

(2016) 02 BOM CK 0161
In the Bombay High Court
Case No : Writ Petition No. 1013/2015

Aditya Dhananjay Phadte and Others	APPELLANT
Vs	
State of Goa and Others	RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 2 AIRBomR 744 : (2016) 5 BCR 690

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : S.D. Lotlikar, Senior Advocate and M. Furtado, Advocate, for the Appellant; V. Rodrigues, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—1. Heard Mr. S.D. Lotlikar, learned Senior Counsel appearing for the petitioners, Mr. V. Rodrigues, learned Government Advocate appearing for the respondents No. 1 and 2, Ms. A. Kamat, learned Counsel appearing for the respondent No. 3 and Mr. S.S. Kantak, learned Senior Counsel appearing for the intervenors.

2. The above petition, filed by five petitioners on the ground that have successfully passed the MBBS Degree Examinations and are eligible for seeking admissions to the Post Graduate Degree and Diploma Course of the Goa University, at the Goa Medical College, Bambolim. The petitioners have, inter alia, prayed for a direction that AIPGMEE, 2016 be cancelled and admissions to the Post Graduate Degree and Diploma Courses 2016-17 be conducted on the basis of the Goa (Rules for Admission to Post-graduate Course of the Goa University at the Goa Medical College) Rules, 2004 ("Admission Rules 2004" for short) at Exhibit A. In the alternative, to issue an appropriate writ, order or direction, directing that the implementation of the All India Post Graduate Medical Entrance Examination 2016 (AIPGMEE) should not be governed in so far as admissions to the Post Graduate Diploma Course 2016 are concerned. The

petitioners have also sought for a relief that admission Norms as contemplated by the Amendment of 2015 be struck down or in the alternative, it be liable to be directed that they should not be made applicable to the admissions for the year 2016-17.

3. Briefly, the facts of the case, as stated by the petitioners, are that each of petitioners were admitted to the MBBS Degree Course consisting of three examinations which are described as First Year, Second Year and Third Year MBBS Examinations. After they successfully completed the MBBS Degree Course, somewhere in the year 2014 they are undergoing their Compulsory Internship which would extend till the end of February, 2016. It is further their case that they are, as such, eligible for admissions to the Post Graduate Degree and Diploma Courses of the Goa University, at the Goa Medical College at Bambolim for the Academic year 2016-17. It is further their case that from the Academic Year 2004-05, admissions to the Post Graduate Degree and Diploma Courses of the Goa University, at the Goa Medical College are regulated by the Admission Rules 2004 which were later amended in the year 2005. It is further their case that save and except during the year 2013-14 when there was confusion in the matter of determining the basis for admission to the Post Graduate Degree and Diploma Course of Goa University at the Goa Medical College, as to whether it should be NEET Post Graduate 2013, which later came to be quashed by the Honourable Supreme Court, by Judgment dated 18th July, 2013, or they should be governed by such Rules framed by the State Government. After the confusion of NEET was over, the Government of Goa continued granting admissions to the Post Graduate Degree and Diploma Courses of the Goa University at the Goa Medical College, on the basis of the Admission Rules 2004. It is further their case that when the petitioners got themselves admitted to the MBBS Degree and Diploma Courses of the Goa University at the Goa Medical College in the year 2010, they were aware and conscious of the fact that future prospects in their career, namely their chances of securing the admission to the Post Graduate Degree and Diploma Course of the Goa University at the Goa Medical College would be dependent on their performance in the First, Second and Third Year MBBS Examinations. It is further their case that on these legitimate expectations they had done all that was necessary for them to ensure their admissions to the Post Graduate Degree and Diploma Courses of the Goa University at the Goa Medical College. It is further their case that they were shocked that in the month of August, 2014, a Circular dated 1st August, 2014, was issued by the Additional Secretary (Health), Government of Goa, making a reference to the Note dated 18th July, 2014 regarding rationalizing the admissions for the Post Graduate Degree and Diploma Courses and stating that the Government was conveying its approval for the implementation from the Academic Year 2016-17 to the effect that there shall be a Common Entrance Test (CET) at the end of the Internship covering full Courses of MBBS, to be conducted by the AIPGMEE for obtaining State Merit List. The CET shall carry only 50% weightage marks and the balance 50% weightage shall be combined merit of First, Second and Third Years Part-I

