
(1984) 12 GUJ CK 0008
In the Gujarat High Court

Dr. H.G. Patel

APPELLANT

Vs

Dr. (Mrs.) K.S. Parikh and Others

RESPONDENT

Date of Decision : 14-12-1984

Acts Referred:

Citation : (1985) 2 GLR 1385

Hon'ble Judges : D.H. Shukla, J;B.K. Mehta, J

Bench : Division Bench

Judgement

B.K. Mehta, J.—The original petitioners who are appellants before us are aggrieved by the order of the learned Single Judge (Coram : R.C. Mankad, J.) dated July 24, 1984, rejecting their respective special civil applications for appropriate writs, orders and directions to quash and set aside the decision of respondents Nos. 1 and 2 who are respectively Director of Post Graduate Studies and Research, B. J. Medical College and Dean and member of the College Council denying the claim of the respective petitioners to get post-graduate degree registration/residency in his/her subject on the rounds urged in the respective petitions. A few relevant and material facts need be noticed in order to appreciate the challenge in these appeals to the decision of the learned single Judge, and for that matter the decision of the respondent-authorities.

2. Each of the appellant-petitioners passed final examination for M.B.B.S. degree from the B. J. Medical College, Ahmedabad in January 1983 and did their internship from January 1983 to January 1984 as required under the Rules. Each of the appellant-petitioners, it is common ground, was entitled to join postgraduate degree course from the term commencing from January 16, 1984. We are" not referring to for the time being their claim and/or their entitlement for residency since that is the basic question at issue between the parties before us. At this stage, it is necessary shortly to refer as to the subjects for which the said appellant-petitioners sought their registration for post-graduate studies and the residency in those subjects and offer by the respondent-authorities of the residency in the available subjects since ultimately on construction of the rules it

would be necessary for us to examine the position of each of the appellant-petitioners from the angle of their respective facts situation. It would be convenient to set out the subjects in which each of the petitioners sought registration and residency and the subject in which each of them was offered residency by the authorities in a tabular form which is as under:

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Name of the	Subject of the	Subject in	Remarks.	petitioner choice	and which	
offer	of	ifs	preference	residency	made.	1. 2 3. 4. 5.
-----						1. Dr.
H.G. Patel	1. Medicine	Pathology	2. Pathology	3. T.B. & Chest disease	4.	
	Radiology	5. Skin & V.D.	2. Dr. Rita Koradia	1. Paediatrics	Medicine	2.
	Gynaecology.	3. Anaesthesia	4. Ophthalmology	3. Dr. P.S. Dhruv	1.	
	Gynaecology	Anaesthesia	According to	2. Anaesthesia & the judgment	3. Skin &	
	V.D. Skin & V.D.	of the learned	Single Judge	4. Dr. Ragin Patel	1. Obstetrics	
	Ophthalmology.	2. Gynaecology	3. Paediatrics	4. Ophthalmology	5. Medicine	
	6. E.N.T.	7. Pathology	8. General Surgery	9. Anaesthesia	10. Skin & T.B.	

We may add here that there is some debate subjects. We will refer to the rival versions at the appropriate time. To revert to the narration again, each of the appellant-petitioner since he or she did not get the offer of residency in the subject of his or her final choice, rejected the offer of residency as stated in column 4 in the above table with the result that they had to forego one term for their registration for the studies in post-graduate degree in the subjects in which they wanted since the appointment as resident in the subjects for postgraduate studies for which a student is registered is necessary from the point of view of clinical experience which each of the candidates must acquire in the course of studies. It appears that for the registration for post-graduate studies commencing for the term of July, 1984, the appellant-petitioners again applied, along with the medical graduates of 1983 April batch who became eligible for registration for post-graduate studies in July 1984 on completion of their internship for one year commencing from July 1983 to July 1984. According to the rules known as Rules for preparation of Merit List for admission to Post-graduate Medical Courses to which we will be required to refer to in details at the appropriate stage, the authorities have to prepare two types of lists, which can be described as Primary Merit List, which is drawn having regard to the total number of marks and aggregate number of marks at the final M.B.B.S. examination, and Subject Merit List, which otherwise termed as Branch Merit List in the Rules is drawn having regard to the marks ;in the subject of medicine or surgery or gynaecology. It is common ground that the names of the appellant-petitioners were included in the Primary Merit List. It is also an admitted position that the students are called for interview on the basis of the Primary Merit List though offer of residency is made on the basis of the Subject Merit List. It appears that the Director of Post-Graduate Studies & Research respondent No. 1 herein notified vide notice of June 27, 1984 the decision of the College Council

