States of Punjab and Haryana on the basis of the 10+2 result.

(5) In some of the petitions, a similar amendment made in the Homeopathy (Degree Course) Regulations, 1983 vide notification dated 14.12.2018 issued in exercise of powers under Section 33 of the Homeopathy Central Council Act, 1973 (hereinafter referred to as the 'Act of 1973' has been challenged on the same and identical grounds.

(6) In support of the aforesaid assertions, learned senior counsel appearing for the petitioners submits that a similar attempt was made by the respondents/authorities in the academic session 2018-19 whereupon the petitioners had approached this Court and obtained interim orders which were not challenged and attained finality and were infact permitted to continue by the Supreme Court in the case of ***Association of Managements of Homeopathic Medical Colleges of Maharashtra*** versus ***Union of India and others***[1]**.**

(7) It is stated that in the previous years the authorities had sought to make NEET compulsory on the basis of certain letters issued by them whereupon the Central Council for Indian Medicine issued a letter on 05.03.2018 (Annexure P-12) stating that the Act was required to be amended by incorporating a provision therein for holding NEET, only whereafter the same could be made compulsory. However, the impugned regulation dated 07.12.2018 has been notified amending the regulation without incorporating the necessary enabling provisions by

[1] 2019 SCC OnLine SC 113

making the necessary amendments in the Act of 1970 or in the Act of 1973 and therefore, the impugned notification dated 07.12.2018 is without the authority of law as per the Central Council itself and deserves to be declared *ultra-vires.*

(8) Learned senior counsel appearing for the petitioners in support of the aforesaid submissions submits that after the decision of the Supreme Court in the case of ***Modern Dental College and Research Centre and others*** versus ***State of Madhya Pradesh and others***[2]**,** in relation to MBBS and MDS admissions, the Government of India amended the Indian Medical Council Act, 1956 by incorporating Sections 10(D) and 33(1)(mb) vide notification dated 24.05.2016 and the Dentist Act, 1948 by incorporating similar amendments therein vide notification dated 05.08.2016. It is submitted that it is only after incorporating the aforesaid amendments in the Indian Medical Council Act and the Dentist Act that the authorities made admissions to MBBS, MDS courses through NEET compulsory. It is submitted that the attempt made by the Medical Council of India to enforce NEET without incorporating the amendment was in fact quashed by the Supreme Court in the case of ***Christian Medical College*** versus ***Union of India***[3]**,** though this decision of the Supreme Court was subsequently recalled and was ultimately decided in the case of ***Modern Dental College and Research Centre*** (supra). It is urged by the learned senior counsel appearing for the petitioners that it was in such circumstances that the letter dated 05.03.2018 was issued by the Central Council asking for amendment in the Act and therefore, in the absence of an amendment in the Act, the attempt of the Union of India to make NEET compulsory by amending the regulation without amending the parent Act of 1970 and the Act of 1973 is beyond the regulation making authority as Section 36(1)(i) and (k) of the Act of 1970 and Section 33 of the Act of 1973, as they stand today do not empower the CCIM or the CCH to notify any regulation regulating the admissions or prescribing NEET and the powers contained in Section 36 of the Act of 1970 and Section 33 of the Act of 1973 respectively are only confined to prescribing the standards of education.

(9) Learned senior counsel appearing for the petitioners has relied upon the decisions of the Supreme Court rendered in ***Federation of Indian Mineral Industries and others*** versus ***Union of India and***

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[2] 2016(7) SCC 353
[3] 2014(2) SCC 305

another[4]***; Indian Council of Legal Aid and Advise*** versus ***Bar Council of India***[5]***; M/s Lilasons Breweries (Pvt.) Ltd. and another*** versus ***State of M.P. and others***[6]***; M/s Assam Company Ltd. and another etc.*** versus ***State of Assam and others***[7]***; Kunj Behari Lal Butail*** versus ***State of H.P. 2000(3) SCC 40; State of T.N.*** versus ***M.P.P.Kavery Chetty***[8] ***and Union of India and others*** versus ***S.Srinivasan***[9] in support of his contention that the impugned amendment made in the regulation is beyond the rule making power prescribed under the Act of 1970 and the Act of 1973 and is, therefore, *ultra vires* and unconstitutional.

(10) Learned senior counsel appearing for the petitioners submits that the last date for applying for the NEET examination for the academic session 2019-20 was 30.11.2018 whereas the impugned amendment in the regulations was notified on 07.12.2018 and the Prospectus for the session 2019-20 was made operative by Guru Ravi Das Ayurvedic University, Hoshiarpur on 01.08.2019 prescribing NEET as the basis for granting admissions to BAMS courses. It is submitted that from the aforesaid dates and undisputed facts it is evident that the Prospectus and the Regulations prescribing NEET as the basis for admission were issued after the cut of date of 30.11.2018 for applying for NEET and, therefore, the candidates and students had no knowledge or information that NEET was necessary for admission to BAMS/BHMS/BUMS courses as a result of which several students though eligible and desirous of obtaining admission in the said courses did not appear in the NEET examination. It is submitted that in such circumstances the students as well as the petitioners were taken by surprise and have been deprived of their right to seek admission. It is submitted that as the requirement of NEET was notified subsequently the same cannot be enforced or made compulsory for admission to 2019-20 session.