and IIIrd Part of MBBS Course and upon preparing such combined merit list, it shall form the basis for admission to the Post Graduate Degree and Diploma Courses. It is further their case that instructions would be issued by the Dean, Goa Medical College to the Head of Departments to obtain noting and signatures of the Interns and Post Graduate Diploma students against their names, towards aforementioned Circular dated 1st August, 2014. It is further their case that they were coerced into signing and acknowledging the said Circular dated 1st August, 2014, entirely against their will. The petitioners also contend that the Government did not adopt any measure which would indicate that the new admission norms, as envisaged in the aforesaid Circular dated 1st August, 2014 which is a departure from the earlier norms for admissions, would be actually implemented from the academic year 2016-17. It is further their case that such a change was incorporated by introducing an amendment to the existing Rules for admissions to the Post Graduate Degree and Diploma Courses in terms of the Admission Rules 2004, which came to be published only thereafter. It is also their case that the Norms have not been published in the Official Gazette, nor specific details were submitted for the purpose of change in Norms for such selection. It is further contended that in the Circular dated 1st August, 2014, the CET at the end of Internship covering full courses of MBBS, would be conducted by the National Board of Examination, New Delhi (NBE) as AIPGMEE for obtaining the State Merit List which would carry only 50% weightage marks, and no steps were taken by the Government to get the NBE to conduct such CET for the State of Goa. It is further their case that as per the Information Bulletin for the AIPGMEE, as circulated by the NBE, which inter alia includes Clause 9(b), pertaining to "Admissions to the State Medical Colleges" provides that the State Authority, namely the Director of Medical Education/Vice Chancellor/Principal/Superintendent of Inspection or any other competent Authority may approach the Ministry of Health, Government of India for obtaining the result and data of the candidates for the AIPGMEE 2016 from the NBE. It further states that the Ministry shall be providing any data of candidates and the result without applying the reservations prevalent in the State and the Merit List and Degree List for the State/University concerned shall be generated by the State itself. It is further their case that several candidates, including the petitioners, made a representation to the Health Secretary, Government of Goa objecting to the changes in the Norms, but, however, the representation has not been decided by the respondents. As no response was forthcoming from the respondents, the petitioners filed the above petition.

4. The respondent No. 2 filed an affidavit-in-reply dated 26th November, 2015, which is stated by the learned Government Advocate to be also on behalf of the respondent No. 1. It is his contention that the Apex Court has, time and again, held that in the matter of admissions, it is within domain of the State Government, University or the Expert Bodies to lay down the criteria and the Courts would not interfere in the matters of laying down the criteria for admissions to a particular faculty. It is stated by the respondent No. 2 that

admission criteria adopted by the respondents is not violative of any of the provisions of law. It is further his case that vide notices in the National and local newspapers, the NBE had also conveyed the decision of the Goa Government to participate in the AIPGMEE, with effect from the Academic Year 2016-17. It is also his case that such news items were published in the Times of India, Goa Edition dated 31st August, 2014 and 9th September, 2014. It is further his case that the decision was based on all considerations and made applicable by the Government from the Academic year 2016-17 in order to give the prospective students sufficient time to prepare for the AIPGMEE. It is further his contention that the evaluation of the students from one University differs from the students from other Universities and as per the Medical Council of India Regulations, the aggregate MBBS merit would be applicable as the sole criteria for merit for the Post Graduate seats selection, if all candidates pass from the same University from the same State/Union Territory. It is further his case that it was felt that if the entire merit for the Post Graduate admissions were to be solely based on the AIPGMEE/State Entrance Examination, it would be unfair to all the meritorious students who work hard through their MBBS Course to secure high marks. In order that the students who have performed well during their studies in the three years MBBS Courses, the weightage for such performance of 50% was also considered. He has also stated that a representation dated 23/4/2014 of about 500 students from the Medical and Dental College for holding a common entrance test for admission to the Post Graduate Course was received and in view of such representation, Government, after considering all aspects, has taken a decision on 1st August, 2014. He has further stated that until the current Academic Year 2015-16, the criteria of merit for admissions to Post Graduate Degree and Diploma Courses was as per the Admission Rules 2004 and 2005. But, however, the Public Health Department of the Government of Goa, issued a Circular dated 1st August, 2014 which shall be followed for admissions to Post Graduate Degree and Diploma Courses for the Academic Year 2016-17. It is also his contention that the Circular dated 1st August, 2014 was duly brought to the notice of the Interns, including the Petitioners and they were accordingly asked to appear for the AIPGMEE 2016 by obtaining necessary details. He has denied that the Government of Goa has been totally silent and has done nothing to determine the weightage of MBBS/AIPGMEE marks. The respondent has disputed the contentions of the petitioners and prayed that the petition be rejected.

5. The respondent No. 2, thereafter, filed an additional affidavit dated 1st December, 2015 to place on record the representation made by the Students of the Goa Medical College and Goa Dental College in April, 2014.