taken on June 26, 1984 that the appellant-petitioners, along with eight other candidates were held to be not eligible for residency as they had refused the residency offered to them according to their choice in January 1984 and in past. The appellant-petitioners, therefore, immediately moved this Court for appropriate writs, orders and directions to quash and set aside this decision of the College Council as notified by the Director and for such other consequential reliefs as may be deemed just and proper on the facts and in the circumstances of the case. They also prayed for interim relief pending hearing and final disposal of the petition directing the respondent-authorities to keep one seat of residency in post-graduate degree in the respective subjects which each of these appellant-petitioners was seeking and also for further interim relief to permit each of the appellant-petitioners to prosecute the studies in the respective subject, namely General Medicine, Paediatrics, Obstetrics and Gynaecology and Obstetrics and Gynaecology, respectively.

3. On the special civil applications reaching hearing for admission, the learned Single Judge while directing the notice to be issued calling upon the respondent-authorities to show cause why the writ petitions should not be admitted granted interim relief permitting the appellant-petitioners to appear at the interview which was to be held on 29th June 1984 and which was postponed on that day and ultimately held on July 13, 1984 for purposes of appointment of residents in different subjects. It appears further that as a result, of the participation of the petitioners in the interview and their consequent appointment as residents in the subjects of their choice, except Dr. Ragini Patel the appellant of Letters Patent Appeal No. 305 of 1984 who was appointed as a resident in Paediatrics. there were some candidates who were aggrieved since their chances of appointment were affected. Two of them, namely Dr. Vijay N. Mistry and Dr. N. D. Suchak applied to this Court for being made party-respondents to the original writ proceedings and the learned Single Judge permitted Dr. V.N. Mistry to be party-respondent in Special Civil Application No. 3271 of 1984 out of which Letters Patent Appeal No 302 of 1984 arises and Dr. N. D. Suchak as party-respondent in Special Civil Applications Nos. 3272 and 3274 of 1984 out of which Letters Patent Appeals Nos. 303 and 305 of 1984 arise. The respondent-authorities also entered the appearance through the learned Assistant Government Pleader Shri Shukla and Dr. Mistry and Dr. Suchak entered their appearance through learned Advocates P.V. Nanavati & J.R. Nanavati, respectively. It appears that since the dispute involved in the matter was of consequence to the careers of the students, the learned Single Judge set down the matters for final hearing and issued" Rule vide his order dated July 20, 1984. We are told that final hearing commenced immediately with the result that no reply affidavits were filed on behalf of any of the respondents. However, in the course of hearing before the learned Single Judge on behalf of the authorities some original records having relevance to the questions in issue were shown to the learned Single Judge to which he has referred in his judgment. The controversy before the learned Single Judge was in a very limited compass namely as to what is the effect of exclusion

of subject or subjects from final choice of subjects by a student seeking admission for post-graduate studies in Medicine or Surgery, and what are the consequences of the rejection of the offer of residency in a subject of final choice since it is on the determination of these two questions that the result of the petitions depends. The learned Single Judge was of the opinion that inasmuch as the petitioners were offered residency in some available subjects of their choice in the interview for the term commencing in January 1984 according to their ranking in the Subject Merit List and since they refused to accept this offer, they were disqualified for being eligible for residency for the term commencing from July, 1984. We will refer to the reasons which weighed with the learned Single Judge in reaching this conclusion at the appropriate time When we will consider and decide the contentions urged in the course of hearing of these appeals. In that view of the matter, the learned Single Judge could not persuade himself to interfere with the impugned decision of the respondent-authorities and therefore, rejected the petitions and discharged the Rule. He, however, continued the interim relief which he has granted so as to enable the appellant-petitioners to prefer appeal from his decision, if they are so advised, and obtain necessary interim relief in that behalf.

