

(2006) 06 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 10720, 11340 and 10909 to 10917 of 2006

Bhavya S. Desai and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 32
MCI Regulations — Regulation 5, 5(2), 5(3), 5(4)

Citation : (2006) 06 GUJ CK 0014

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : ND Nanavati and Mitul K Shelat, in SCA Nos. 10720, 10909 to 10917/2006, Party in person in SCA No. 11340 of 2006, for the Appellant; KB Trivedi, General and Sangita Vishen, AGP for Respondent Nos. 1 and 2 and AD Oza and Hemang Raval for Respondent No. 3 in SCA Nos. 10720, 10909 to 10917/2006, KB Trivedi, General and Sangita Vishen, AGP for Respondent No. 1 in SCA No. 11340 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Two set of petitioners have approached this Court in these petitions raising several contentions, some of which overlap. The common challenge involved in all these petitions pertain to legality of the admission process undertaken by the State Government for various professional courses available in the State after passing Higher Secondary School Board Examinations in Science Stream. Essentially, the challenge is to the modalities adopted by the State Government in preparing merit lists for such professional courses.

2. The petitioners in Special Civil Application No.10720 of 2006 and connected matters are students who are pursuing studies in Gujarat in the schools affiliated to Central Board and have either appeared this year or will appear in the next couple of years in standard 12 examination conducted by the Central Board called CBSE. These petitions had come up for admission hearing on 12th May

2006 during summer vacation. After issuance of notice and filing of replies, they were ripe for hearing before this Court on 15th June 2006. Considering the importance and urgency of the issues involved in the matters, with the consent of the learned advocates appearing for the parties, these petitions were heard for final disposal at the admission stage itself.

3. Special Civil Application No. 11346 of 2006 has been filed by the father of student who has appeared in standard 12 (HSC) science stream examination held by the Gujarat Board in March 2006. At the request of the Court, learned AGP Ms.Sangita Vishen had accepted an advance copy of the petition for the State Government and also within a short time available filed affidavit to which the petitioner has also filed rejoinder. Considering the importance of the issues and the commonality of some of the aspects of the matter with the group petitions filed by the students from Central Board schools, this petition was also simultaneously heard for final disposal.

4. All appearing parties have advanced detailed arguments before this Court and raised several contentions.

5. In order to appreciate the controversy arising, necessary facts need to be noted at this stage.

1. Special Civil Application No. 10720 of 2006 and connected matters have been filed, as noted above, by the students pursuing their studies in schools affiliated with the Central Board. These petitioners may be conveniently referred to as the Central Board students.

2. Petitioners Nos.1 to 7 of Special Civil Application No. 10720 of 2006 are students who have appeared in their class 12 examination conducted by the Board called CBSE. They are eligible to apply for medical or para-medical courses or engineering or related subjects - as per the choice of their subjects - in various professional courses run by several institutes in the State. Petitioners Nos.8 to 10 are students who have appeared in standard XI in their respective schools which are affiliated to Central Board. They are though not directly concerned with the exercise undertaken by the State Government for granting admissions to various professional courses in the current year, they have however, joined themselves in these petitions to safeguard their future interest.

6. Broadly stated, the case of these petitioners is that in the State of Gujarat, there are different sources through which the students who pass their qualifying examination seek admission in various professional courses. It is, therefore, the case of these petitioners that the State Government must compulsorily conduct a common entrance test to prepare a common merit list from amongst all the students seeking such admissions. It is their case that they should be allowed to compete for all available seats in various medical, para-medical, engineering and other professional courses available after passing class 12 Science examinations. They also contend that the State Government should follow the regulations framed by the governing bodies such as Medical Council of India (MCI for short)

and All India Council for Technical Education (AICTE for short).

7. It is not in dispute that till the current academic year, the State of Gujarat did not have the practice of conducting common entrance test. Admissions to various professional courses to be granted after passing of standard 12 Science Stream Examinations were being regulated on the basis of the performance of the students in the Board Examinations. It is a common ground that for the first time, the State of Gujarat has introduced Common Entrance Test called "GUJCET 2006" for the current academic year. By a combination of the marks secured by the students in the Board Examination and in GUJCET, merit list is to be prepared for granting admissions to professional courses. It is also not in dispute that for the students appearing through the schools affiliated to the Central Board, certain percentage of quota in proportion to the number of students passing through such schools in 12th standard, as compared to the number of students who have passed from Gujarat Board; is ear-marked for such students for admission in professional courses. The petitioners i.e. Students of schools affiliated to Central Board oppose to such quota system on various grounds.

8. These petitioners, i.e. Central Board students had earlier approached the Hon"ble Supreme Court by filing writ petition raising these very grounds which, however, ultimately came to be withdrawn on 9th May 2006 with a liberty to approach the High Court. That is how these petitions have been filed before this Court.

9. Petitioner of Special Civil Application No. 11340 of 2006 is the father of one Krushna Jagdeep Pandit who had appeared in Higher Secondary Board Examination conducted by Gujarat Board. He had elected to study all four science subjects, viz. Physics, Chemistry, Biology and Mathematics, which is popularly referred to as group AB. He also appeared in GUJCET 2006 examination conducted by the State Government. He has also challenged the methodology adopted by the State Government for preparation of merit list for granting admission to various professional courses. His contention also is that admission to professional courses should be based entirely on common entrance test and no other parameters should be added to the performance of the students in such examination. He has questioned the decision of the State Government in granting grace marks to certain students. To the details of the challenge of this petitioner, reference will be made at a slightly later stage.

10. With this broad outlining of the controversy involved, it is now necessary to focus on the factual details leading to the present group of petitions.

11. As noted earlier, the petitioners, viz. Central Board students are those who have appeared or will appear in Class 12 examination conducted by the CBSE. Petitioners Nos.1 to 7 have already appeared in such examination conducted by the CBSE in the current academic year. They have also appeared in GUJCET 2006 conducted by the Gujarat Secondary and Higher Secondary Board. According to these petitioners prospectus was published by the State Government outlining

the details of GUJCET 2006 to be conducted by the Board. The prospectus provided that merit list for the professional course would be prepared considering 60 per cent of the marks obtained in theory subjects in standard 12 examination and 40 per cent of the marks obtained Common Entrance Test. However, on 8th February 2006, a newspaper report was published in Indian Express and Times of India dailies suggesting that merit list would be prepared on the basis of marks obtained in Common Entrance Test alone and that eligibility criteria for securing admission would be minimum of 70 per cent of marks in the qualifying examination. Yet again, newspaper report was published on 16th February 2006 reporting that admission criteria are revised and weightage of 60 : 40 per cent will be applied and the students shall have to secure a minimum of 70 per cent marks in the qualifying examination.

12. GUJCET 2006 was conducted on 16.4.2006 and result thereof was published on 8th May 2006. At the time of filing of the petition, though CBSE results were not declared, subsequently the same have been released.

1. It is the case of the petitioners that opposing the Government policy of giving 60 per cent weightage to the result of the students in qualifying examination, some of the petitioners had made several representations to the authorities. Such representations have been produced on record. It is the case of these petitioners that barring one single acknowledgment, the respondents have neither replied nor taken into consideration the representations made on behalf of the petitioners.

2. The policy decision of the State Government was ultimately formalized when the State Government published rules for admission to various professional courses. Under resolution dated 15th February, 2006, the State Government was pleased to adopt Rules for Admission to M.B.B.S./B.D.S./B.Physiotherapy/B.A.M.S. /B.H.M.S./B.Sc.Nursing/B.P.O./B.P.O./B.O. Courses in Government Medical/Dental/Physiotherapy/Ayurved/ Homeopathy/Nursing/Orthotic/Optomerty Colleges, Municipal Medical Colleges, Grant in Aid Institutes in the State of Gujarat. These rules shall be, for the sake of convenience and brevity, hereinafter be referred to as Sthe Rules for admission to MBBS, etc. course?. These rules are applicable for admission to above-mentioned various medical and para-medical professional courses for the academic year 2006-2007.

3. Likewise, under resolution dated 16th May 2006, the Government formulated the rules for admission to the first year course of Degree Engineering, Decree/ Diploma in Pharmacy to be made applicable for admission to all Government, Grant-in-Aid Institutes for Degree Engineering and Degree/Diploma Pharmacy run by the Universities from the academic year 2006-2007. These rules shall be hereinafter to be referred to as Sthe Rules for admission to Engineering, etc. course?. Salient features of these rules in so far as the same are relevant for the purpose of deciding the issues involved in these petitions need to be noted at this stage.