6. An additional affidavit dated 11th January, 2016 was again filed by the respondent No. 2 to bring on record the Goa (Rules for Admission to Post-graduate Degree and Diploma Courses of the Goa University at the Goa Medical College) (Second Amendment) Rules, 2015.

7. The respondent No. 2 filed yet another Additional Affidavit-in-reply to the

amendment carried out by the petitioners, dated 27th January, 2016. He has stated therein that the averments by the petitioners in unambiguous terms suggest a miniscule minority at odds with expressed sentiments of the majority of the candidates aspiring enrollment to the Post Graduate Degree and Diploma Courses. He has further stated that the very tenor of the pleadings suggests egoistic motives and myopic self-interest of the petitioners seeking a writ from this Court to repudiate the Post Graduate Admission Rules. He has also stated that the petitioners have not raised any averments that cogently espouses the violation of the fundamental rights or commission of legal infirmity and that there is no case of mala fides made out by the petitioners. He has also contended that the petitioners have impetuously set out upon a litigious path which ought not to intrude upon the writ jurisdiction. He has further contended that the Authorities have, in exercise of powers, appointed the NBE, as the Competent Authority and have accordingly accredited participation in the AIPGMEE, which is a National Level Examination.

8. Mr. S.D. Lotlikar, learned Senior Counsel appearing for the petitioners has reiterated the contentions raised by the petitioners in the petition referred to herein above and submitted that the whole action on the part of the respondents to change the Norms for admissions to the Post Graduate Degree and Diploma Courses is ultra vires, mala fide and lacks reasonableness. The learned Senior Counsel further submits that in terms of Admission Rules 2004 enacted by the State Government, the selection to the Post Graduate Degree Courses was on the basis of marks secured in the three years MBBS Degree Course conducted by the Goa University. The learned Senior Counsel further submits that as such, the petitioners have strived hard to excel in the said examinations, with expectations that they would easily be selected to the Post Graduate Degree Course. The learned Senior Counsel further points out that the Circular dated 1st August, 2014 is illegal and discloses total non-application of mind, nor any experts in the field have been consulted to come to the conclusion that such a changed criteria for admissions would be feasible and proper for the students of the Goa Medical College. The learned Senior Counsel further submits that the MCI Regulations clearly provides that the admission to the Post Graduate Courses can be on the basis of cumulative marks secured in the three years MBBS Degree Course and that in case the respondents want a common entrance test to be conducted, such entrance test would be confined only for the State of Goa conducted either by the College or by a Competent Authority, nominated by the State. The learned Counsel further points out that the AIPGMEE is only for the purpose of filling up the seats of All India Quota and such examinations cannot be used for the purpose of preparing a State merit list to fill up the posts reserved for the Students from the College. The learned Senior Counsel further points out that the manner of evaluating the students of All India Quota is on percentile basis and, as such, this criteria cannot be applied for the purpose of evaluating the seats reserved for Goa quota. The learned Senior Counsel has, thereafter, taken us through the Admission Rules 2004 to point out that there was no notification

issued amending such Rules and consequently, the exercise of the respondents by resorting to such type of criteria, without it being notified in the Official Gazette cannot stand the legal scrutiny and, as such, the exams for admissions for this year for the Post Graduate Degree Courses cannot be on the basis for such exams. The learned Senior Counsel further points out that the petitioners have been coerced in appending their signatures to the Circular dated 1st August, 2014, without being informed that such Norms would be followed from the Academic Year 2016-17. The learned Senior Counsel further points out that the exercise resorted to by the respondents is totally unjust, unfair and as such deserves to be quashed and set aside. The learned Senior Counsel further submits that in the alternative such criteria can be followed for the next Academic Year 2017-18, but not for the current Academic Year 2016-17. The learned Senior Counsel has, thereafter, taken us through the Rules, as well as the Norms involved for such admissions and submitted the acts of the respondents in changing the manner of evaluation for admission to the Post Graduate Courses is untenable in law.

In support of his submissions, the learned Senior Counsel has relied upon a Judgment of this Court in Writ Petition No. 210/1997 in the case of Master Vasudeo alias Amey S. Kamat v. State of Goa others dated 6th August, 1997.