4. The Division Bench, while admitting these. appeals, continued the interim relief granted by the learned Single Judge vide its order of August 16, 1984 and while granting the same observed that appropriate directions, if necessary, would be given at the time of disposal of these appeals for shifting the appellant-petitioners as residents in other subjects in which case the shifting of the post-graduation registration may become necessary, and therefore, the Division Bench suggested to the learned Advocate for the appellant-petitioners to join the University as a party-respondent. In response, to this suggestion, Gujarat University has been joined as a party-respondent in these appeals.

5. The appeals reached hearing before us on different dates and since there was controversy between the parties as to certain fact situation noted by the learned Single Judge on perusal of the records shown to him on behalf of the respondent-authorities, we directed the parties ultimately by the order of December 5, 1984 with the consent of all of them to put these relevant and material records on the file of these appeals and also permitted the appellant-petitioners as well as the respondent-doctors to inspect the records and file additional affidavits in light thereof. This was done only in order to set the controversy at rest between the parties as to what was precisely the fact situation since as observed at the outset, it would be necessary to refer to these fact situations after construing the relevant rules. Accordingly xerox copies of the relevant records have been produced by the respondent-authorities with short affidavit supporting the production and also additional affidavits of the appellant-petitioners and the respondent-doctors stating the facts in light of the inspection which they had taken of the original relevant and material records in the files of the authorities.

6. Before we set out the neat questions of law which arise in these appeals, it

would be profitable to refer briefly to the scheme contained in the rules governing the appointment of residents at the Government Medical Colleges and Attached Teaching Hospitals in the State. We will set out the relevant and material rules immediately thereafter. Broadly stated, the scheme for appointment as residents in the medical colleges and attached teaching hospitals is by inviting applications by inserting advertisement which have to be inserted by the respective medical colleges twice a year in September and March for the term commencing from January and July, respectively from those who have passed M.B.B.S. degree examination from the respective medical college and satisfactory completion of one year internship and should not be having more than four years standing after passing the third M.B.B.S. examination on the day of admission to first year residency. The eligible candidates have to make applications stating in brief the choice of subjects in order of their preference. The aggregate tenure of residency is four years. The selection of any number of candidates for appointment as residents is to be made by College Council of the respective medical college. The applications which are so received are not allowed to be changed except as provided in the relevant rule, namely 9.2. As stated above, the authorities have to prepare Merit Lists according to the rules in that behalf. These Merit Lists are to be drawn in two parts - General Merit List which is on the basis of aggregate marks of each of the candidates at the final M.B.B.S. examination and Subject Merit List (Branch Merit List) which is drawn on the basis of the performance in each of the three subjects, namely, Medicine, Surgery and Gynaecology. The College Council will convene its meeting for selecting the candidates for appointment to residency. The Council has to call the candidates merit-wise, for interview. Such candidates are permitted to charge the number of subjects as well their preference. It should be noted here that there was a sharp debate as to what is the scope of this liberty of changing the choice of subjects expressed in the application. This option of changing the choice of subject, if so desired, is in light of the information about the actual vacancies available at the time. This choice which a candidate makes at the time of his interview is to be treated" as his final choice. There is some consequence provided for the exclusion of the subjects at the time of making final choice. We will refer to this aspect of the question since it has also generated debate between the parties. The consequence which has been provided for the exclusion is that the candidate concerned will not be considered for any residency, even though he or she stands in the merit for the same. The candidate. is thereafter offered residency by the interviewing committee according to" his or her highest available choice. Such a candidate has to immediately pay the deposit and sign the undertaking before the next candidate is called for interview. If he or she fails to comply with, this obligation, his or her name is struck off from the merit list. The merit list remains valid and in operation for a period of one month from the date of the commencement of the term of appointment which is either first January or first July, This provision appears to have been inserted so as to enable the candidate who have not got the residency in subjects of their choice to move to other subjects as a result of the drop out from the selected candidates. If the

candidate who is offered the residency in the subject of his final choice declines it, he will not be considered for any other residency in any subject in future. This is in short the scheme which has been incorporated in the rules. It would be necessary to set out the relevant rules in extenso so as to appreciate the contentions urged at the bar in proper perspective:

2. Admission to the first year residency will be made by advertisements by the respective colleges twice a year in September and March for the term commencing from January and July respectively. While inviting applications the candidates will be allowed to state any number of choice of subjects in order of preference.