4. Rule 1.3 of the said Rules for admission to MBBS, etc. course provides that there shall be pro-rata distribution of seats between the candidates of Gujarat Higher Secondary Education Board and Central Board (along with Council of the Indian School Certificate Examination) seeking admission to the first MBBS and other related courses as per the policy decision of the State Education Department as applied to the degree professional courses in the Engineering and Pharmacy. Rule 8 of the said Rules for admission to Engineering etc. course in turn provides as follows:

Rule 8 Distribution of seats among students of Gujarat Board and other boards
Seat distribution among Gujarat Secondary & higher Secondary Education Board and other Boards shall be done on pro-rata basis taking into account the number of students who have passed the examination from respective Boards.

Combined reading of these rules would mean that there would be a separate quota of seats ear-marked for the Gujarat Higher Secondary Education Board students as also for students passing from Central Board including in the examination conducted by the Council of Indian School Certificate. Quota is fixed in the ratio of the students passing from respective boards' examinations.

5. Rule 1 of the Rules for admission to MBBS etc. course reads as follows:

1. Qualifying examination for admission shall be GUJCET and Higher Secondary Certificate Examination (Science Stream B Group or AB group) under the 10 + 2 Education pattern taking with Physics, Chemistry, Biology & English Conducted by

i. Gujarat Secondary and Higher Secondary Education Board

or

ii. Central Board of Secondary Education, New Delhi or Council for the Indian School Certificate Examination, New Delhi from the recognized institutions located in Gujarat State only

or

iii. Other equivalent examinations so far as candidate referred to Rule 1.1 Sanskrit is compulsory either in 10th or 12th science for candidate seeking admission in Ayurveda.

Rule 4.4 of the said Rules prescribes the minimum aggregate marks to be obtained in the qualifying examination for being eligible for various courses including Medical, Dental, etc. Rule 4.4 reads as follows:

4.4 The minimum aggregate marks (Theory) to be obtained at the external evaluation in science subject (in the subject of Physics, Chemistry & Biology) in qualifying examination shall be as under:

For Medical/Dental:

4. (a) For Scheduled Caste Candidates 40 %

(Forty per cent)

4.4(b) For scheduled Tribes (including Garudi) Candidates 40 %

(Forty per cent)

4.4(c) For socially & educationally backward class candidate (excluding creamy layer) 40%

(Forty percent)

4.4(d) For all other candidates except where specified (seventy per cent) 70 %

For Ayurved/Nursing/Homeopathy/Physiotherapy/Orthotics

4.4(e) For Scheduled Caste Candidates 40 %

(Forty per cent)

4.4(f) For scheduled Tribes (including Garudi) Candidates 40 %

(Forty per cent)

4.4(g) For socially & educationally backward class candidate (excluding creamy layer) 40%

(Forty percent)

4.4(h) For all other candidates except where specified (fifty per cent) 50 %

Rule 5 of the said Rules provides for determination of merit order. The said rules read as follows:

5. Determination of Merit Order:

The Merit Order shall be determined on the following basis:

1. On the basis of 60% weightage of marks obtained in the external evaluation examination in the theory papers of science subjects only viz. Physics, Chemistry and Biology in higher secondary examination of respective Board/Council and 40% weightage to be given to marks obtained in GUJCET (in the subject of physics, chemistry and Biology).

2. If there are candidates who have secured equal marks as per Rule 5.1, the merit order should be determined by application of criteria as under:

5.2(a) Candidate whose marks obtained in Biology at GUGCET are higher should be placed higher.

5.2(b) After application of Rules 5.2(1) if still the candidates have equal marks, merit order should be determined on the basis of marks obtained in English at qualifying examination.

5.2(c) After application of Rule 5.2(b) if still the candidates have equal marks, merit order should be determined on basis of total marks obtained in theory of

Science subjects (viz. Physics, Chemistry & Biology) in the qualifying examination.

5.2(d) After application of Rule 5.3(c) if still the candidates have equal marks, Merit order should be determined on basis of Total Marks obtained in the qualifying examination.

Likewise, Rules for admission to Engineering etc. course make similar provisions for admission to Engineering, Pharmacy, etc. courses. Rule 4.1.1 provides for minimum educational qualifications for seeking such admission and the said rule reads as follows:

1. Candidate should have passed standard 12 (10+2) pattern Science stream or equivalent examination (1) For degree Engg. Courses with mathematics, Physics and Chemistry Subjects and (2) For degree/diploma Pharmacy courses with Physics, Chemistry and Biology or with Mathematics subject; should have passed from any school recognized by any examination board mentioned below (AB-Group shall be eligible for Pharmacy).

(a) Gujarat Secondary and Higher Secondary Education Board.

(b) Schools located in the State of Gujarat and recognized by the Central Board of Education, New Delhi.

(c) Schools located in the State of Gujarat and recognized by the Council of Indian School Certificate Examinations, New Delhi.

(d) The Children of Gujarat Origin Officers/Staff working in Central or other State Government, Military or other State/Central Government run Board/Corporation, who have passed standard 12 examination from the Examination Board of respective State or passed the examinations from similar schools located in other states as per Rules 4.1.1(b) and (c) and appeared in the examinations of Rule 4.1.2. Such candidates shall be included in the first merit list shown at Rules 10.

Rule 4.1.2 further provides that a candidate shall also have to appear in the Gujarat Common Entrance Test 2006 in the related subjects. Rule 4.1.2 reads as follows:

4.1.2 And candidate should have also taken in related subjects the Gujarat Common Entrance Test 2006 (GUJCET 2006) conducted by the State Government.

Rule 10 of the said Rules pertains to merit marks and preparation of merit list. The same reads as follows:

10. Merit marks and merit list:

1. Merit marks of students who have applied to Joint Admission Committee for Professional Course (T) in prescribed application form within prescribed time limit and who are eligible for admissions as per these rules, shall be decided as under:

For candidates who have passed 12 Science examination from Gujarat Board with 60% marks from total 300 marks of three theory subjects and 40% marks from total 120 marks of the same three subjects of Gujarat Common Entrance Test (GUJCET-2006) shall be taken as merit marks.

For candidates who have passed examination equivalent to eligibility examination from other boards, marks of the relevant exam shall be converted into total 300 marks and then 60% marks shall be taken for the calculations.

2. For Degree Engineering Courses, 60% of marks obtained in theory of Physics, Chemistry & Mathematics of eligibility examination and 40% of marks obtained in Gujarat common Entrance test in the same subjects.

3. For Degree/Diploma Pharmacy courses, 60% of marks obtained in theory of Physics, Chemistry and Mathematics or Biology and 40% of total Marks obtained in Gujarat Common Entrance Test in the same subjects, separate merit list shall be prepared from total marks. Candidate has to give option in application form to take into consideration the marks either of Mathematics or Biology.

4. Two separate merit list shall be published by Joint admission committee for professional courses. The first merit list shall be that of candidates from the Gujarat Secondary & Higher Secondary Education Board. The second merit list shall be published for the candidates of other Boards. For candidates of reserved categories separate merit list shall be prepared for both the boards.

5. Following criteria in sequence if and where required, shall be applied for deciding merit order in case of students having equal merit marks.

(a) For Engineering theory marks obtained in Mathematics in qualifying examination.

(b) For Pharmacy theory marks obtained in Biology in qualifying examination. If Biology subject is not opted, theory marks in mathematics.

(c) Marks in English subject of qualifying examination.

(d) Marks obtained in standard 10th examination.

(e) Birth date (Candidate who is elder in age shall be given priority)

6. Merit lists with detailed admission programme shall be displayed at the office of the Joint Admission Committee for Professional Courses, and on the notice board of the colleges where it is possible. The same details shall also be put on the web-site.

Rule 14 of the said Rules provides for grace marks to be granted for certain technical subjects. It, inter alia, provides that students who have passed S.S.C. Examination of Gujarat Secondary Examination Board, Central Boards or its equivalent examination, from any of the recognized schools located in Gujarat State, with any of the specified subjects mentioned therein, namely, Engineering Drawing, Basic Principles of Mechanical and Electrical Engineering, Workshop

Technology, Basic Electronics, Chemical Technology shall be given grace marks as provided therein for engineering courses. The exact number of marks to be granted to such students by way of grace need not be gone into. Suffice it to say that depending on the performance of the students concerned in SSC examination certain additional weightage is to be given in his marks tally of the standard 12th examination Science stream for the purpose of considering his candidature for engineering course.

13. In the nutshell, it can be seen that by formulating the above mentioned rules separately, for medical and para-medical and for engineering and related degree/diploma courses, the State Government provided for minimum qualifications and other criteria for granting admissions in such courses. For the students appearing in schools affiliated to Central Board and including those who passed the Council of Indian School Certificates Examination (CISCE), certain quota is provided in proportion of the number of students who passed such examination as compared to the number of successful students in Gujarat Board examination. Thus the total number of seats available in such professional courses are to be shared by the students passing from Gujarat Board Examination as compared to Central Board Examination in proportion to successful students of those respective boards.