(11) Learned senior counsel appearing for the petitioners submits that the petitioners filed the present petitions on and about 26.08.2019 and the interim orders were passed by this Court on 28.08.2019 and

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[4] 2017(16) SCC 186
[5] 1995(1) SCC 732
[6] 1992(3) SCC 293
[7] 2001(4) SCC 202
[8] 1995(2) SCC 402
[9] 2012(7) SCC 683

14/15.10.2019. It is submitted that several students who have either failed in NEET or have not appeared in the NEET have been granted admission by the respondent university through centralized counseling conducted by the university in compliance of the interim orders passed by this Court and, therefore, in view of the orders passed by the Supreme Court in the case of ***Association of Managements of Homeopathic Medical Colleges of Maharashtra*** (supra), the impugned notification be quashed and the admissions made pursuant to the interim orders passed by this Court be confirmed and regularized.

(12) Learned Additional Advocate General appearing for the State of Punjab submits that the admission and other matters relating to private Health Sciences Educational Institutions are regulated and governed by the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of fee and making of Reservation) Act, 2006 (hereinafter referred to as 'the Punjab Act'). It is submitted that Section 2(b) of the said Act defines "Common Entrance Test" to mean an entrance test conducted by the State Government or any other authority authorized by it. It is submitted that Section 3(3) of the Punjab Act mandates that admission in a private health sciences educational institution should be made in a fair and transparent manner on the basis of *inter-se* merit, determined by the Common Entrance Test or qualifying examination in accordance with the procedure notified by the State Government. It is submitted that the Government of Punjab vide notification dated 28.05.2018 notified the admission criteria to under graduate degree courses i.e. BAMS, BHMS and BUMS for the year 2018 onward in Government and private Ayurvedic, Homeopathic and Unani Institutes in the State of Punjab.

(13) Learned Additional Advocate General, Punjab submits that by notification dated 28.05.2018, it was notified that the admissions to the said courses shall be based on the merit of NEET to be conducted by the Central Board of Secondary Education and authorized Guru Ravi Das Ayurvedic University, Hoshiarpur to conduct the centralized counseling for admissions to BAMS, BHMS and BUMS courses on the basis of marks obtained in NEET. It is submitted that the entire procedure including the requirement for applying for admission on the basis of NEET was notified and made known to the public at large by the said notification on 28.05.2018 and was well within the knowledge of all concerned.

(14) It is submitted that the said notification was in existence and was duly notified on 28.05.2018 and is in existence since then. It is

submitted that Guru Ravi Das University, Hoshiarpur, Punjab while issuing its Prospectus annexed the said notification along with the same with the clear stipulation contained therein that all admissions including eligibility for admission to the courses would be governed by the Rules and Regulations notified by the Punjab Government. It was further notified that the eligibility would be such as is prescribed by the Punjab Government, University, Medical Institutions, CCIM and CCH, with the further stipulation that the admission and allotment of college shall be made as per the merits determined on the basis of NEET (UG) 2019.

(15) It is submitted that in the definition clause contained in the Prospectus, the eligible candidate has been defined to mean a candidate who satisfies the requirement of the eligibility prescribed in the Prospectus/Government Notification and the corrigendum issued from time to time and the word Government Notification has been defined as the notification dated 28.05.2018 and the corrigendum issued from time to time and other notifications issued for this purpose from time to time by the Department of Medical Education and Research. The eligibility condition of qualifying in NEET (UG)-2019 and admission to be made strictly as per the regulations/notification of the Punjab Government has also been clearly prescribed and notified.

(16) It is submitted that in the aforesaid circumstances as the statutory provisions of the Punjab Act clearly provide for a common entrance test to be conducted by the State of Punjab or any authority authorized by it and as the Punjab Government vide notification dated 28.05.2018 had clearly authorized the Central Board of Secondary Education to hold the NEET, which would be made basis for admission in the courses concerned and as that the statutory notification prescribing the procedure for admission under Section 3(iii) of the Punjab Act was also issued in this regard, therefore, no fault can be found in the procedure followed by the respondents' authorities or in the Act of the respondents in making admissions to the courses concerned on the basis of NEET (UG)-2019.

(17) It is submitted that as this notification was issued on 28.05.2018 well before the last date to apply for NEET 2019-20 i.e. 30.11.2018, therefore, the contention of learned senior counsel for the petitioners that the students or the candidates were unaware of the requirement of appearing in NEET is factually misconceived.