3. to...4....

5. Approximately 75% of the first year residencies and post-graduate degree registrations in each subject will be available for the term commencing from January and the remaining 25%, residencies and degree registration will be available for the term commencing from July.

ELIGIBILITY CRITERIA:

6. The selection of the candidates for admission to first year residency shall be made by the college council of respective Medical Colleges.

7. The following categories of candidates would be eligible for admission into residency.

7.1 Those who have passed the MBBS degree examination from the respective medical colleges and satisfactorily completed one year compulsory rotating housemanship (internship). Sons and daughters of All India Service officers viz. Indian Police Service, Indian Administrative Service, Indian Forest Service allotted to the Gujarat State and serving in the State outside the Gujarat State on deputation and sons and daughters of the Gujarat Government servants, who have been posted outside the Gujarat State should be treated on par with candidates of respective medical colleges for the purpose of appointment, if they are otherwise eligible on merits..

Note: Applications from such candidates will be received by the Adm. Dir. of Medical Education and Research, Ahmedabad who will forward the same to any one medical college desired by the candidate. Not more than 250 of the applications will be forwarded to a particular medical college. Choice of the candidate will be on first come first serve basis.

7.2 and 7.3....

7.4 Candidates should not be more than four years standing, after passing the Third M.B..B.S. examination on the day of their regular admission to the first year residency (i. e. 1st January or 1st July).

7.5 If a candidate applies for any of the first year residencies and does not

accept the residency when offered in the subject of his final choice he will not be considered for any other residency in any subject in future. For this purpose selection of the candidate at the meeting of the college council will be considered as an offer of the residency. Candidates' inability to pay the deposit as per Rule 13 or sign the undertaking as per Rule 14 will be taken as rejection of the offer.

7.6. ...

METHOD OF SELECTION: ...

8. Selection of eligible candidates for appointment to the first year residency shall be made on the basis of total marks obtained at the final M.B.B.S. examination as modified below.

8.1 to 8.5...

PROCEDURE FOR SELECTION

9. Merit list will show following details

- (1) Merit number.
- (2) Name of the candidate.
- (3) Modified total marks.
- (4) If from any other institution, name of institution.
- (5) Serial number of application.

9.1 The merit showing details of the candidates will be put up on the notice Board about 7 days before the meeting of the college council, alongwith the merit list the notice will also contain number of vacancies of residents in different subject and the number of vacancies for registration in respect of different post-graduate degree course. The notice will also declare the date and time of interview of the candidates.

9.2 The college council at its meeting will call the candidates meritwise for interview. The candidate will be permitted to change the number and preference of his/her choices if he/she so desired after knowing the actual vacancies "available at the time. In any case, each candidate will write out his/her final decision of choices and preference and sign it. This final choice will be attached to the candidate's original application as a record. If the candidate excludes any post from his/her preference, he/she will not be considered for any residency even if he/she stands in the merit for the same. All procedure at this stage and in future will be based on this final choice and the candidate will not be permitted to change it under any circumstances.

9.3 At the time of interview the candidate will be offered residency, according to his/her highest available choice. Immediately he/she will have to pay the deposit and sign the undertaking, before the next candidate is called for interview. If he/

she fails to pay the deposit or sign the undertaking as per Rule 13 and 14 respectively, he/she will be eliminated from the merit list.

9.4 If a candidate does not get any of the residency of his/her choice his/ her name will be kept on the merit list. He/she will be eligible for any subsequent vacancies in case of drop outs. The merit lists will operate for a period of one month from the date of commencement of the term of appointment i. e. 1st January or 1st July.

10. ...10.1, ...11....

11.1 The application once received will not be allowed to be changed except as provided in Rule 9.2.

11.2 In case any candidate desires to withdraw the application, he/she may be allowed to do so only after the list is put up on notice! Board and before the first meeting of the college council. No candidate shall be allowed to withdraw the application except as stated above.