9. On the other hand, Shri V. Rodrigues, learned Government Advocate appearing for the respondents has pointed out as per the Circular of 1st August, 2014, such criteria was intended to be introduced from the Academic Year 2014-15, but, however, the Honourable the Chief Minister, upon consideration of the difficulties of the students, has taken a decision that such criteria would be followed from the Academic Year 2016-17. The learned Government Advocate further points out that the criteria was being changed based on the representation of more than 500 Students who pointed out the drawbacks in conducting the Exams of the First, Second and Third Year MBBS Course, considering that there is only one Medical College and only one University. The learned Government Advocate further pointed out that after considering such representation, the respondents took a decision to appoint the NBE, New Delhi as the Competent Authority to conduct a common examination for the Students of the State of Goa who intend to seek admission to Post Graduate Courses. The learned Government Advocate further points out that as per the said Norms, 50%, weightage would be given in terms of the Admission Rules 2004 for the marks obtained in the Three Years MBBS Degree Course, following the criteria specified in the Admission Rules 2004. The learned Government Advocate further submits that the remaining 50% weightage would be given for the performance in the All Indian Examination conducted by the NBE. The learned Government Advocate further points out that it cannot be disputed that the NBE is a reputed and prestigious Institution, conducting specialized examinations for the Post Graduate Students who seek admissions to prestigious Colleges in India and as such, competence of such an Institution can, by no means, be doubted. The learned Counsel further submits that the contention of Mr. Lotlikar, learned

Senior Counsel appearing for the petitioners that the evaluation for such National Examinations is on percentile basis, which would not be feasible for selecting the seats for the quota reserved for the Students of the Goa Medical College, cannot be accepted as NBE has agreed to provide the details of the percentage marks obtained by each of the Goan Student and, as such, the evaluation would be on percentage basis and not on percentile basis. The learned Government Advocate has further submitted that minimum passing marks which are required to get a seat on All India Quota at such National level shall not be applicable to the students who are seeking seats reserved for the students of the Goa Medical College. The learned Government Advocate further points out that to get the Post Graduate admissions, such students have the capability of answering any Exams and it is not open for the petitioners to choose a particular mode of criteria for evaluating their performance. The learned Counsel further points out that even to conduct the Examinations in Goa, such aspect was in fact discussed by the State Government with the concerned Authorities at the NBE, but, however, on account of administrative and technical difficulties, the NBE conducts examinations only at few centers in the Country. The learned Government Advocate has further submitted that there was complete application of mind on the part of the State Government whilst taking such decision and, as such, the question of seeking interference of this Court by the petitioners is totally unjustified. The learned Counsel further points out that the petitioners were aware about answering such examinations way back in the year 2014 and have filed the present petition only on the eve when the exams were scheduled to be held and, as such, the petition itself is barred by laches. The learned Government Advocate further points out that more than 250 students have applied for such exams and have no grievance with the manner in which the criteria is established by the respondents for evaluating their performance for admission to the Post Graduate Courses. The learned Government Advocate, as such, submits that the question of interfering in the decision at the instance of only five petitioners would be totally unjustified, besides untenable in law. The learned Government has also brought to our notice the publications in the newspapers, with the initial notice, the clarifications issued in "The Times of India" Goa Edition dated 9th September, 2014 that the Government of Goa has decided to participate in the AIPGMEE as per the Scheme so prescribed, with effect from Academic Year 2016-17 and not from 2015. The learned Government has also brought to our notice that the NBE was appointed as the Competent Authority in 2014 itself to conduct such exams. The learned Government Advocate, as such, points out that the above petition be rejected as, grave injustice would occasion to the students who have studied for the exams and have in fact answered the exams for the current year. The learned Government Advocate, in support of his submissions, has relied upon a Judgment of this Court reported in , 2005 (5) Bom CR 649 in the case of Miss Ankita Subhash Lotlikar (minor) through her natural guardian and ors. v. State of Goa and others and another Judgment also of this Court, reported in , AIR 1992 Bombay 233 in the case of Ashwin Prafulla Pimpalwar v. State of Maharashtra and others.

10. Mr. S.S. Kantak, learned Senior Counsel appearing for the Intervenors has supported the contention of the learned Government Advocate. The learned Senior Counsel has pointed out that more than 250 students have answered the examination and grave injustice would occasion in case any relief sought is granted at the instance of only five petitioners. The learned Senior Counsel further submits that about 500 students had made a representation to the Government for change of criteria of admission to the Post Graduate Courses in April, 2014 and, as a result of such representation, the Government took a decision in August, 2014 to be a part of the AIPGMEE. The learned Senior Counsel has, thereafter, taken us through the MCI Regulations to point out that there is no irregularity committed by the Government in changing the criteria in the matter of admissions to the Post Graduate Courses. The learned Counsel further points out that there is no requirement for gazetting the amendment, as according to him, Admission Rules 2004, as well as the MCI Regulations itself permit the Government to follow such a course for the purpose of admissions to the Post Graduate Courses. The learned Senior Counsel further points out that the amendment is not a legislative act which requires to be gazetted and, as such, the Circular which was given a wide publicity provided sufficient knowledge that the criteria for admissions would be governed by the said Circular of 1st August, 2014. The learned Senior Counsel further points out that majority of the students have relied upon such Circular and answered the exams and they would be subjected to injustice in case any relief is granted in the above petition. The learned Senior Counsel, as such, submits that the petition be rejected.