(18) Similar plea has been taken by the State of Haryana by placing reliance on the provisions of Shri Krishna Ayush University

Kurukshetra Act, 2016. It is submitted that while the State of Haryana has not enacted any legislation governing admissions, fee regulations etc. as has been done by the Government of Punjab by its Act of 2006, however, a notification governing the procedure of admission to courses concerned has been issued on 01.08.2019 containing similar stipulations and making passing of NEET a compulsory requirement.

(19) It is conjointly submitted by respective Additional Advocate General(s) appearing for the States of Punjab and Haryana that both the States on the basis of letters issued by CCIM and CCH were fully aware of the requirement of NEET for making admissions in the courses since 2018 and had duly adopted the same since 2018 itself and had also given due publicity to the said requirements. It is submitted that both the States had in fact implemented this requirement in the year 2018 as well which had led to filing of several petitions and passing of interim orders as well as the ultimate disposal of the matter in view of the order of the Supreme Court in the case of ***Association of Managements of Homeopathic Medical Colleges of Maharashtra*** (supra) and therefore, all the students, candidates, colleges and others were well aware of the fact that NEET was an essential requirement for obtaining admission in BAMS courses since 2018 itself.

(20) Learned counsel for the Union of India and the Central Council submit that the Central Government decided to implement NEET as a necessary condition for granting admission to various Ayush courses in the light of the judgment dated 09.05.2016 passed by the Supreme Court in the case of ***Mihir Abhijat Pathak and others*** versus ***Medical Council of India and another***x[10]**.** It is submitted that pursuant thereto repeated instructions including the impugned letters and instructions were issued by the Central Council on the direction of the Union of India. It is further stated that the Central Government vide the impugned gazette notifications dated 07.12.2018 and 14.12.2018 has made the necessary amendments in the regulations framed under the Act of 1970 and the Act of 1973. It is submitted that the power to prescribe for NEET is contained in clauses (i) (j) and (k) of Section 36 of the Act of 1970 and Section 33 of the Act of 1973 and therefore, the impugned notifications amending the regulations are in exercise of the statutory powers to make the regulations contained in the Acts. It is submitted that as the field of examination is also covered by the Central Acts, the Union of India and the Central Council have the power to

[10] 2012(7) SCC 683

prescribe combined entrance test to be held at the national level for making admissions in various courses. It is further submitted that the first part of Section 36 of the Act of 1970 and Section 33 of the Act of 1973 gives general powers to make the regulations for the purposes of carrying out the objects and purposes of the Acts and therefore, even if the source of power to prescribe for NEET is not found in clauses (i)(j) and (k) of Section 36 of the Act of 1970 and Section 33 of the Act of 1973, the same can be found in the general power to make regulations.

(21) Learned counsel for the Union of India and the Central Council submit that the instructions for making the NEET compulsory for admissions to various courses were issued way back in the year 2017 and have thereafter been repeated continuously. It is stated that in the year 2018 NEET was made compulsory and as is evident from a perusal of the decision rendered in the case of ***Association of Managements of Homeopathic Medical Colleges of Maharashtra*** (supra), the same was not challenged by the colleges and the issue raised before the Supreme Court was confined to prescription of a cut of percentile.

(22) It is submitted that Supreme Court in the case of ***Association of Managements of Homeopathic Medical Colleges of Maharashtra*** (supra) while permitting admissions made on the basis of interim orders passed by the High Court has categorically stated that it is only those candidates who have secured minimum marks in NEET-UG 2018 who shall be eligible for admission to the first year BHMS course for the academic year 2018-19. It is stated that the Supreme Court while permitting the aforesaid situation created by the interim orders passed by the High Court to continue for the academic year 2018-19 alone has further observed that the order passed by it is based on the peculiar facts of the case and would not be treated as a precedent. Union of India in its return has also brought on record the fact that it had filed a Special Leave Petition (C) No. 25464 of 2019 before the Supreme Court against the interim orders passed by the High Court of Karnataka and the Supreme Court by order dated 04.11.2019 has stayed the operation of the interim orders permitting admissions granted by the High Court of Karnataka. It has also been brought on the record that the Supreme Court in SLP (C) No. 25237 of 2019 has upheld the order passed by the Bombay High Court refusing to grant interim order to medical colleges. It is further stated that even in respect of the interim orders passed by this Court in respect of PG courses, the Supreme Court has stayed the interim orders passed by this

Court permitting admissions. It is submitted that as far as the UG courses are concerned, the Supreme Court instead of staying the orders of this Court, has permitted this High Court to proceed with and decide the matters finally.