12. The vacancies arising out of drop outs referred to in Rule 10.1 or other vacancies arising after regular appointments will be filled up by the committee consisting of the following members

(1) Dean.

(2) Medical Superintendent.

(3) Seniormost full time Professor.

(4) Seniormost full time Professor of the concerned department.

12.1 Before making first selection from the merit list, appointed candidates will be shifted to residency their highest available choice, also those nonappointed candidates on the merit lists who did not get the residency of their choice should be again called for interview and offered the residency of their highest available choice. Both these categories will be considered according to their position in. the merit list.

This will be done upto 1st January/or 1st July as the case may be.

12.2 The vacancies will "be filled up by the committee by following the procedure adopted by the college council as per Rule 9.2 and 9.3. The same merit lists will be utilised for the purpose. When the merit lists are over fresh applications will be invited. All appointments made under the rule mentioned above before 1st January/or 1st July will be considered regular appointments. The appointments after 1st January/or 1st July except as in Rule 12.3 will be locum i.e. purely on temporary basis not more than Six months in any case and they shall not be entitled to continue on the residency automatically, also their experience will not be counted for future appointment. No residency of a particular term will be carried forward to the next term.

7. In view of the contentions urged in the petition and elaborated at the time of hearing of these appeals mainly two questions arise. Apart from these two questions, there are couple of subsidiary questions which we will be required to examine and answer since it is on the answer of these subsidiary questions that we can answer effectively the main questions. The two main questions which arise are : What is the width and scope of the exclusion clause contained in Rule 9.2. To put it specifically, whether a candidate who excludes one or more subjects from his initial choice of subjects made; along with his application for residency makes him ineligible for being admitted to residency for all times to come. Secondly, what is the width and scope of Rule 7.5. In other words, whether a candidate is disqualified for being admitted to any residency in any subject in future, if he was offered residency in any one of his subjects of final choice by the college Council. We will formulate the subsidiary questions which arose in course of the discussion which took place at the Bar in support of the rival interpretations canvassed by the parties before us at the appropriate time.

8. Before we answer the questions formulated as above, we must at the outset express our dissatisfaction about the drafting of the rules which, with respect, we must state in unequivocal terms, is very casual. It is really unfortunate that this casual drafting of almost a subordinate legislation has exposed. as it had unfortunately been in the past, the cream of our students community to the vagaries of litigations. We are aware that the authorities responsible for enacting these rules had to provide, for the diverse situations and had to strike a balance between the competing claims amongst the students. We are also aware that these competing claims could be settled only on merits of the competing candidates by evolving a scheme for assessing the merits of the concerned candidates. In evolving such a scheme : the authorities have to "keep in mind necessarily not only the overall performance of the candidate who has performed In a particular subject in which he is seeking speciality since in the ultimate analysis he wants a "degree of Master in the subject. After everything said and done and after giving concessions on these counts, even then we feel that the authorities could have produced better rules which would be simple and intelligible enough not "merely to the persons who are well-versed in interpreting these rules and statutes but also to the candidates competing at a particular juncture as well as the students aspiring to prosecute higher studies for whose benefit and interest ultimately they have been envisaged. We have been told that on an earlier occasion also the learned Judges of this Court have impressed upon the authorities that they should draft more intelligible and simple rules, if need be, with the assistance of the members of the Bar who may be frequently appearing in such cases so that there may be as less scope as possible for the students to rush to the court which they can hardly afford at the cross-roads of their career where they are standing. We, therefore, hope pray that the authorities will address themselves to this vital question so that the students may not be exposed to the vagaries of litigations. Anyway, when the questions have been raised we have to answer them.