14. It can also be seen that minimum qualification required for admission to such courses is standard 12 pass from recognized boards with related subjects. A student passing such examination with physics, chemistry and biology as his subjects could apply for medical and para-medical courses. Such a combination of subjects is popularly referred to as "B" group. A student who passes his examination with chemistry, physics and mathematics as his subjects can apply for engineering and related degree/diploma course including pharmacy. This is popularly referred to as "A" group. A student passing all four subjects, namely, physics, mathematics, chemistry and biology is eligible to apply for both branches of professional courses. This combination is popularly referred to as "AB" group. Passing of English as a compulsory subject is also an additional requirement.

15. In addition to passing Higher Secondary Science stream examination, a student desirous of seeking admission to professional course also has to undertake GUJCET 2006 examination in related subjects. For the purpose of medical and dental courses, additional requirement insisted upon is that the student must have secured a minimum of 70 per cent in the qualifying examination if he belongs to open category. For reserved category of Scheduled Castes and Scheduled Tribes and Socially and Educationally Backward Classes, this requirement is however lowered down to minimum of 40 per cent. For Ayurved. Nursing, Homeopathy, Physiotherapy, Orthotics courses, general category candidate is expected to have secured a minimum 50 per cent marks in the qualifying examination which is relaxed to a minimum of 40 per cent marks for reserved category candidates belonging to SC/ST and SEBC. It may also be

noted that for Engineering and other related degree/diploma courses, there is no such requirement of minimum qualifying standard of passing in the qualifying examination.

16. For both the professional courses, it is provided that merit list shall be prepared considering 60 per cent weightage of marks obtained in the qualifying examination in theory papers of related science subjects i.e. Physics, Chemistry and Biology for medicine and para-medical courses and Physics, Chemistry and Mathematics for engineering and other related courses whereas 40 per cent weightage is to be given to the marks given in GUJCET. So far as the exact implication of this weightage is concerned, there has been some debate and dispute between the parties to which I will make reference at a slightly later stage.

17. On the basis of the above factual background and the position of the rules framed by the State Government, the petitioners i.e. the Central Board students have approached this Court challenging the methodology adopted by the State Government for granting admission to various professional courses. Principally, these petitioners are opposed to the Government action on following three counts:

(A) They contend that giving weightage to the result of a student in qualifying examination is not permissible and the Government should have prepared the merit list solely on the basis of the performance of the students in the GUJCET examination.

(B) They contend that prescribing the minimum of 70 per cent marks in the qualifying examination to be eligible to apply for medical and dental courses is also not permissible.

(C) The third contention of the petitioners is that providing for separate quota for Gujarat Board students and for Central Board students is also not permissible. They assert that the Central Board students should be permitted to compete freely for all available seats.

18. The State Government has appeared through the learned advocates and filed affidavit in reply. In the affidavit in reply dated 25th May 2006 filed by one Shri Lalit T. Vyas, Under Secretary, Education Department, Government of Gujarat, it is contended, inter alia, that the petitions suffer from delay and laches. It is contended that the Government policy was formulated way back in July 2005 through a Government Resolution dated 28.7.2005 which was given sufficiently wide publicity. The petitioners should have approached the Court earlier. It is contended that the Central Board students have other available avenues for admission in national institutes. It is contended that separate quota for Central Board students has been upheld by this Court on an earlier occasion. It is contended that the system of preparing merit list on the basis of 60 percent of the marks secured in the qualifying examination and 40 per cent marks scored in GUJCET examination though is introduced in the State for the first time, the

same is prevalent in various other States since long. It is contended that by providing appropriate weightage to the qualifying examination and GUJCET examination, the State has achieved a balance between the two examinations so that the students do not lose interest in either of the examinations. It is contended that fixing the eligibility criteria of minimum of 70 per cent marks in the qualifying examination for medical and dental course cannot be found fault with. It is pointed out that Medical Council of India has also provided for a minimum of 50 per cent marks for the said purpose.

19. It is further contended that the Central Board students and State Board students cannot be compared on account of different text books and different examination pattern and different marking system and on account of diversity, the State Government has taken a policy decision to provide for different yardsticks for allocation of seats.

1. Further justifying the weightage given to the qualifying examination for preparation of merit list, it is stated that it is open for the State Government to come out with logical proposition and ensure that the students are not appearing in the qualifying examination only for passing but that they should strive to excel in their performance in such examination also. With this purpose in mind and to see that neither of the examinations i.e. qualifying examination or GUJCET loses significance and that the students do not lose interest in the qualifying examination, the State has tried to strike a balance between the two in a best possible fashion. Not providing for any weightage to the qualifying examination would lead to the students not preparing for the said examination at all and would concentrate on preparation of Common Entrance Test alone. It is stated that another aspect of the matter is that the pattern of both these examinations are different. In case of qualifying examination, more importance is attached to theory as well as practical and less stress is on objective questions whereas in case of Common Entrance Test, the entire focus is objective questions and answers where the style of preparation would also be different.

20. The Gujarat Secondary and Higher Secondary Board has been added as party-respondent No. 3. The Board has also filed its affidavit in reply dated 31st May 2006. In addition to adopting the stand of the State Government, it is stated that the Board has been entrusted with the task of conducting GUJCET 2006 examination. The Board also supports the State Government stand of giving due weightage to the marks scored by the students in qualifying examination. The Board in its affidavit in reply as well as through the learned advocate has supplied specific details of number of students appearing in various examinations as well as in GUJCET. Reference to the same will be necessary at a later stage.

21. On the basis of the above pleadings, the learned Senior advocate Shri N.D. Nanavati appearing with learned advocate Mr. Mitul Shelat for the petitioners has made detailed submissions.

22. It is contended that the policy of the State Government to provide for ratio of

60 per cent weightage to the marks secured in the qualifying examination for preparation of the merit list is irrational, discriminatory and violative of the regulations framed by the MCI, AICTE and other regulatory agencies. It is contended that the same is violative of Article 14 of the Constitution of India. In this regard, it is further elaborated that the Government had to conduct a common entrance test considering the situation prevailing in the State of Gujarat. It is contended that for the purpose of admission to various professional courses, students are drawn from different sources in the State of Gujarat. Evaluation of the relative merits of these students is possible only through a common entrance test. It was contended that not only the Gujarat Board students but students passing standard 12 Science Stream examination from Central Board and CISC examination also are in contention for various seats for professional courses available in the State of Gujarat. In that view of the matter, the only option available with the State Government is to conduct a common entrance test to judge their suitability and to prepare a common merit list for granting such admissions.

1. Learned advocate has pointed out the provisions contained in regulations framed by the Medical Council of India called Regulations on Graduate Medical Education, 1997. Drawing my attention to Regulation 5 of the said regulations, he submitted that the said regulations would require that common entrance test be held for preparation of merit list. Regulation 5 of the said Regulations reads as follows:

Selection of students:

The Selection of students to medical college shall be based solely on merit of the candidate and for determination of the merit, the following criteria be adopted uniformly throughout the country.

1. In states, having only one Medical college and one university board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration.

2. In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

3. Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

4. A competitive entrance examination is absolutely necessary in the cases of institution of All India character.

2. Learned Senior Advocate submitted that the State of Gujarat would be

covered by the situation envisaged in Sub-regulation 2 of Regulation 5 of the said regulations. He pointed out that in Gujarat State, since there are more than one Board conducting the qualifying examination, the competitive entrance examination has to be held for the purpose of achieving uniform evaluation since there would be variation of standard at the qualifying examination conducted by different agencies. He further submitted that similar provisions are also made by AICTE in its rules governing admission to Engineering and related courses. He further submitted that this aspect has been elaborated by the Hon''ble Supreme Court in number of decisions, reference to those decisions will be made at a later stage.

3. It was next contended that providing for quota separately ear-marked for students passing out from Gujarat and those passing out from other Central Boards is illegal, unlawful and irrational. It was contended that such reservation is not permissible as held by various decisions of the Hon''ble Supreme Court. It was, therefore, contended that the petitioners who have passed out from 12th standard examination of science stream from Central Board in the current year should have been permitted to compete for all the seats on the strength of their performance in the GUJCET examination.

4. It was next contended that providing for minimum qualifying requirement of 70 per cent marks in qualifying examination for being eligible to apply for medical and dental course is also illegal. It was submitted that the State Government could not have provided for any such standard. It was contended that Medical Council of India Regulations provide for a minimum 50% marks to be secured in the qualifying examinations for being eligible to apply for such courses. It is not open for the State Government to enhance the standard further which would knock out a candidate at the very threshold and even if the concerned student excels in GUJCET examination, he would be knocked out of contention if he fails to secure minimum of 70 per cent marks in his qualifying examination. He submitted that the criteria is not rational and is otherwise also discriminatory. He submitted that it is a well-known fact that the curriculum in the Central Board schools is much more difficult than the Gujarat Board and that the assessment is also stricter. It is far more difficult for the students from the Central Board to secure a minimum of 70 per cent marks as compared to the State Board students. He, therefore, submitted that providing for one single yard-stick of 70 per cent marks in the qualifying examination both for the Central Board students and the State Board students is arbitrary and discriminatory inasmuch as unequals are being treated as equals which is not permissible under the law and is opposed to Article 14 of the Constitution of India. He further submitted that the Central Board students in Gujarat are subjected to such strict requirements whereas Central Board students in other states are not subjected to such restrictions. This also according to the learned senior advocate is discriminatory in nature.