(23) Learned counsel for the Union of India and Central Council further submit that all the colleges and the students know about the fact that NEET is compulsory for granting admission to Ayush courses since the last two years and it is for this reason that none of the students have approached this Court challenging its implementation. Union of India in its return has stated that for the academic year 2018-19, total 7,97,060 candidates have qualified the NEET examination against the total number of approximately 37,906 seats in Ayush courses available and therefore, the contention that students had no knowledge is incorrect and false.

(24) It is submitted that Union of India has the legislative competence to frame the regulations under Entry 66 List I and concurrent power to legislate in respect of the remaining field under Entry 25 List III of the 7th Schedule of the Constitution of India and therefore, the contentions to the contrary made by the learned senior counsel for the petitioners are meritless and deserve to be rejected.

(25) We have heard the learned counsel for the parties at length.

(26) Before we advert to the issues raised by the petitioners in the present case, it is pertinent to note that no student or candidate has approached this Court challenging the selection through NEET on any ground whatsoever and the petitions have been filed only by the private colleges. It is also an undisputed fact that the State of Punjab has framed the Punjab Act and issued a notification dated 28.05.2018 that is referable to the powers contained in Section 3(3) of the Punjab Act. It is also apparent that under the provisions of section 2(b) of the Punjab Act, common entrance test for making admissions to the courses concerned can be conducted by the State of Punjab or any authority authorized by it and that the State of Punjab by the notification dated 28.05.2018 has clearly stated that the admissions to the courses concerned shall be made on the basis of NEET. This stipulation in the notification is a clear authorization of the agency conducting NEET and is referable to Section 2(b) of the Punjab Act.

(27) The State of Punjab in the affidavit filed before this Court has clarified this aspect and stated that they have complied with the directions issued from time to time by the Central Council and that they

are bound by them and that in compliance thereof they have already issued a notification for making the admissions to the courses concerned on the basis of NEET. Similar submissions have been made by the State of Haryana and an identical notification dated 01.08.2019 for the session 2019-20 has been issued by it.

(28) The aforesaid act of the State of Punjab and State of Haryana or the respondents' universities of the respective States or the notification dated 28.05.2018 issued by the State of Punjab or the notification dated 01.08.2019 issued by the State of Haryana, have been challenged, assailed or objected to by the petitioners in the present petitions except in CWP No. 29517 of 2019 and CWP No. 29612 of 2019, wherein the Haryana notification has been challenged, in which no arguments in this Court have been made. Infact, the learned counsel appearing for the petitioners have unconditionally stated that they adopt the arguments of the learned senior counsel appearing in the Punjab matters and have not raised any arguments assailing the notification dated 01.08.2019 issued by the State of Haryana.

(29) In view of the aforesaid undisputed facts that emerge from the present petitions, it is evident that the petitioners have not challenged the act of the respondent-State of Punjab (and given up the same in the case of Haryana) in making admission on the basis of the merit lists of the States of Punjab and Haryana respectively prepared on the basis of NEET but have only challenged the act of the Central Council and the Union of India in amending the regulation vide impugned notification dated 07.12.2018 and the instructions issued by the Central Council asking the States to make admissions only on the basis of NEET on the ground that the same are beyond the authority of the Central Council.

(30) Apparently in the absence of any challenge to the notifications issued by the States of Punjab and Haryana and the admissions being made by the States themselves on their own by adopting the result of the NEET, mere challenge to the amendment in the regulations made by the Central Council and the instructions issued thereunder are meaningless as even a successful challenge to the same would not affect or reflect upon the validity of the admissions made by the States themselves on the basis of the State legislations and the notifications issued by them. In the absence of such a challenge a mere assertion that the notifications have become *non-est* on issuance of the letter dated 05.03.2018 by the Central Council proposing to first amend the Act of 1970 and the Act of 1973 as made by the learned senior

counsel is misconceived firstly on account of the fact that the Punjab notification is statutory and would not be affected by the letter and secondly because the Punjab Act and notifications of both the States are in conformity and not in conflict with the impugned notification and letters of the Central Council. In fact the reliance placed by the learned senior counsel on the letter dated 05.03.2018 Annexure P-12 is misplaced as this letter has itself lost significance in view of the impugned notification amending the regulations issued by the Central Council itself.

(31) On the same grounds, the contention of the learned senior counsel for the petitioner that the notifications of the States of Punjab and Haryana have become meaningless in view of the impugned amendments made in the regulation by the Central Council is also misconceived as there is no conflict or repugnancy between the impugned notification amending the regulation by the Central Council and the notifications of the Punjab and Haryana. More so, as the notifications of Punjab and Haryana not just prescribe that NEET is compulsory but stretches way beyond it and lay down the entire procedure for making admissions in Ayush courses, whereas the impugned notification is confined to the limited extent of inserting a clause in the regulation framed by the Central Council making NEET compulsory and does not prescribe the procedure for making admissions.