9. We will deal with and decide both these questions simultaneously since we have interpreted these two rules in the larger perspective of the scheme adumbrated in these rules and since they have been engrafted for purposes of implementing the scheme envisaged they are necessarily interdependent. Before we proceed to" address ourselves to the interpretation of these two crucial rules, we would like to remind ourselves once again that one of the basic objectives underlying the scheme is in our opinion one that is contained in the part relating to the eligibility criteria in the residency rules. The overall limitation which has been prescribed on the right of a candidate for admission to the residency is as prescribed in Rule 7.4. Besides the qualifications! which have been prescribed in the preceding rules, namely, rules 6, 7, 7.1, 7.2, 7.3 and the method of selection as provided in Rule 8 and as modified by the subsequent "rules for preparation of the merit list for admission to post-graduate medical course. The most important provision which one has to bear in mind in understanding the scheme is that all those medical graduates who have not completed four years after passing the Third M.B.B.S. examination on the appointed day are eligible for being admitted to the residency. No doubt this is subject to the provisions made about the ineligibility or dis-qualification in the relevant clauses. But nonetheless the interpretation in construing these ineligibility or dis-qualification clauses, the Court must construe them in such a manner so as to advance this larger perspective namely that all those medical graduates till they complete four years after passing the Third M.B.B.S. examination are eligible for admission to residency. The effort of the court must be, therefore, to translate this perspective as far as possible so that the candidate concerned in particular subject does not suffer dis-advantage and the community is assured of the supply of specialists. It is in this context and also in the context of other connected provisions that we have to interpret these two clauses.

10. The first question, therefore, to which we address ourselves is that what is the width and scope of Rule 9.2. On perusal of the order of the learned Single Judge, it appears that the main contention which has been canvassed on behalf of the respondent-authorities as well as the contesting respondent-doctors and found favour with him was that a candidate, who excludes any one on more of subjects from the subjects of his final choice at the time of interview is virtually dis-qualified for being considered for admission to the residency in any subject in future. The learned Single Judge has in reaching the conclusion relied mainly on the concession said to have been made by all the parties about the meaning of the words the number and preference of his or her choice used in the opening part of Rule 9.2, and also on the consequences prescribed in the exclusion clause in later part thereof. There was some debate in the course of hearing of these appeals when the petitioners took an exception about this observation of the learned Single Judge that all the parties had made a Concession about the meaning of the words, "the number and preference of his Or her choice". In support of the submission, the petitioners have invited our attention to what the learned Single Judge has recorded in the order in connection with the

contentions urged on behalf of the petitioners before him. We must state that the learned Single Judge has recorded these contentions urged on behalf of the petition so as to negative the earlier part of his observation that there was a consensus about the meaning of the words "the number and preference of his or her choice". However, this is not material for us since we have to construe, this Rule 9.2 not on the concession of the parties but on our own. For purposes of the true construction of the said rule we must examine the different parts comprised in this rule. Rule 9.2 appears a matter of sequence Rule 9.2 is one of the does proving for selection. It is substantive to the extent to which it provides for some consequences for the act of a candidate. The said rule comprises of five parts. The first part enjoins the College Council to call the candidates meritwise for interview. The second part, which we may call an enabling part, give an opinion to the candidates to change "the number and preference of his or her choice" after knowing the actual available vacancies at that time. The third part provided for two-fold obligation. It requires the candidate in any case whether he exercises the option or not to "write out his or her final decision of choice and preference and sign it. It also requires the authorities to affix such final choice to the original application for purposes of maintaining record. The 4th part provides for the consequence of exclusion of any post (possibly it means subject) from the preference (possibly it means choice) of a candidate. The consequence of such exclusion is that the candidate would not be considered for any residency even if he or she stands in the merit for the same. The 5th part prescribes that final choice at the interview will govern all the procedure at that stage and in future and the candidate would not be permitted to change it under any circumstances. On behalf of the petitioners, it has been contended that on the true construction of Rule 9.2, a candidate becomes ineligible at the particular interview for being admitted to) residency in the subject" only which, has been excluded specifically. the learned Advocate submitted an alternative interpretation that the students become ineligible in future only to the extent of the excluded subject. On the other hand, on behalf of the authorities, and the contesting respondent-doctors it has been urged that the interpretation canvassed on behalf of the petitioners does not give effect to every word of the exclusion, clause which in their opinion, would render a candidate wholly ineligible for being considered for any residency, even if the candidate is entitled to be considered on the basis of the merit list. In submission of the respondents, the exclusion not only operates qua the excluded subject but also in respect of every other subject and not only for the purposes of particular interview but also in future. In support "of this contention emphasis has been placed on the words, "any residency" and the 5th part of the rule where it has been prescribed that the final choice would govern all the procedure not only at the stage of interview but in future also and the candidate is not permitted to change that final choice under any circumstances. It is this interpretation canvassed on behalf of the respondents which has found favour with the learned Single Judge. The learned Single Judge has expressed his opinion on the construction of Rule 9.2 in the following terms:

...In my opinion, Rule 9.2 read as a whole, leaves no room for doubt that the aforesaid provision is a prohibition against exclusion of subjects as urged by Mr. Nanavati and the provision clearly says that if the candidate excludes any post from his/her preference, he/she will not be considered for any residency even if he/she stands in merit for the same. This provision has nothing to do with the subject excluded at the time of making application as urged by Mr. Shukla. Rule 9.2 comes into play only at the stage of interview Therefore, what is provided is that if a candidate excludes any post from his/her preference which he/she has shown in his/her application, he/she will not be considered for any residency even if he/she stands on merit for the same. Therefore, reading Rule 9.2 as a whole, it is clear that what it permits is only change of order of preference and not exclusion of any subject out of the subjects of choice indicated in the application.. If candidate excludes any subject, he/she is not entitled to residency in any subject at that time or in future. Therefore, the final choice which a candidate has to make under Rule 9.2 is the choice regarding the order of preference out of the subjects chosen by him/her at the time of making the application. Petitioners, therefore, could not have confined their choice only to one subject put of the subjects of their choice indicated in their application made for residency for the term commencing, from January 16, 1984. If they confined their" choice to only one subject and excluded others they would become ineligible for residency in any subject for the aforesaid term and in future. It, therefore, appears "that the College Council in order not to deprive the petitioners of residencies gave them offer of residency in a subject of lower choice. It is not disputed, by the petitioners that they were not entitled to residency "in the subject of their first choice on merits and that they were offered residency in the subjects of lower "choice. Once this position is admitted, in my opinion, Rule 7.5 comes into play and the petitioners cannot be considered for residency in, any subject for the term commencing from July 1, 1984.

11. The learned Advocate for the petitioner-appellants, therefore, made a grievance that the learned Single Judge has, with respect to him, failed to consider that these two rules viz. rules 9.1 and 7.5 operate totally in different fields. According to the learned Advocate for the appellant-petitioners, Rule 9.2 operates having regard to the exercise of option by a candidate as permitted under the said rule at the time of interview while Rule 7.5 operates at a later stage as a result of the refusal by the candidate to accept the offer made by the Council for residency in the subject of his or her final choice. In submission of the learned Advocate for the petitioners, the consequences prescribed in Rule 9.2 are limited while the consequences prescribed in Rule 7.5 are all pervasive. The consequence for exclusion of a subject according to the learned Advocate is merely to make the candidates ineligible for being appointed to residency in the excluded subject or subjects only for a particular term or in the alternative, in future to the extent of excluded! subject or subjects only. While Rule 7.5 disqualifies a candidate wholly for the residency in any subject in future if he or she declines the offer of residency in the subject of his for her find choice. On

behalf of the authorities as well as the contesting respondent-doctors the interpretation which has found favour with the learned Single Judge has been reiterated.

12. It is in this background of the rival interpretations that we have to determine as to what is the true scope and effect of Rule 9.2.

13. As stated above in interpreting this Rule 9.2 as well as Rule 7.5 to which we will address presently, we have borne in mind the larger perspective of the scheme contained in the rules that the legislature has permitted a medical graduate who has not completed four years after passing the final M.B.B.S. examination to seek residency in subject or subjects of his or her choice. We have also considered rules 9.3, 9.4 as well rules 12.1 and 12.2 of the said rules for residency. On giving anxious consideration to the rival contentions, which have been forcefully placed before us by the learned Advocates representing different sides, we are of the opinion that the interpretation canvassed on behalf of the petitioner-appellants commands to us for the following reasons.