11. We have considered the submissions of the learned Counsel and we have also gone through the record. Before we go into the merits of the rival contentions, we shall first examine whether the petition suffers from laches. Perusal of the record reveals that the Circular was issued on 1st August, 2014. Such circular was widely circulated amongst all the Students, as well as the petitioners herein. It is also seen that all the petitioners are signatories to the information circulated by the respondents amongst all the Interns. The records also reveal that one of the petitioners had also made a representation, along with other 500 students to change the eligibility criteria for admissions to the Post Graduate Courses. There are specific details in the said representation as to why the Students wanted that a test be also conducted for the purpose of evaluating the students for such admissions to the Post Graduate Courses. The fact that the admissions to the Post Graduate Courses would be conducted for the Academic Year 2016-17 in the modified Norms were widely circulated in public vide news papers, and on the Official Website. The petitioners cannot, now claim that they were not aware about such Norms in the year 2014. The contention of the petitioners that they were coerced to sign such a Circular cannot be accepted as, there is no material produced on record on that count. The petitioners filed the petition only on 6/11/2015 when such exams were being scheduled and it cannot be disputed that a number of students had acted upon such Circular and prepared themselves to answer such exams. The Intervenors,

who are 13 in number, have also supported the stand taken by the State Government to have the admissions for the Post Graduate Courses under the new Norms. The contention of the petitioners that as similar exams for the Dental College were postponed, the petitioners felt that such exams for the Post Graduate Courses of the Goa Medical College would also be postponed, is without any substance. The reason for postponing the Dental College exams is a totally different decision. As such, the petitioners cannot now, on the eve of such examinations, approach this Court for a relief which would cause great injustice and inconvenience to more than 250 students who were scheduled to answer the All India Examinations for the year 2016-17. As such, we find that the contention of the learned Counsel appearing for the respondents and the Intervenors that the petition is barred by laches has to be accepted. The petitioners have filed this petition belatedly, though they were very well aware that after they complete the MBBS Degree Course, for admissions to the Post Graduate Courses, they would be subjected to the Common Entrance Test. On this ground alone, we find that the question of any interference, at this stage, in exercise of our jurisdiction under Article 226 of the Constitution of India would not at all be justified, as it would cause grave injustice to the others who have also answered the same exams.

12. We shall now deal with the other contentions of the learned Counsel appearing for the respective parties. Relevant portion of clause 9(2) of the Medical Council of India Postgraduate Medical Education Regulations, 2000 ("MCI Regulations" for short) read thus :

"9(2) For determining the "Academic Merit", the University/Institution may adopt the following methodology:--

(a) On the basis of merit as determined by a "Competitive Test" conducted by the state government or by the competent authority appointed by the state government or by the university/group of universities in the same state; or

(b) On the basis of merit as determined by a centralized competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wises. Or

(d) Combination of (a) and (c).

....

..."

Perusal of the said provision, clearly contemplates that combination of sub-clauses (a) and (c) can also be the criteria for determining the academic merits of the candidates. Sub-clause (c) is in consonance with the Admission Rules 2004 framed by the State Government. The NBE has been authorised by the State Government to conduct the competitive tests in terms of Clause 9(2)(a), referred

to herein above. Shri Rodrigues, learned Government Advocate has brought to our notice that in August, 2014, the said NBE has accepted to conduct such examinations for the students of the Goa Medical College applying for the Post Graduate Courses. Though Shri Lotlikar, learned Senior Advocate appearing for the petitioners has pointed out that such appointment was only in August, 2015, nevertheless, the material, including the Circular dated 1st August, 2014 and other documents on record suggest that before such decision was taken, the respondent No. 2 had already taken the consent of such Board to allow the State of Goa to participate in such All India Examinations. As such, we find that though a separate examination was contemplated for the students of the Goa Medical College for the seats reserved for them, nevertheless, participating in the AIPGMEE which is undisputably considered to be a premier institution to conduct competitive examinations, it would not be appropriate for this Court, at this stage, to interfere in the admission process based on such examinations. Apparently, the NBE has been asked to conduct the common entrance test for the students as AIPGMEE for obtaining the State Merit list. The information supplied by the NBE in connection with the All India Post Graduate Entrance Examinations-2016 discloses that Goa is one of the States which have confirmed to the NBE that they shall not be conducting their own entrance exams and shall make use of the AIPGMEE 2016 for admissions to the MD/MS/PG Diploma Courses under their control. Besides, Goa we find that more than 12 States have also followed the said criteria. All the States, no doubt, are subjected to the MCI Regulations referred to herein above and, as such, we find that participation by Goa in the AIPGMEE to conduct the common entrance test to prepare the Goa Merit List for the Post Graduate Diploma Courses cannot, prima facie, be faulted. In case there is any breach of the MCI Regulations, the MCI will deal with such breach, in accordance with law.