(32) As we are of the considered opinion that the act of the respondent States and Universities in following and accepting the directions of the Central Council for making admissions in the courses concerned on the basis of NEET finds due support and source of authority under the State Act and the notifications issued thereunder or in exercise of the powers under Article 162 of the Constitution of India and as the same have not been subjected to challenge in the present petitions, we do not find any illegality in the act of the authorities of the States of Punjab and Haryana and the respondents' universities in making admissions in the courses concerned on the basis of separate merit lists of the States of Punjab and Haryana prepared on the basis of NEET nor do we find any reason to interfere in the same.

(33) As far as the first contention of learned senior counsel for the petitioners regarding lack of power or authority in the Central Council to make the regulation prescribing for NEET on the ground that the said power does not flow from Section 36(1)(i)(k) of the Act of 1970 or Section 33 of the Act of 1973 is concerned, the same has to be

adjudged by examining the provisions of Section 36 of the Act of 1970 and Section 33 of the Act of 1973. Both the aforesaid sections provide that the respective Central Council with the previous sanction of the Central Government by notification in the official gazette may make regulations "generally to carry out the purposes of this Act" and "without prejudice to the generality of this power", such regulations may provide for the matters that are thereafter mentioned in clauses (a) to (p) of sub section 1 of Section 36 of the Act of 1970 and clauses (a) to (p) of Section 33 of the Act of 1973. The Statement of Object and Reasons of both these Acts state that they have been enacted to regulate practice or for prescribing the minimum standards of education and conduct of examination.

(34) The Supreme Court in a series of decisions has settled the law that where such an enabling provision empowers the making of rules or regulations "generally for carrying out the purposes of this Act" and thereafter enumerates the matters in respect of which Rules or Regulations may be made "without prejudice to the generality of the power", the particular instances mentioned subsequently are only illustrative and do not restrict the general rule making power conferred upon the authority to generally carry out the purposes of the Act and in such cases even if the Rule or Regulation in question is not covered by any of the illustrations mentioned in the Section, it does not affect the power to make the Rules/Regulations as the same can be framed in exercise of the general rule making power contained in the first part of the Section. The law in this regard has been laid down in the cases of ***Emperor*** versus ***Sibnath Banerji***[11]***; Om Parkash and others*** versus ***Union of India and others***[12]***; Afzal Ullah*** versus ***State of M.P.***[13]***; K.Ramanathan*** versus ***State of Tamil Nadu and another***[14]***; Ajay Canu*** versus ***Union of India and others***[15] ***and Ishwar Nagar Cooperative Housing Building Society*** versus ***Parma Nand Sharma and others***[16]**.**

(35) The basic law and decision in the case of ***Emperor*** versus ***Sibnath Banerji and others, 156*** (supra) which has been consistently followed by the Supreme Court in a series of decisions while dealing

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[11] AIR 1945 PC 156
[12] AIR 1971 SC 771
[13] AIR 1964 SC 264
[14] 1985(2) SCC 116
[15] 1988(4) SCC 156
[16] AIR 2011 SC 548

with a similar issue relating to interpretation of section 2 of Defence of India (Amendment) Act, 1940 which conferred general rule making powers on the Central Government by sub section (1) and thereafter gave certain illustrations in sub section (2) "without prejudice to the generality of the powers conferred by sub section (1)" the Privy Council was pleased to observe that:-

> **"**The material portions of section 2, Defence of India Act, 1939 (Act 35 of 1939), a amended by section 2, Defence of India (Amendment) Act, 1940 (Act 19 of 1940) are as follows:- "2. (1) The Central Government may, by notification in the Official Gazette, make such rules, as appear to it to be necessary or expedient for securing the Defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.
>
> (2) Without prejudice to the generality of the powers conferred by sub section (1), the rules may provide for or may empower any authority to make orders providing for, all or any of the following matters, namely:-
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> Their Lordships are unable to agree with the learned Chief Justice of the Federal Court on his statement of the relative positions of sub sections (1) and (2) of section 2, Defence of India Act, and counsel for the respondents in the present appeal was unable to support that statement or to maintain that Rule 26 was invalid. In the opinion of their Lordships, the function of sub section (2) is merely an illustrative one; the rule making power is conferred by sub section (1) and "the rules" which are referred to in the opening sentence of sub section (2) are the rules which are authorized by, and made under, sub section (1); the provisions of sub section (2) are not restrictive of sub section (1), as indeed is expressly stated by the words "without prejudice to the generality of the powers conferred by sub section (1)". There can be no doubt- as the learned

> Judge himself appears to have thought- that the general language of sub section (1) amply justifies the term of Rule 26, and avoids any of the criticisms which the learned Judge expressed in relation to sub section (2)."