5. In support of this contention, learned senior advocate placed reliance on

several decisions of the Hon''ble Supreme Court. Reliance was placed in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, : (1984)ILLJ481SC . In addition to referring to the said decision at length, he drew my attention to the observations made by the Hon''ble Supreme Court in para 19 thereof wherein it was observed that it would be constitutionally permissible to provide, as an interim measure until we reach the stage when we can consistently with the broad mandate of the rule of equality in the large sense ensure admission to the MBBS course on the basis of national entrance examination an ideal which we must increasingly strive to reach - for reservation of a certain percentage of seats in the medical college for students satisfying a prescribed residence requirement as also for students who have passed PUC or pre-medical examination or any other qualifying examination held by the university or the State and for this purpose it should make no difference whether the qualifying examination is conducted by the State Board or by the Central Board of Secondary Education, because no discrimination can be made between schools affiliated to the State Board and schools affiliated to the Central Board of Secondary Education?. It was a decision where the Hon''ble Supreme Court was considering the question of reservation on the basis of residence requirement within the State and also the question of institutional preference.

6. Reliance was placed on a decision of the Hon''ble Supreme Court in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, : (1981)ILLJ103SC wherein in para 17, the Hon''ble Supreme Court observed that the college being the only institution for education in engineering courses in the State of Jammu & Kashmir has to cater to the needs of both the regions and it has, therefore, found it necessary and expedient to regulate admissions by holding an entrance test, so that the admission process may not be held up on account of late declaration of results of the qualifying examination in either of the two regions. It was further observed that the entrance test also facilitates the assessment of the comparative talent of the candidates by application of a uniform standard and is always preferably to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorities because lack of uniformity is bound to creep into the assessment of candidates by different authorities with different modes of examination. So saying, the Hon''ble Supreme Court found that the procedure of taking into account the marks obtained in the entrance test instead of the marks obtained by the candidate in the qualifying examination cannot be regarded as arbitrary.

7. A decision of the Hon''ble Supreme Court in the case of Asif Hameed and others Vs. State of Jammu and Kashmir and Others, : [1989]3SCR19 was pointed out to suggest that in the said decision also, the Hon''ble Supreme Court approved holding of common entrance test.

8. A decision in the case of Chander Chinar Bada Akhara Udasin Society and Others and Yasar Shaff and Others etc. Vs. State of J. and K. and Others etc., :

AIR1997SC399 was relied upon in support of the contention that the State Government ought to have resorted only to common entrance test results and should not have provided for any other parameter. My attention was drawn to the observations made by the Hon"ble Supreme Court in para 10 of the said decision, wherein it is stated that the percentage secured at different examinations are bound to vary according to the standard applied by such examining bodies which is well-known. As such, a common entrance examination has to be held.

9. Decision in the case of Ravindra Kumar Rai Vs. State of Maharashtra and Others, : [1998]1SCR1146 was also cited before this Court. In the said decision, a student of Maharashtra Board approached the Hon"ble Supreme Court with a prayer to direct the State to hold a common entrance test. It was the contention of the petitioner that there are various boards in the State of Maharashtra from which students pass out after standard 12. The case, therefore, would fall under Sub-regulation 2 of Regulation 5 of the MCI Regulations. It was, therefore, contended that holding of common entrance test would be necessary. The Hon"ble Court placing reliance on the decision in the case of Chander Chinar Badaakhara Udasin Society (supra) found that common entrance examination for admission to medical colleges has to be held.

10. Decision in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, : AIR1999SC2894 was also cited. My attention was drawn to para 28 and 29 of the said decision wherein the Hon"ble Supreme Court observed that there may be several Universities which conduct MBBS courses. The courses of study may not be uniform. The standard of assessment at the M.B.B.S. Examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the M.B.B.S. Examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the M.B.B.S. Examination; while it may also be easier for candidates to secure passing marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. The purpose of such a common entrance examination is not merely to grade candidates for selection, the purpose is also to evaluate all candidates by a common yardstick. It was observed that one must take into account the possibility that some of the candidates who may have passed MBBS examination from more generous Universities may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. The Hon"ble Supreme Court in the said case was considering the question of reservation in favour of backward classes in specialty and super-specialty courses in medical field.

11. Reliance was placed on the decision of the Hon''ble Supreme Court in the case of Narayan Sharma v. Pankaj Kr. Lehar AIR 2000 SC 82 wherein in para 22 and 23, the Hon''ble Supreme Court noted various decisions on the question of requirement of holding a common entrance test. In para 24, the Hon''ble Supreme Court observed that admission to post graduate course should be strictly based on merit and for the merits of candidates seeking admission to higher educational courses shall be judged by uniform standard and for that purpose holding of entrance is the best method.

23. On the other hand, learned Advocate General Shri Kamal Trivedi appearing for the State Government with learned AGP Ms.Sangita Vishen opposed the petitions. He submitted that the prospectus was published as far back in December 2005. Even before that the Government policy was formulated and publicized vide resolution dated 25th July 2005 which clearly envisaged holding of common entrance test as also for weightage being given to marks obtained by the students in the qualifying examinations. He submitted that the Government aided by the experts in the field of Education found it appropriate to provide for weightage being given to the marks obtained by the students in qualifying examinations. He submitted that the Government found that taking into account only the marks secured by the students in the GUJCET would result into diminishing the importance of the Higher Secondary Board Examination. To preserve its pre-eminence and preserve the sanctity of the Board examination, it was found necessary that 100 per cent weightage cannot be given to GUJCET examination. He submitted that it is a matter of Government policy as to how best the suitability of the candidates could be judged. He further submitted that the methodology adopted by the State Government to prepare a common merit list with 60 per cent of marks secured in the qualifying examination and 40 per cent of the marks secured in the GUJCET though is being introduced by the State for the first time, such a pattern is prevailing in several states since some time now.

1. He further submitted that providing for a separate quota for Central Board School students and keeping the remaining seats for the Gujarat State Board is neither illegal nor impermissible. He submitted that the quota is to be fixed in proportion of the students passing from respective boards which would ensure equitable distribution of seats among two different competing groups. He submitted that keeping apart number of seats for students coming from different streams cannot be categorised as reservation for or against one set of students or other. The State is only drawing from different sources and providing for different quotas or different seats in proportion of their respective strength.

2. He further submitted that it is always open for the State Government to provide for certain minimum qualifying standards for being eligible to secure admission in a professional course. In the interest of excellence and to secure that only competent and clever students enter the competitive fields such as medicine and dental, if the State Government upon due deliberation found that

minimum cut-off of 70 per cent marks in the qualifying examination is necessary, the same cannot be questioned on any principles of law. He further submitted that providing for minimum qualifying standard of 70 per cent both for Gujarat students as well as for the Central Board students also cannot be termed as arbitrary or discriminatory. He submitted that though the students coming from both the Boards are subjected to different examinations, 70 per cent marks prescribed is only the minimum requirement. He, therefore, submitted that the policy decision of the State Government calls for no interference.

3. Further elaborating the submissions, he submitted that providing for separate seats for Gujarat students vis-a-vis the Central Board students cannot be termed as reservation nor the same amounts to providing for quota but the same amounts to drawing from two different channels.

4. In support of his contention, reliance is placed on an order dated 3.8.2004 passed by the learned single Judge of this Court in Special Civil Application No. 12624 of 2003 wherein similar provision made by the State Government for the previous academic years was under challenge. Learned Judge turned down the challenge holding that the same is a matter of Government policy and should be left to academicians to decide upon. It is observed that the Gujarat Board and Central Boards cannot be given equivalence since the students in both streams study with different syllabus. They have different academic systems. In short, the policy decision of the State Government was not found illegal.

5. Reliance was also placed on a decision of the Hon"ble Supreme Court in the case of *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, : AIR2003SC2952 wherein the Hon"ble Supreme Court in para 19 observed that mere use of word "reservation" per se is not decisive of the nature of allocation. It was observed that where the scheme envisages not a mere reservation but is one of the classification of the sources from which admissions are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simplicitor.

6. Reliance was also placed on the decision of the Hon"ble Supreme Court in the case of *Pradeep Jain (supra)* wherein while considering the question of regional as well as institutional reservation, the Hon"ble Supreme Court observed that the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission provided of course such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged.