13. With regard to the contention of Mr. Lotlikar, learned Senior Counsel appearing for the petitioners that there is no basis shown as to how the criteria to give 50% weightage only was fixed for the marks obtained in the three years MBBS course, we find that it is to be noted that in the State of Goa there is only one University and one Medical College where the criteria for assessing the marks for the three years MBBS course may not differ. The Full Bench of this Court in the case of *Ashwin Prafulla Pimpalwar v. State of Maharashtra and others* (supra) has observed at paras 30, 39 and 40 thus :

"30. Again, it cannot be denied that the Government has the necessary competence and authority to lay down the rules regulating admission to educational institutions run by it. The Government knows best the prevailing conditions, the requirements in relation to the running of the institutions, the conduct of the examinations, the standards to be provided therein and other relevant aspects. No doubt, it could entrust consideration of many of these matters to expert bodies including Universities and be guided by their views. Prospectus giving information about details which have to be adverted to by those seeking admission in such institutions are sometimes issued by the

Government periodically, even annually. Admissions are made on the basis of the provisions contained in the Prospectus in force at the time of admissions. (See *Principal, King George's Medical College, Lucknow v. Dr. Vishan Kumar Agarwal*, , [1984] 1 SCR 503]. Any change made in the Prospectus after the admission is given would not, however, be applicable to admissions already made. This has been considered elaborately by a decision of the Kerala High Court reported in , AIR 1988 Ker 200, *Verghese v. Director of Medical Education*. A reference has been made in the aforesaid decision to a decision in *Principal K.G. Medical College v. V.K. Agarwal*, , [1984] 1 SCR 503](supra). These decisions necessarily imply that Prospectus issued by the Government is not unalterable on subsequent occasions if circumstances justify the same.

39. In a decision of the Gujarat High Court in *Kumari Jayashree Chandrachud Dixit v. State*, , (1979) 20 G LR 614, which was rendered by one of us (P.D. Desai, J. as he then was), many factors which have a bearing in regulating the admission to professional courses were considered. The following extract from the decision will parade the prominent among the principles laid down therein:--

"Now, it might be clarified at the outset that though the State Government has every right to frame rules regulating admission to Government Colleges based on certain rational policy and to amend them, if occasion arises, to remove any defect or lacuna, it would be always desirable to formulate and finalise such rules with precision well in advance and to make the rules relating to admission known to the intending applicants at a point of time reasonably anterior to the last date of admission. In a society governed by the rule of law, certain basic principles must be observed. One of such principles is that enactments or orders governing public rights and duties must be open and adequately published and that they should be relatively stable. If such an enactment or order is to guide the people, they must be able to find out what it is and it should not be changed too often. An ambiguous, vague, obscure or imprecise enactment or order is likely to misguide or confuse those who are to be guided by it and too frequent changes would make it well-nigh difficult, if not impossible, for the people to make long-term planning and decisions..... If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.... This principle would govern the framing of Rules for admission to the Government Medical Colleges because those institutions are run out of public funds and the Government in framing its policy in regard to the admission to those Colleges must act with some predictability. Frequent changes made in the rules are likely to introduce uncertainty and, as experience has shown, result in plethora of litigation. The State Government would be well-advised, therefore, to consider all the relevant questions relating to its policy in the matter of admission to Government Colleges well in advance of the start of the academic year and to formulate rules based on such policy and make such rules known to the intending applicants by giving to it suitable publicity. No departure, should ordinarily be made once such rules are published unless for compelling reasons it is necessary to do so in order

to meet exigencies of the situation..... it would be desirable for the State Government to give to these rules some permanency after taking into account all relevant facts and circumstances. Besides, it would be desirable to get the rules examined by an independent Committee of experts which might consist not only of Government officials but also outsiders such as the Deans of the Medical Faculty of the Universities and representatives of the Indian Medical Council. Once such rules are framed, they should ordinarily be not amenable to change straightway by exercise of executive powers. Any such amendment, revert if necessary, should only be made in consultation with such Committee. It would also be desirable to have the rules examined by the Legal Department of the State Government in order to ensure against possible litigation as also to cast them in suitable precise verbal formula so that interpretation of the rules on account of unhappy or equivocal expression does not raise problems not only for the students but also for the Court..... "

The principles mentioned above have our full approval. The manner in which a change in the Rules granting admission to professional courses has to be brought about, with extreme circumspection and adequate notice to the persons seeking admission to the Court, had been stressed therein.