(36) The law in this regard has again been analysed and elaborated with reference to the above cases by the Supreme Court in the case ***Bharat Sanchar Nigam Limited*** versus ***Telecom Regulatory Authority of India and others***[17]**.**

(37) In view of the law laid down by the Supreme Court, the contention of the petitioners to the effect that the impugned notification dated 07.12.2018 amending the regulation is unconstitutional and without authority of law as it does not fall within the ambit of Section 36(1)(i) & (k) of the Act of 1970 or the illustrations given under Section 33 of the Act of 1973, deserves to be rejected as even if the amendment in the regulation providing for conducting NEET does not specifically find its source in clauses (i) and (k) of Section 36(1) of the Act of 1970, the same can be framed under the general regulation making power conferred by the main part of Section 36 of the Act of 1970 or Section 33 of the Act of 1973, as the case may be, for generally carrying out the purposes of the Act.

(38) The contention of learned senior counsel for the petitioners that even otherwise no provision of the Act of 1970 or the Act of 1973, as they stand today, covers the field of prescribing the centralized entrance test like NEET and the submission in that regard based on the amendments made in the Indian Medical Council Act by inserting Section 10(a) is concerned, the same has to be adjudged on the basis of certain observations made by the Supreme Court in the case of ***Modern Dental College and Research Centre*** (supra) wherein the legislative powers of the Union of India and the State under Entry 66 List 1 read with Entry 25 List III of the 7th Schedule of the Constitution of India has been considered and analysed in the following terms:-

> "**101.** To our mind, Entry 66 in List I is a specific entry having a very specific and limited scope. It deals with coordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words "coordination and determination of standards" would mean laying down the said standards. Thus, when it comes to prescribing the

[17] 2014 (3) SCC 222

standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such coordination and determination of standards, insofar as medical education is concerned, is achieved by parliamentary legislation in the form of the Indian Medical Council Act, 1956 and by creating the statutory body like Medical Council of India (for short "MCI") therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as coordination of standards and that of educational institutions. When it comes to regulating "education" as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in List III Entry 25, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject-matter of List II Entry 11 ["**11.** "**Education**" including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III"] . Thus, power to this extent was given to the State Legislatures. However, this entry was omitted by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3-7-1977 and at the same time List II Entry 25 was amended [Unamended Entry 25 in List III read as: "Vocational and technical training of labour"] . Education, including university education, was thus transferred to the Concurrent List and in the process technical and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 completely otiose. When two entries relating to education, one in the Union List and the other in the Concurrent List, coexist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to coordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is

concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by List III Entry 25 is wide enough and as circumscribed to the limited extent of it being subject to List I Entries 63, 64, 65 and 66.

[25* Entry 11 : 'Education' including universities, subject to provisions of Entries 63, 64, 65 and 66 of List 1 and Entry 25 of List III]

[26* Unamended Entry 25 in List III read as: 'Occasional and Technical Training of Labour'].

102. Most educational activities, including admissions, have two aspects: the first deals with the adoption and setting up the minimum standards of education. The objective in prescribing minimum standards is to provide a benchmark of the calibre and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education determined nationwide is ancillary to the very determination of standards. Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was thought desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the Constitution- makers provided for List I Entry 66 with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

103. The second/other aspect of education is with regard to the implementation of the standards of education determined by Parliament, and the regulation of the complete activity of education. This activity necessarily entails the application of the standards determined by Parliament in all educational institutions in accordance with the local and regional needs. Thus, while List I Entry 66 dealt with determination and coordination of standards, on the other hand, the original List II Entry 11 granted the

States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to education was removed and deleted, and the same was replaced by amending List III Entry 25 granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of education, except that which was specifically covered by List I Entries 63 to 66.

104. No doubt, in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] it has been observed that the entire gamut of admission falls under List I Entry 66. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions. In Gujarat University [Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703 : 1963 Supp (1) SCR 112] , a Bench of five Judges examined the scope of List II Entry 11 (which is now List III Entry 25) with reference to List I Entry 66. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by List I Entry 66 must prevail over power of the State. Validity of a State legislation depends upon whether it prejudicially affects "coordination or determination of standards", even in absence of a Union legislation. In R. Chitralekha v. State of Mysore [R. Chitralekha v. State of Mysore, AIR 1964 SC 1823: (1964) 6 SCR 368] , the same issue was again considered. It was observed that if the impact of the State law is heavy or devastating as to wipe out or abridge the Central field, it may be struck down. In State of T.N. v. Adhiyaman Educational & Research Institute [State of T.N. v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104 : 1 SCEC 682] , it was observed that to the extent that State legislation is in conflict with the

Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120: 1 SCEC 742] and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya [State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1 : 5 SCEC 637] . Though the view taken in State of M.P. v. Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] and Ajay Kumar Singh v. State of Bihar [Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401] to the effect that admission standards covered by List I Entry 66 could apply only post admissions was overruled in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] , it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] .