7. Reliance was also placed on a decision in the case of *Saurabh Chaudri and Others Vs. Union of India (UOI) and Others*, : AIR2004SC361 wherein once again the question of reservation on the basis of domicile came up for consideration. The decision of the Hon"ble Supreme Court in the case of *Pradeep Jain (supra)*

was considered at length wherein the Hon''ble Supreme found that though there is always a need to strive to achieve the goal of excellence which in turn would mean that meritorious students should not be denied pursuit of higher studies, it is extremely difficult to lay down fool-proof criteria. It was observed that success or failure of a candidate in one examination or other may not lead to infallible conclusion as regard the merit of a candidate so as to achieve excellence. It was further observed that whereas larger interest of the country must be perceived, the law-makers cannot shut their eyes to the local needs also. In conclusion, the Hon''ble Supreme Court found that the criteria for institutional preference has come to stay.

8. With respect to the question of weightage to be given to the marks obtained in two different examinations, reliance was placed on a decision of the Hon''ble Supreme Court in the case *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, : [1971]3SCR699 wherein the methodology of preparing merit list on the basis of the marks obtained in written test as well as oral interview was upheld.

9. Decision in the case of *Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others*, : [1981]3SCR34 was relied upon for the very same purpose. It was pointed out from the observations made by the Hon''ble Supreme Court in para 21 that preparation of merit list on the basis of separate objective test of 35 marks in addition to 35 marks ear-marked for qualifying examination was upheld.

10. With respect to the question of providing for higher eligibility criteria than one provided by the MCI, it was strongly urged that it is well within the powers of the State Government to provide for more stringent qualifying standard and so long as the standard adopted by the State Government was not lower than the one fixed by the Medical Council of India, the same cannot be objected to. In this regard, reliance was placed on the decision of the Hon''ble Supreme Court in the case of *Dr.Preeti Srivastava (supra)*. In para 39 of the said decision, the Hon''ble Supreme Court observed that in every case, the minimum standards as laid down by the Central statute or under it have to be complied with by the State while granting admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its power under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

11. For the same purpose, reliance was also placed in the case of *Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and Others*, wherein the Hon''ble Supreme Court found that the impugned order laying down the qualification for the candidate to be eligible for being considered for selection for admission to post-graduate course on the basis of merit as specified by regulations made under the Indian Medical Council Act, cannot be said to be in conflict with the regulations or in any way repugnant to the said regulations. It was observed that it does not in any way encroach upon the standard prescribed

by the regulations and on the other hand, while laying down a further qualification and eligibility, it promotes further the standards in an institution.

12. Reliance was also placed in the case of *State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others*, : AIR2004SC1861 wherein it was observed that if higher minimum qualifications is prescribed by the State Government than what had been prescribed by the AICTE, it cannot be said that it is in any manner adverse to the standards fixed by the AICTE or reduce the standard fixed by it.

13. A decision of this Court in the case of *Kumari Jayshree v. State* 20 GLR 614 was cited wherein the learned single Judge of this Court upheld the validity and applicability of Rule 5.2(A) introduced by the State Government.

14. Reliance was also placed on the decision of the Hon''ble Supreme Court in the case of *Thapar Institute of Engineering and Technology and Another Vs. Gagandeep Sharma and Another*, : AIR2001SC3676 wherein the Hon''ble Supreme Court held that the task of prescribing academic standards falls exclusively in the domain of special bodies like the Senate, Syndicate, etc. and the Court would normally not interfere with the prescribed standards especially when they are intended to improve the academic standards in their respective institutes. It was observed that the scope of judicial review in such matters would be very limited.

24. First question that calls for consideration is whether it was open for the State Government to separate out two sources from which the students apply for different professional courses. As noticed, in the State, primarily there are two streams through which the students pass qualifying examinations of 12 standard science stream. Predominantly, it is the State Board students who appear in the standard 12 science stream examination conducted by the Gujarat Board. Smaller, but significant number of students also come from Central Board. It would be useful to note the number of students available from different sources. Learned advocate for the Board has supplied such details. It is stated that in the HSC examination held by the State Board in March/April 2006, a total of 53312 students including ex-students appeared in the examination. Out of these students 43517 were declared pass. 38138 fresh students had passed the examination while 5379 repeater students had passed. I am also told that 50001 students from Gujarat Board appeared in the GUJCET 2006. I am also informed that for the current academic year, 2346 students passed CBSE examination in Gujarat State whereas 236 students passed from ISC examination. From amongst CBSE students, 2798 students applied for GUJCET and 2700 actually appeared. From ISC source, 300 students applied and 293 actually appeared.

25. It can thus be seen that predominantly, large number of students come from Gujarat Board aspiring to get admission in various professional courses. As noticed earlier, the State Government has provided for a methodology for considering students from these different sources for admission to professional courses. The available seats are shared by these students in proportion to the

total number of students passing from different boards. It will thus appear that students from CBSE or ISC would vie for total number of seats in proportion to the number of successful students from their Board as compared to the number of successful students from Gujarat Board. The question is whether this methodology can be termed as illegal or arbitrary. The subsidiary question is whether this would amount to reservation - as is sought to be suggested - in favour of Gujarat Board students to the exclusion of the Central Board students.

26. In this regard, the observations made by the Hon''ble Supreme Court in the case of *State of Madhya Pradesh v. Gopal D.Thirthani* (supra) need to be adverted to. While considering the question of legality of the State of MP, to allocate certain percentage of seats for in-service candidates, the Hon''ble Supreme Court found that in-service candidates and candidates not in service of Government form two classes based on intelligible differentia. It was found that the term reservation is not decisive of the nature of allocation. It was observed that when the scheme envisages not a mere reservation, but is one of classification of sources from which admissions are to be accorded, fixation of respective quota does not attract applicability of considerations relevant to reservation simplicitor. It was, however, found that such in-service candidates also must go through the same rigours of entrance examination for post graduate courses. Relevant observations in this regard can be noted:

19. The controversy in the present litigation does not concern the open category candidates; it is confined to in-service candidates. We, therefore, propose to preface our discussion by determining the nature of 20% seats allocated to in-service candidates - whether it is by way of reservation or quota or is a channel of entry. Our task stands simplified by the law laid down by a three-Judge Bench decision of this Court recently in *K. Duraisamy and Another Vs. The State of Tamil Nadu and Others*, : [2001]1SCR489 . The question arose for decision in almost a similar factual background. The seats were at the State level and not all-India quota seats. The State Government had allocated 50% of the seats exclusively for in-service candidates and left the remaining 50% seats as open quota, i.e., to be filled in from out of such candidates as were not in State Government service. The classification was made as "service quota" and "open quota," for in-service candidates and other candidates respectively, confining the respective class/cadre candidates to the respective percentages earmarked for the two of them exclusively. The Court held:

(i) the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion;

(ii) that such allocation of seats in the form of fixation of quota is not to be equated with the usual form of communal reservation and, therefore, the constitutional and legal considerations relevant to communal reservations are out of place while deciding the case based on such allocation of seats;

(iii) that such exclusive allocation and stipulation of a definite quota or number of seats between in-service and non-service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit. Inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota;

(iv) that the mere use of the word "reservation" per se is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would be determinative of the meaning, content and purport of the expression. Where the scheme envisages not a mere reservation but is one of the classification of the sources from which admissions are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simplicitor.

Even the case of Dr.Pradeep Jain (supra), the Hon''ble Supreme Court noted the earlier decision wherein the University-wise distribution of seats was upheld by the Hon''ble Supreme Court as constitutionally valid though it was not in conformity with the principles of selection based on merit and marked a departure from it. The observations of the Hon''ble Supreme in this regard may be noted:

17. We may also conveniently at this stage refer to the decision of" this Court in D. N. Chanchala's case (supra). The reservation impugned in this case was university-wise reservation under which preference for admission to a medical college run by a university was given to students who had passed the PUC examination of that university and only 20 per cent of the seats were available to those passing the PUC Examination of other universities. The petitioner who had passed PUC examination held by the Bangalore University, applied for admission to any one of the medical colleges affiliated to the Karnataka University. But she did not come within the merit list, on the basis of which 20 per cent of the open. seats were filled up and since she had not passed the PUC Examination held by the Karnataka University, her application for admission to a medical college affiliated to the Karnataka University was rejected. She therefore filed a writ petition under Article 32 of the Constitution contending inter alia that the University-wise distribution of seats was discriminatory and being without any rational basis was violative of Article 14. This contention was however rejected by a 3 Judge Bench of this Court. Shelat, J, speaking on behalf of the Court held that there was No. constitutional infirmity involved. in giving preference to students who had passed the PUC Examination of the same University and gave the following reasons in support of this conclusion:

The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas.

Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centres for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the Universities are set up for satisfying the educational needs of different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of districtwise or unitwise selection as any student from any part of the State can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders up to 20% of the total available seats in any one of these colleges, i.e., those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is therefore, impossible to say that the basis of selection adopted in these rules would defeat the object of the rules as was said in Rajendran's case or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them. A preference to one attached to one university in its own institutions for post-graduate or technical training is not un-common. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with these which were held invalid in the aforesaid two decisions. Further, the Government, which bears the financial burden of running, the Government colleges is entitled to lay down criteria for admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged. In our view, the rules lay down, a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished

from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14."

University-wise distribution of seats was thus upheld by the Court as constitutionally valid even though it was not in conformity with the principle of selection based on merit and marked a departure from it. The view taken by the court was that universitywise distribution of seats was not discriminatory because, it was based on a rational principle. There was nothing unreasonable in providing that in granting admissions to medical colleges affiliated to a university, reservation shall be made in favour of candidates who have passed PUC examination of that university, firstly, because it would be quite legitimate for students who are attached to a university to entertain a desire to "have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own" university, since that would promote institutional continuity. which has its own value and secondly, because any student from any part of the country could pass the qualifying examination of that university, irrespective of the place of his birth or residence.

In the case of *Saurabh Chaudri v. Union of India* (supra), while observing that ideal situation might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally, but history is replete with situations to show that India is not ready therefor. It was further observed that whereas larger interest of the country must be perceived, law-makers cannot shut their eyes to the local needs also. The Hon'ble Supreme Court, therefore, came to the following conclusions:

67. This Court may, therefore, notice the following:

i. The State runs the Universities.

(ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in Post-Graduate Courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for last about two decades.

(v) Even those States which defied the decision of this Court in *Dr. Pradeep Jain's* case (supra) had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criteria.

(vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile /residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in All India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.

(viii) Giving of such a preference is a matter of State Policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope.

(x) for manipulation.

It would thus appear that the Hon'ble Supreme Court also recognized that it would be open for the Government to provide for different quota of seats for two separate sources of entry. Such provision cannot be confused with reservation and even the term reservation would not be decisive of the nature of allocation. It has also been held that when the scheme envisages not a mere reservation but is one of classification of the sources from which the admissions are to be accorded, fixations of respective quota for such classified groups does not attract considerations relevant to reservations. Institutional preference per se in strict sense of the term may be opposed to the concept of equality and may also be somewhat conflicting with the concept of goal for achieving excellence and for selecting the best possible candidate for the seat, it is found to be an unavoidable factor which as the Hon'ble Supreme Court observed in the case of Saurbh Chaudri (supra) has come to stay and perhaps India is not yet ready for such absolute equal treatment for all candidates from all parts of the country. As a matter of fact, the students passing the examination from CBSE themselves are beneficiaries of such regional preference. The principle of equality and no reservation stretched to its logical conclusion would lead to a situation where all these seats would be thrown open to all students from any part of the country without any preference to the local or institutional background. Surely that is not even the contention of the petitioners. In that view of the matter, it is not impermissible for the State to provide for separate allocation of seats for two different sources from which students are available for admission to the professional courses.

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27. This brings me to the next bone of contention which is the central issue in all these petitions. It is the most hotly debated and contested issue between the parties. It is the case of the petitioners that the State Government could not

have taken into consideration the marks obtained by the candidates in the qualifying examination for the purpose of preparation of the merit list. In other words, it is sought to be canvassed that the performance of the students in the common entrance test alone should form the basis for preparation of the merit list. There are several facets of this argument. The main line of the argument is that under the regulations framed by MCI and AICTE for conducting a common entrance test in the present case is imperative. Relying on Regulation 5 of the MCI regulations and Rule 1.3 of the AICTE Rules, it is submitted that since the candidates are coming from more than one source, common entrance test could be the only yardstick that can be applied for preparation of the merit list. Strong reliance was placed on Sub-regulation 2 of Regulation 5 of the MCI regulations. As noted earlier, certain decisions of the Hon"ble Supreme Court were relied upon by the learned senior advocate for the petitioners. On the other hand, stand of the State Government is that neither the MCI regulations nor the AICTE Rules prohibit giving weightage to the performance of the students in qualifying examination even when common entrance test is conducted.

28. As noted, the other facet of the argument of the petitioners is that even otherwise and irrespective of the rules and regulations of MCI and AICTE, it is necessary for the State Government to conduct an entrance test since it is not possible to judge the performance of the students coming from different background and sources since the syllabus, approach, preparation, nature of question papers and its assessment, all are likely to be different for different boards. It is canvassed that the students affiliated to Central Board schools find it more difficult to score marks whereas assessment in the Gujarat Board may be comparatively liberal. Therefore, to compare the respective marks of the two completely independent and unrelated Boards for preparation of the merit list would not be permissible.

29. It is not in much dispute that the State Government has power to regulate admissions in professional courses in several institutes in the State. Education appears both in Union List as well as in concurrent list. Entry 66 in List I is SCoordination and determination of standards in institutions for higher education or research and scientific and technical institutions.? Entry 25 in List III is SEducation, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.? It is held in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, : AIR2003SC355 that by transfer of entries, character of entries is not lost or destroyed. By transfer of entires of entry 11 of List II to List III as entry 25 has not denuded the power of the State Legislature to enact law on the subject Seducation? but has also conferred power on the Parliament to enact law on the subject Seducation?. In the case of Saurabh Chaudri v. Union of India (supra) it was observed that in absence of any Parliamentary act, the State has the legislative competence to enact statutes laying down reservation for entry in any course of studies including the medical courses. The State Government, therefore, has power to regulate the admissions

in several professional courses, of course, as long as such procedure does not infringe the provisions made in any Central Act or the rules and regulations framed by governing bodies such as MCI or AICTE.

30. The question that calls for consideration is whether the modality adopted by the State Government in preparation of merit list offends any such provision. In this context, as discussed earlier, the thrust of the argument of the petitioner is that Regulation 5 of the MCI regulations and in particular Sub-regulation 2 thereof, would mandate that the State Government must hold a common entrance test and regulate admission process solely on the basis of merit list prepared on the strength of marks obtained by the students in such entrance test. *Pari materia* provisions are also in rules framed by AICTE. Regulation 5 of MCI regulations has already been reproduced herein-before. Regulation 5 envisages four different situations. In States having only one medical college and one university/board examining body conducting qualifying examination, it is permissible that the marks obtained in such qualifying examination may be taken into consideration. Sub-regulation 2 of Regulation 5 provides, *inter alia*, that in States having more than one university/board/examining body conducting the qualifying examination or where there are more than one medical college under the administrative control of one authority, a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examination conducted by different agencies. Sub-regulation 3 of Regulation 5, however, provides that where there are more than one college in a State and only one university/board conducting the qualifying examination, then a joint selection board needs to be constituted for all the colleges. Sub-regulation 4 of Regulation 5 states that it is absolutely necessary to hold a competitive entrance examination in cases of institution of All India character.

31. MCI regulations though have statutory flavour are not enacted by expert legislative bodies such as Parliament or the State Legislature. The interpretation of these regulations and intention behind the provisions made thereunder shall have to be gathered by reading the provisions as a whole.

32. While providing in Sub-regulation 4 of Regulation 5 that a competitive entrance examination is absolutely necessary in cases of institution of All India character, no such inviolable mandate is to be found in the language used in Sub-regulation 2 of Regulation 5. This is, however, not to suggest that holding of a common entrance test is not required in the situation envisaged in Sub-regulation 2 of Regulation 5. However, if the intention of the framer of legislation was to unavoidably provide for one single common entrance test also in States having more than one university/board/examining body conducting qualifying examination, as was the intention in case of institution of All India character, separate enactment of Sub-regulation 4 of Regulation 5 was wholly unnecessary. Sub-regulation 2 of Regulation 5 itself could have included the institution of All India character as one of the categories in which holding of common entrance

test is imperative. To reconcile between two situations, it appears to me that though Sub-regulation 2 of Regulation 5 requires holding of an entrance test, it does not prohibit applying of any other additional parameter for judging the suitability of the candidates. Whereas in case of institution of all India character, Regulation 5(4) would suggest that common entrance test alone would govern the admissions. To my mind, Sub-regulation 2 of Regulation 5 permits some play in the joints to the State Government. Since more than one Boards are conducting qualifying examination in the State, as per Sub-regulation 2 of Regulation 5 of MCI regulations, though it is necessary for the State to hold common entrance test, it is not necessary that marks obtained in such test alone must form the sole basis for preparation of the merit list. As discussed earlier, it is well within the powers of the State Government to regulate the admission to professional courses in a manner that is reasonable and just as long as the procedure so adopted does not offend any of the Central statutes or the regulations made by the Central governing bodies such as MCI or AICTE. In my view the formula adopted by the State Government is not shown to be opposed to any such provision. It is not necessary to discuss separately provisions contained in the Rules framed by AICTE in this regard since provisions are similar to those made by MCI.