40. In the light of the above discussion, we have no hesitation to hold that the doctrine of promissory estoppel would not have application in relation to admissions to post- graduate courses for higher specialised studies in Medical Colleges run by or under the control of Government.

Question No. 2 : Are the impugned G. Rs. invalid on the ground of offending the principle of legitimate expectations?"

14. Taking note of the said observations of this Court, we find that there is no material placed on record discussing the reason and the manner in which such weightage of 50% was arrived at or that any guidance was sought from the experts in the field. Even in the judgment passed by this Court in the case of Master Vasudeo alias Amey Subhashchandra Kamat v. State of Goa and others (supra), it has been observed that in the matters of admission to Professional Courses, the consistent view taken by the Court is that mindless changes in the admission rules should be avoided and the State Government should not ordinarily alter the rules for admission without consulting the University concerned and the Medical Council of India. It is further observed that it is equally well settled that framing rules for admission to Medical Colleges run by the Government is a field of public law. It is undoubtedly controlled by the provisions of Article 14 of the Constitution of India which excludes arbitrariness and there is no unfettered discretion to the Government in the field of public law. Since the Government exercises its powers for the public good, there is a duty cast upon it to act fairly and to adopt a procedure which involves fair play and as far as possible, a reasonable notice to all concerned. It is also observed that the change should have been preceded by views expressed by expert bodies like Medical Council, competent authorities like the University or suggestions and

views of a committee or a commission appointed on that behalf. In the present case, there is no material produced to point out that any such exercise was resorted to by the respondents prior to effecting such changes. This exercise is more essential as the future of fresh graduate doctors who desire to pursue their Post Graduate Courses are at stake. The recourse can be had to the clause (c) of the MCI Regulations when there is only one University. When there is only one University in the State, the standard of assessment can reasonably be assumed to have been the same for assessing the academic merit of the students passing from the same University. The situation no doubt is different when there are more Universities than one in a State and there are more Medical Colleges wherein the standards of different Universities and their assessment methods cannot obviously be uniform. In such cases, it would be futile to assess the comparative merit of individual performances by reference to clause (c) of the MCI Regulations. But however, clause 9(2) of the MCI Regulations permit combination of clauses (a) and (c) for assessing comparative merit of the students for the post of State quota in the College. Hence, conducting a common entrance test by the respondents for assessing comparative merit of the students who are admittedly all similarly placed. cannot be faulted.

15. The only aspect, as such, remained to be examined is whether the criteria adopted by the respondents to assess the comparative merit for the Academic year 2016-17 for the Post Graduate and Diploma Courses is invalid or ultra vires the said MCI Regulations and the Admission Rules of 2004. As pointed out herein above, the respondents have appointed the NBE as the Authority to conduct the exams in terms of the provisions of clause 9(2)(a). In such circumstances, the criteria adopted by the respondents cannot be said to be unreasonable as the institution conducting such exams as pointed out herein above is a reputed and respected institution which conducts exams throughout the Country. In this connection, we would also like to record the observations of the Full Bench in the case of *Ashwin Prafulla Pimpalwar v. State of Maharashtra and others* (supra), wherein it has been observed at paras 32 and 34 thus :

"32. Does the rule of promissory estoppel operate so that the admission rules once issued could not be altered subsequently by the Government? It is assumed in some decisions that a student preparing for the qualifying examination on the basis of the Prospectus relating to postgraduate courses prevailing at that particular point of time is entitled to continue to receive benefits or advantages arising therefrom and consequently no change can be made to his prejudice. It is difficult to accept such a broad proposition. Students entering educational institutions with the ultimate aim of completing their scholastic career at the peak are expected to strive for academic excellence, and accordingly, it cannot be assumed that a student would only look at a GR operating at or about the time when he intensifies the preparation for the qualifying examination and regulating admission to post-graduate courses. Then again, a student is indeed expected to do his best throughout his scholastic career. The heights are reached not by a sudden flight. They are reached by those who toil upwards in the night

while their companions slept. (The borrowing from the lines of Longfellow is acknowledged). In a highly competitive examination there is a neck to neck race even among those who spare no pains or times to achieve the coveted goal. Quite often, imponderable factors or fortuitous circumstances may affect the fate. Under such circumstances, it would be unrealistic to posit a theory of promissory estoppel based on the elusive concept of the preparation time for the qualifying examination.