105. We do not find any ground for holding that Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] excludes the role of States altogether from admissions. Thus, observations in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] that entire gamut of admissions was covered by List I Entry 66 cannot be upheld and overruled to that extent. No doubt, List III Entry 25 is subject to List I Entry 66, it is not possible to exclude the entire gamut of admissions from List III Entry 25. However, exercise of any power under List III Entry 25 has to be subject to a Central law referable to Entry 25.

106. In view of the above, there was no violation of right of autonomy of the educational institutions in CET being conducted by the State or an agency nominated by the State or in fixing fee. The right of a State to do so is subject to a Central law. Once the notifications under the Central statutes for conducting CET called "NEET" become operative, it will be a matter between the States and the Union, which will have to be sorted out on the touchstone of Article 254 of the Constitution. We need not dilate on this aspect any further."

(39) From the aforesaid analysis of the two entries in the Constitution made by the Supreme Court and the law laid down therein, it is apparent that while the Union of India has the sole power to legislate in respect of coordination and determination of standards in institutions of higher education or research as well as scientific and technical institutions under Entry 66 List I, it concurrently has the power along with the State to legislate on the topic of education including technical education, medical education and Universities, vocational and technical training of labour under Entry 25 of List III of the Constitution of India.

(40) In the circumstances and in view of the law as laid down by the Supreme Court it is apparent that the Union of India while having the exclusive legislative powers in respect of matters under Entry 66(1) has concurrent legislative power to enact the laws in respect of Entry 25 List III along with the State and therefore its power to legislate spreads over the entire field covered by Entry 66 List I and Entry 25 List-III and in such circumstances it can make the laws relating to conduct of centralized entrance test like NEET subject to the question of repugnancy or conflict in respect of any such law made by the Union viz.a.viz. the State which would have to be adjudged on the touchstone of the parameters stated in Article 254 of the Constitution of India as stated by the Supreme Court in paragraph-106 in the case of ***Modern Dental College and Research Centre*** (supra). Apart from the above the Union and the State both have co-extensive powers to issue executive instructions on the topics on which they can legislate in view of Article 73 and Article 162 of the Constitution of India.

(41) The issue raised by the petitioners, is, therefore, to be adjudicated on the basis of the facts prevailing in the present case on the touch stone of the law as enunciated above.

(42) The undisputed facts prevailing in the present case are that the entire process of admission fee etc. in the State of Punjab including providing for holding of centralized entrance test by the State or anybody authorized by it is governed by the Punjab Act and while the State of Haryana has not framed any Act in similar terms, it has enacted Shri Krishna Ayush University Kurukshetra Act, 2006 governing the admissions to Ayush courses and has also issued a notification dated 01.08.2019 prescribing the procedure for admissions under Article 162 of the Constitution of India. It is also undisputed that both the States of Punjab and Haryana by notifications dated 28.05.2018 and 01.08.2019 respectively have provided that the

admissions to BAMS, BHMS and BUMS courses would be made on the basis of centralized NEET and the merit list prepared on the basis of NEET examination in the States of Punjab and Haryana.

(43) The impugned notification amending the central regulation dated 07.12.2018 and the Homeopathy notification dated 14.12.2018 issued by the Central Council also mandate that the admissions to BAMS, BHMS and BUMS courses would have to be made strictly in accordance with merit on the basis of NEET. The affidavit filed by the State of Punjab before this Court as well as the stand of the State of Haryana before this Court is clear to the effect that they are bound by and have followed the regulations/instructions/letters of the Central Council and have decided to make admissions in the courses concerned strictly on-merits on the basis of NEET. It is also observed that the State of Haryana has also followed and complied with the directions of the Central Council and like the State of Punjab has the power to make laws relating to education including technical education, medical education and Universities etc. under Entry 25 List III of the Constitution of India and as its executive power extends to the matters with respect to which the State has the power to legislate under Article 162 of the Constitution of India, it has issued a notification dated 01.08.2019 prescribing NEET as the basis for making admissions in the courses concerned. The State legislation and the notifications are in consonance with, and not repugnant to, the impugned amendment in the regulation and the question of conflict or repugnancy under Article 254 does not arise in the facts of this case. For the reasons stated above, we are also of the considered opinion that the impugned notification issued by the Central Council amending the regulation does not affect the operation of the Punjab Act of 2006 and the notification issued thereunder and the notification issued by the State of Haryana and the contention to the contrary is hereby rejected.