33. This brings me to the second facet of the controversy, namely whether the State erred in applying the marks received by the candidates in qualifying examination since there were more than one Boards or Universities in the State conducting such examination. As already held earlier, the methodology of separating students in different quotas depending on the source of their qualifying examination is not found illegal. If one accepts this principle as legal, it emerges that what the State Government has done is to prepare a separate list for Gujarat Board students and another list for students passing from different Central Boards. The question of comparing marks obtained by the students passing from different sources, therefore, does not arise in the present case. Had the State Government prepared a common list for the students irrespective of the sources and had the State Government equated the marks obtained by the students from different Boards without any modulation, the petitioners would have been justified in complaining about unequals being clubbed together. In fact, the Hon'ble Supreme Court in the decisions noted hereinabove has been saying time and again that when students are drawn from different sources of qualifying examinations, it is not possible to compare the performance without any modification since the syllabus, preparation, approach, pattern of examination of the papers and assessment style would be vastly different. Reference in this regard may be made to the decision in the case of *State of Madhya Pradesh v. Gopal D. Thirthani* (supra). Such an eventuality, however, has not arisen in this case.

34. Considering the rule position and considering the various pronouncements of the Hon'ble Supreme Court in this regard, I find that the paramount consideration before the State is that unequals should not be judged together by

bracketing them in one single process of selection without proper modulation. As noted, since the concept of separating out the students on the basis of their parent boards having been found to be legal, it was thereafter upto the State Government to provide for a reasonable formula for preparation of the select list from amongst respective sources. In its wisdom and as a policy decision, with the aid of experts in the field if the State Government came to the conclusion that certain weightage for the higher secondary board results should be provided for preparation of the merit list, it is not possible for this Court to interfere with such a policy decision in absence of overwhelming material to point out that such a policy is wholly arbitrary or unreasonable or malafide. Even otherwise, philosophy and purpose behind providing for weightage for HSC marks is eminently just. The State Government was of the opinion that not giving any weightage to the result of the HSC examination would lead to reducing the importance of the HSC Board examination and the students would at the very outset focus solely on the preparation of the common entrance test. In order not to reduce the importance and seriousness of the HSC Board examination, the State Government found that it is necessary that certain percentage of weightage should be provided for such an examination. Selecting best meritorious students for advanced professional courses in science subjects is a complex task. It is best left for the experts in the field and the policy makers to evolve a formula which besides being just and fair would ensure that the most meritorious students get placement at best possible places. Such a complex task involving consideration of large number of factors can be performed only by the authorities duly aided and assisted by the experts in the field. This Court neither has the wherewithal nor has the power to interfere in such decision unless the decision is pointed out to be wholly unreasonable, arbitrary, malafide or violative of any of the constitutional or statutory provisions.

35. I have already noted the number of students from Gujarat Board as compared to the students from the Central Board schools appearing in the GUJCET 2006 examination. The figures would suggest that against approximately 50000 students appearing from the Gujarat Board, less than 3000 students appeared from the Central Board schools. Overwhelming number of students of Gujarat Board had appeared in the GUJCET examination and sought admission. The State Government, therefore, was concerned about the pre-eminence of the Gujarat Board examinations and found it appropriate in its wisdom to provide for resorting to percentage of weightage for preparation of merit list and I find nothing objectionable in such policy decision.

36. It is true that the merit list of the Central Board students includes students not only from CBSE but a small number of students passing out also from CISE. During the course of discussion, there was some debate about the modality of preparing a common list for both these streams. However, for want of sufficient particulars and for want of proper material on record, it is not possible for this Court to examine this question any further in these petitions. It is not clear whether the Board had provided for some form of moderation for equation of

marks obtained from respective Boards. It would appear that perhaps without any further moderation, if marks obtained by these students from their respective Boards were given equal weightage, the same may be susceptible to legal challenge. However, in view of the factors mentioned hereinabove, it is not possible for this Court to conclude this issue in this petition. It will be for the State Government to examine this aspect at least for the future years.

37. This brings me to the last contention raised by the Central Board students. It was urged that the MCI regulations prescribed only minimum of 50 per cent marks in the qualifying examination to permit the students to appear in the entrance test. The State Government, however, provided for a minimum of 70 per cent qualifying marks in the Board examination. This according to the petitioners is illegal. Firstly, they suggest that the State Government cannot depart from the MCI regulations and provide for separate qualifying marks. Secondly, it is suggested that 70 per cent uniform standard demanded from the Gujarat Board students as well as Central Board students is unjust. It is contended that the Central Board students find it more difficult to score higher percentage of marks compared to the Gujarat Board students. To provide for one common uniform minimum standard therefore amounts to treating the unequals as equals and in that sense offends Article 14 of the Constitution of India.

38. I am afraid these contentions cannot be accepted. It is by now well settled that the State Government can provide for more stringent and higher standards for admission in professional courses than those provided by the governing bodies such as MCI and AICTE. It is impermissible for the State Government to lower down the standard, but perfectly open for the State Government to provide for higher standard or stricter norms. It has been so held by the Hon'ble Supreme Court in number of decisions, more particularly in a recent decision of the Hon'ble Supreme Court in the case of *State of Tamil Nadu v. S.V. Bratheep* (supra). The suggestion that providing for one common uniform cut off marks for both Gujarat Board students as well as the Central Board students is impermissible also cannot be accepted. 70% marks at the qualifying examination is only the minimum required standard to make the students eligible for seeking admission in the professional courses of Medicine and Dental. The same has thereafter no other reflection for preparation of the respective merit list. It was for the State Government to provide for certain cut off considering the ground realities and there cannot be any objection to any such prescription.

39. I would now focus on issues raised in Special Civil Application No. 11340 of 2006. The petitioner party-in-person though has made several prayers in the petition and also in the rejoinder, through his oral submissions, he has raised only following contentions which are dealt with hereinafter.

40. He submitted that admission should be based on the marks obtained in common entrance test alone and no other weightage from any other source should be provided. This contention has already been dealt with and discussed at length while dealing with the arguments of the Central Board students petitions.

It is, therefore, not necessary to repeat the same.

41. He submitted that Rule 13 and 14 of rules to admission to engineering course provides for certain grace marks for the students having certain elected subjects. He submitted that such grace marks are not justified and should be abolished. He, therefore, opposed to the allocation of grace marks to such students.

1. The State Government in its affidavit in reply clarified the purpose for grant of grace marks. It is also stated that in future such grace marks are being phased out. It is pointed out that those students taking admission in technical subjects in standard 8 from academic year 2007-08 shall not get such grace marks by the time they pass in the year 2011-2012. The question of grant of grace marks is a matter of policy of the State Government. If certain subjects are found more relevant and studying in such subjects is found to be more arduous and also more useful for the purpose of engineering course and if grace marks are granted by the State Government which are prevailing since many years, no interference is called for. It appears that the students who had taken such elected subjects from standard 8 onwards in the previous years were under the impression that they would be entitled to such additional grace marks. To stop the system abruptly when the State Government has been holding such promise and allotting grace marks since many years would also not be fair to such students.

2. It was next contended that there should be only one committee for regulating the admissions since the students have to run from one place to another and are unable to decide the preference since it is not clear in which branch he will get admission at which place. The anxiety of the petitioner can be well understood. In the days of multiple choices and choices are as diverse as various subjects and various institutions with different reputation and vastly different fee structure, students and parents are bound to be confused. Taking a decision is, therefore, sometimes extremely difficult. However, the State Government cannot be faulted for creating two separate committees to speed up the admission process. It is true that son of the petitioner is eligible to apply both for medical and para medical courses as well as engineering and related courses since he has opted for AB group and appeared in all four science subjects, such students are extremely small in number and bulk of the students in HSC examination have either elected for biology or mathematics. Grievance of the petitioner though has the sympathy of this Court, the ground realities and technicalities do not permit this Court to give any directions.

42. It is next suggested that even the past students should be allowed to appear in the selection process for the current year. I am afraid the petitioner cannot raise this contention as it does not apply in the case of his son.

43. It is contended that for the quota of seats made available to reserved categories such as SC and ST, equal number of additional seats should be made available for the general category candidates. There is no rule, regulation or

judgment providing for such prescription. Reservation is a constitutionally provided and legally upheld concept. If certain number of seats are reserved for Scheduled Caste and Scheduled Tribe and other backward communities, no provision requires that the State Government must increase equal number of seats for the general category candidates.