34. The problem may be viewed from another angle. Can it be said that student, who enters an educational institution, has a vested right to prepare for and write the succeeding higher examinations on the basis of the prevalent rules/directions and to claim advantage and benefits arising therefrom? If so, will a student forfeit such a right due to an accidental circumstance, beyond his control, preventing him from appearing at the qualifying examinations before the change is brought about? The answer would obviously be in the negative. Framing the same question but timing it to a later stage, could a student claim that his prospects of admission to a professional course which he may choose to follow should be governed by the Prospectus in force at the time when he wrote the S.S.C. Examination? Here again, a variety of factors could affect the further prosecution of studies. If one or some students for some genuine reasons beyond their control are unable to write their examination, the Government in principle may be obliged simultaneously to hold different examinations for different group of students. To hold that till all the students who had appeared for the S.S.C. Examination at a particular time should have the opportunity to secure admission to a professional course on the basis of prospectus in existence when he wrote the S.S.C. Examination would equally be anomalous. The concept of a sort of vested right would be inappropriate in such circumstances."

16. Considering that the exams are to assess the comparative merit of the students for the Post Graduate Courses who are expected to have a high degree of knowledge and have to strive for academic excellence, it cannot be assumed that a student would only look at a particular manner of being assessed of his capability, but is expected to do his best throughout his scholastic career. It is not disputed that AIPGMEE 2016 exams conducted by the NBE covers the same portion/curriculum as applicable to the students of the Goa Medical College. As such, it is not possible to accept that the students would, in any way, be prejudiced in case they are assessed by such exam. The academic pursuits are not to be equated with commercial activities or trade dealing, which raise question of immediate and easily eligible profits and other advantages. Pursuing postgraduate professional course could not be linked with a narrow and selfish desire for promoting a private interest. The very concept of a profession is the antithesis of activities of a lesser calibre. Merely because of a promulgation of a particular rule or order by the Government authorities, a student, particularly applying for postgraduate degree, and that too in a professional course, cannot with grace or legal force, contend that his merit should be assessed on the basis of a particular criteria. As such, we find that though the respondents ought to

have sought expert opinion before introducing the said change, for the reasons stated herein above, we find that the question of interfering with the admission process for the Post Graduate Degree and Diploma Courses for the current Academic Year which is already started, cannot arise in the peculiar facts and circumstances of the case, also taking note of the delay on the part of the petitioners in approaching this Court.

17. In the present case, the eligibility criteria for admissions to the Post Graduate Courses was very well known to the petitioners and it was acted upon by over 200 other students and, as such, the petitioners are now not entitled to challenge such process after a period of one year when they were aware about such Norms. The eligibility test called the entrance test or the Post Graduate Test is conducted with a dual purpose. Firstly it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to pursue Postgraduate studies, if allowed an opportunity of doing so. Secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance when it comes to allotting the successful candidates to different disciplines where the seats are limited and some disciplines are considered to be more creamy and are more coveted than others. The Medical Council of India insists on an Entrance Test being conducted. It is permissible to assign a reasonable weightage for an entrance test and for the marks secured in the Three Years MBBS Degree Course to determine the inter se merit of the students who belong to a common class. The Admission Rules 2004 referred to herein above though called "Rules", are not statutory, but they have the effect of instructions or guidelines, issued in exercise of the executive powers of the State Government.

18. Before we conclude, we would like to place on record that we do not appreciate the intemperate language used by the respondent No. 2 in his Additional Affidavit by making some unreasonable allegations against the petitioners who have approached this Court raising a bonafide claim with regard to the admission criteria for the Post Graduate Courses. The anxiety of the petitioners to get a seat for the Post Graduate Courses by following the remedies available in law cannot be questioned by the respondent by using such wholly unjustified language to the budding Doctors who have enormous tasks in their hands in future. Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners and Shri S.S. Kantak, learned Senior Counsel appearing for the Intervenor, also take exception to such averments by the respondent No. 2 in his additional affidavit. The respondent No. 2 who is the Dean of the Goa Medical College, should have restrained himself from using such a language in the additional affidavit. We hope that this conduct of the respondent No. 2 shall not be repeated in future.

19. For the aforesaid reasons, and subject to the above, we find no merit for interference in the above petition, which stands accordingly rejected.