(44) From the aforesaid analysis it is clearly established that the Union of India has the exclusive power to frame laws in respect of matters enumerated in Entry 66 and concurrent power along with the States to frame laws in respect of matters mentioned in Entry 25 of List III of the 7th Schedule of the Constitution of India, in other words, as the power to make laws conferred upon the Union of India is not confined to matters relating to coordination and determination of standards in institution of higher education alone but also extends to and co-exists with the legislative power of the State in respect of education including technical education and medical institutions,

universities, vocational and technical training of labour etc., that is, the entire field covered by both the entries, and as in the facts of the present case there is no repugnancy between the impugned notifications dated 07.12.2018 and 14.12.2018 and the impugned letters issued by the Central Council on the one hand and the Punjab Act, the notification issued by the State of Punjab dated 28.05.2018 and the notification issued by the State of Haryana dated 01.08.2019 respectively, and as all the respondents i.e. Union of India as well as the States of Punjab and Haryana have equivocally and unanimously agreed and decided to grant admissions in BAMS, BHMS & BUMS courses on the basis of NEET, therefore, we are not required to delve into the question as to whether the impugned notifications fall within the scope of the Act of 1970 or the Act of 1973, in the facts of the present case.

(45) In conclusion of the above discussion, we are of the considered opinion that there is no conflict, repugnancy or inconsistency between the provisions of the impugned amendment in the regulation dated 07.12.2018 and the Homeopathy notification dated 14.12.2018 viz.a.viz. the Punjab Act as well as the notifications issued by the State of Punjab dated 28.05.2018 and of Haryana dated 01.08.2019. We also do not find any ground to declare the amendment made in Regulation vide the impugned notification dated 07.12.2018 as *ultra vires* the powers conferred by the Act of 1970 or the Act of 1973 or to declare the same to be unconstitutional.

(46) As far as the contention of learned senior counsel for the petitioners regarding lack of prior intimation and knowledge of the necessity for appearing in NEET is concerned, it is pertinent to note that none of the students have approached this Court alleging that they had no knowledge or information regarding the requirement of appearing in NEET for the purposes of obtaining admission in BAMS, BHMS & BUMS courses and therefore, *per se* the contention of the petitioner colleges to the contrary being unsubstantiated deserves no consideration.

(47) Quite apart from the above, the record of the present case indicates that as far as back on 09.06.2017 the Central Council had issued a direction for making NEET compulsory for granting admission to the courses in question. It is also undisputed that NEET was actually introduced for the session 2018-19 which fact has been clearly stated in the first paragraph of the order passed by the Supreme Court in the case of ***Association of Managements of Homeopathic***

Medical Colleges of Maharashtra (supra) wherein it has been stated that the Ministry of Ayush, Government of India, vide its letters dated 12.02.2018 and 15.06.2018 had instructed all the State Governments and concerned Universities to admit students in Ayush under graduate courses on the basis of NEET merit list for the academic session 2018-19 which was not under challenge, though the applicability of NEET was assailed before this Court in the year 2018 and interim orders were passed permitting admissions to candidates even without NEET for that session.

(48) The facts on record indicate that the State of Punjab, vide statutory notification dated 28.05.2018 which finds its source of power in the Punjab Act, had already notified the mandatory requirement of appearing and passing NEET for admission to BAMS, BHMS & BUMS courses. Wide publicity in view of the litigation filed all over the country against the implementation of NEET for AYUSH courses in the year 2018 was made throughout and was known to everyone. Though it is true that the Prospectus of the Guru Ravi Das Ayurvedic University was made operative w.e.f. 01.08.2019 i.e. after the cut of date for appearing in the NEET examination, however, it is also equally established that the said Prospectus was based upon the statutory notification issued by the State of Punjab on 28.05.2018 which was in existence and is part of the Prospectus and that this statutory notification prescribing NEET was published several months before the cut of date of 30.11.2018 for applying for NEET.

(49) It is in the back ground of the aforesaid undisputed facts that none of the students have approached this Court or any authority raising a grievance regarding lack of information or knowledge regarding the mandatory requirement of appearing in NEET for obtaining admission in Ayush under graduate courses. In fact the Union of India has brought on record the fact that 7,97,060 candidates have qualified against 37,906 Ayush seats. In the circumstances we are of the consideration opinion that this issue raised by the petitioners is meritless and deserves to be rejected.

(50) In the facts and circumstances of the present case we do not find any merit in any of the petitions which are accordingly dismissed.

(51) Before we part of these cases it is pertinent to note that this Court in various petitions had granted interim orders permitting the students without NEET to be considered and granted provisional admissions with the specific condition that the admissions would be granted with the clear stipulation that it would be subject to the final

outcome of the present petitions. It is stated before this Court that pursuant to the aforesaid condition the students who had not appeared in NEET or who have failed in NEET have been granted admissions with the stipulation that the admissions would be subject to the final outcome of the present petitions and therefore, no right or equity has accrued in anybody.

(52) In view of the conclusion recorded by us that NEET is mandatory for obtaining admissions in Ayush under Graduate courses, therefore, all admissions made to the contrary are illegal and cannot be sustained and therefore, only those admissions made on the basis of appearing and passing in NEET can be sustained or continued by the authorities. It is directed accordingly.

(53) With the aforesaid directions, all these petitions stand dismissed. There shall be no orders as to costs.

A photocopy of this judgment be placed in all the connected files.

Ritambhra Rishi