44. Before parting, I would like to advert to two important aspects of the matter. Firstly, though at the first sight, it may appear that the State Government has given 60 per cent weightage to the marks obtained by the respective Board examinations and 40 per cent weightage to the performance of the students in the common entrance test, in reality the projection of qualifying examination marks is much higher than the ratio of 60 : 40. In reality, what is done by the respondents for preparation of the merit list is that 60 per cent of the marks scored by a student in the Board examination is added by 40 per cent marks scored by the students in the common entrance test for preparation of the total marks for the purpose of preparation of merit list. The language used in the Medicine Rules and Engineering Rules in this regard is somewhat different. This methodology has been clearly laid down in the Engineering Rules and as per the said rules, it may not be strictly impermissible for the State Government to adopt this methodology. However, the actual result of this methodology is that weightage of the marks obtained by the students in his Board examination is approximately 79 per cent as compared to 21 percent weightage given to the marks obtained by the students in the common entrance test. This is so because the total tally of marks in the Board examination in the Gujarat Board was 300 whereas the total marks assigned for the common entrance test was 120 (eventually, the maximum marks became 119 since one question was inaccurate). Therefore, while preparing the merit list, when the State adopted the formula of taking 60 per cent of the marks of the students in the Board examination along with 40 percent of the marks scored in the common entrance test, in reality, since the grand total in the Board examination was much higher than the grand total in the common entrance test, the Board examination projection went further up. In the 100 per cent of marks for the merit list, therefore, weightage of the Board result is as high as 79 per cent compared to only 21 per cent weightage to the common entrance test.

45. The purpose of holding of common entrance test is to be found in various decisions of the Hon''ble Supreme Court noted hereianbove. In the decision in the case of State of M.P. v. Gopal D. Tirthani (supra), the Hon''ble Supreme Court observed that Sthe eligibility test, called the entrance test or pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute post-graduate 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 at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the

others?. In the case of *Ajay Hasia* (supra), the Hon'ble Supreme Court observed that the entrance test also facilitates the assessment of the comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorities because lack of uniformity is bound to creep into the assessment of candidates by different authorities with different modes of examination. We would not, therefore, regard the procedure adopted by the society as arbitrary merely because it refused to take into account the marks obtained by the candidates at the qualifying examination, but chose to regulate the admissions by relying on the entrance test?. Primarily, thus, it ensures a common yardstick for judging the suitability of the candidates coming from different sources. When more than one source of institution taking qualifying examination is available, it would be extremely difficult to compare the performance of such students coming from different backgrounds. The common entrance test, therefore, serves the useful purpose of providing a common yard-stick for judging the suitability of these students. This, however, is not the sole purpose of holding common entrance test. The term 'common' entrance test is sometimes a misnomer. Many institutions hold their own entrance test. One more purpose for holding a common entrance test would be to eliminate the element of judgment and human discretion. This would be so in entrance tests which rely entirely on objective type of test papers. Large number of entrance test examinations are found to be relying solely on the objective question-answers i.e. one question followed by multiple choices for the students to select the correct choice and often providing for negative marks for wrong answers. However, this is not necessarily so. In various institutions, entrance tests are not strictly based on objective question papers. In fact, some of the premier institutes such as IITs, and IIMs provide for complex common entrance tests much of which may not be of objective type. In fact, some times the admission process at higher degree course may also involve holding of oral interviews. Therefore, to state that common entrance test is meant to eliminate entirely the angle of human discretion would be somewhat inaccurate. In the present case, however, the State Government has opted for objective markings and the questions have multiple choices and negative marking is also applied for incorrect answers.

46. Yet another important element of holding of entrance test would be to judge the aptitude of the students for the course offered. The Higher Secondary Board in the State and other Boards offer science stream course which essentially prepare the students for further studies in science courses. It is a foundation for pursuing further studies in science. Not necessarily all students opt for professional courses only. There may be small, but significant number of students who might have better aptitude for pure science subjects and may opt either for teaching or research or some such related fields. Common entrance test is therefore envisaged at judging aptitude of the students for such courses. The State Government has also hinted at such purpose in its reply. It is stated

that one aspect of the matter is that the pattern of both these examinations (i.e. Board examination and GUJCET examination) is different. In case of qualifying examination more importance is attached to theory as well as practical and less stress on objective questions whereas in case of common entrance test entire focus is on objective questions and answers where style of preparation would also be different. It is in this regard that the weightage given by the State Government to the marks obtained in the two tests comes into picture. As noted earlier, the State Government had bifurcated two sources for the purpose of preparation of separate merit lists. Students passing out from the State Board have been provided with a separate avenue for admission and Central Board students have been ear-marked a separate quota in the proportion of number of students passing. Therefore, to judge the relative merit of the students coming from two different Boards is not the purpose which is sought to be achieved through this common entrance test. The main purpose is that the State would achieve through these tests would be to eliminate the possible fluctuation of marks due to the human agencies and to judge the aptitude of the students better for such applied science courses. If this be the angle and if this be the philosophy for holding the common entrance test, would it not be diluting the purpose to a large extent by providing only 20 per cent weightage for such results. I find that this issue requires serious reconsideration at the hands of the Government for future examination. What exactly should be the weightage is for the State Government to judge. In the current year, however, no directions can be given for modifying the lists already published for the following reasons.

1. No such issue has been raised by the petitioners who are Central Board Students.
2. Though the party-in-person in his petition and through the rejoinder and oral submissions canvassed this issue, to a large extent his main contention also has been to eliminate his Board result altogether from consideration. His approach to the Court is also rather belated. The State Government had published this policy through the Government Resolution way back in July 2005. This was followed by publication of prospectus. Wide publicity was given from time to time to the said policy. It is true that the formal rules were formulated only in the month of April/ May 2006, however, nothing prevented the said petitioner from approaching the Court at an earlier stage.
3. Only 1 out of 50,000 Gujarat Board students who have appeared in the GUJCET have made the grievance about this modality.
4. In substitution of the present methodology, there is no other ready-made alternative available and it is for the State Government to undertake an exercise of reconsideration in consultation with the experts in the field.
5. For such a purpose, it would not be proper for this Court to stall the admission procedure; which would have a chain reaction; especially when the admission process is rigidly time bound. This Court cannot send the entire selection process

in a tailspin only on the perception that higher weightage should be considered for common entrance test. A concrete decision has to be taken by the State Government which can be applied only for future admission process.

47. Yet another aspect of the matter which needs elaboration is the requirement of certainty and clarity in the matter of Government policy. In these days of fierce competition and multiple confusing choices, it is absolutely imperative that the State policy is clear, unambiguous and is disclosed well in advance. I have already noticed earlier that though as early as in July 2005 the Government had taken a policy decision to hold common entrance test, finer aspects thereof were known to the public much later. If any one was going by the newspapers reports, there was confusion at the end of the Government. The newspapers once reported that the State Government is completely doing away with the common entrance test whereas at another stage, it was published that there would be weightage of 60 per cent for the Board Examination with minimum qualifying standard of 70 per cent. At no stage, the State Government came out with any official release to clarify the situation. Even averments made by the petitioners in this regard in the petition have remained completely unanswered in the reply. It is true that because of shortage of time, the Government was under considerable pressure to file a reply at an early date. However, the sum total of these circumstances, clearly demonstrate that there was a great degree of confusion in the public mind about the exact policy of the Government. This should be avoided at all costs. Spare a thought for the poor student. He is already reeling under the parental expectations, peer pressure and fierce competition. When he should be focusing entirely on preparation of the examination, if he is not clear as to which examination is going to be relevant and which irrelevant, marks of which examination may carry certain weightage and which may not carry any weightage, how is it possible for the student to prepare himself with a degree of piece of mind and focus on his subjects. As far back in the year 1978, in the case of *Kumari Jayshree v. State* (supra) this Court had perceived the need for a clear and well publicised Government policy in this regard. Observations made by the learned Judge in this regard can be noted:

20. The next ground of challenge is that since Rule 5.2(1) was enacted after the last date for filing applications for admission had expired, it could not have been validly enacted, more so because it altered the position as existing on such date and in that manner affected and altered settled rights by retrospective operation. 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 (See Joseph Raz on *The Rule of Law and its Virtue*, the *Law Quarterly Review*, Vol.93, page 195). Indeed, F.A. Hayek's definition of the rule of law is:

this means that Government in all its actions is bound by rules fixed and announced beforehand rules which make it possible to foresee with fair certainty how the authority will use its powers in given circumstances and to plan one's individual affairs on the basis of this knowledge: (See *The Road to Serfdom* p 54).

In this connection, it would be worthwhile to recall the observations made by the Supreme Court in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, at page 1431. It was there pointed out that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. 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. Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. It would appear from the above observations that predictability even of the administrative decision is one of the essentials of rule of law which is the high policy of the Constitution embodied in Article 14. 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 is 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. Experience has shown that the rules are not framed after taking into

account all possible contingencies, with the result that, on the one hand, the aggrieved students have to resort to the Court of law for seeking redress and, on the other, the State Government itself is faced with many administrative and other problems arising on account of such litigation.

It is expected that the Government will ensure that its policy in this regard is clear, unambiguous, well publicized and in time. This would ensure that the students and their parents are not left in confusion about the Government policy till the last minute. Leaving them in the dark would be putting unnecessary pressure which could be easily avoided.

48. In the result, subject to the above observations, the petitions are rejected. Notice is discharged.