14. It should be recalled that Rule 9.2 permits a candidate to change the number and preference of his or her choice after knowing the availability of the vacancies at the time of interview. A subsidiary question was debated as to what is precisely the meaning of the words "number and preference of choice of a candidate". Does it mean only the order of preference or it means also the number of subjects as well as the preference ? The learned Single Judge, as observed above, held on the so-called concession as well as the later part of the rule that what is number and preference of choice would only mean preference of choice. The same meaning was pressed before us on behalf of the respondents. We are afraid that we find ourselves unable to agree with this meaning pressed into service on behalf of the respondents. The rule making authority has clearly recognised between the number of choice and the preference of choice. If we look to Rule 2 in this behalf, it clearly provides that while inviting the applications, the candidates would be allowed to state any number of choice of subjects in order of preference. In other words, the rules clearly permit the candidates while indicating their choice to state any number of subjects with their order of preference. If, therefore, Rule 9.2 gives an option at the time of interview after knowing the availability of seats at that time to change the number and preference of choice, the legislative intent is manifested that a candidate can exclude the subject or change the order of his preference. The very fact that Rule 9.2 provides for some consequence of exclusion supports the meaning urged on behalf of the appellant-petitioners. This rule read as a whole in light of Rule 2 makes it clear that the meaning which is to be ascribed to the words number and preference of his choice" cannot be the order of preference only since it would be re writing his clause by omitting the words the number of choice and would also render the exclusion clause in the later part of the rule as of no consequence. The effort made on behalf of the respondents to support the interpretation canvassed by them from reading the exclusion clause as

negating the right of exclusion of subject is to say the least reading in a manner which would go against the accepted principles of interpretation of statutes. It is recognised as a matter of principle as well as authority that if the words are clear and unambiguous, one has to read them as they mean on the face and cannot, be read so as to either rewrite the clause or make some part of it redundant or nugatory. It is axiomatic to say that the Legislature never indulges in topology. If, therefore, a candidate has an option to exclude the subject, what is the effect of it? As stated above, the exclusion clause is not properly worded. It says that if a candidate excludes any post from his or her preference, he or she will not be considered for any residency even if he or she stands in the merit for the same. We believe that what is meant by post is subject since the exclusion clause 6.2 provides the effect of exclusion of any subject or change in the order of preference of the subject. It is no doubt true the conclusion clause says that a candidate excluding the subject considered for any residency. The respondents have emphasised these words in support of their contention. We are of the opinion that the respondents are trying to read more in these words than what is warranted. If the effect of the exclusion of a subject is as one as canvassed by the respondents, the exclusion clause would stultify the option clause set out in the opening part of Rule 9.2. If the rule permits change in the number of subjects and at the same time provides for consequence that the candidate exercising the option will not be considered for any residency not only at that stage or term but also "for times to come in future and in every subject, it would be a clear contradiction in terms. We can understand that the rule-making authority may provide a penalty which may operate for a limited purpose but the interpretation canvassed on behalf of the respondents that the exercise of the permissible option would have such disastrous consequences of being totally excluded for admission to residence in any subject in future, would be tantamount to imposing a wholesome penalty for exercise of a permissible option. Such an interpretation not only goes against the provision permitting option in the rules but also defeats the basic purpose of the scheme, namely, to permit a medical graduate to seek education to residency till he completes four years after his graduation. We, therefore, find ourselves unable to accept this contention advanced on behalf of the respondents "since it would provide for a situation which would go not only against the basis scheme but would be unreasonable.

15. The immediate must question which arises is that what is the limited consequence of exclusion of subject. In our opinion the candidate concerned who excludes a subject would not be considered for residency in any of his exclusion subjects for a particular term. On behalf of the respondents our attention is drawn to the 5th. part of rule 9.2 that the final choice made at the interview would govern the procedure not only at this stage but also in future and the candidate will not be permitted to change it under any circumstances. On behalf of the respondents, it was laid on the words "in future" used in the last part of the rule. Here also we are of the opinion that we need not and more the what is

warranted. In our opinion the "rule making authority has provided that this final choice will govern not only at that stage of the interview but also in future because the merit list which is prepared is to be effective and remain in "operation for a period of one" month from the commencement of the term as provided in Rule 9.4. If, therefore, the rule making authority has provided that this final choice should" govern in future it is only for this limited "purpose "that there may not be any claim by the candidate that he may be permitted still further to change the number or order of preference of choice till the merit list remains effective and operative. In that view of the matter, therefore, we are of the opinion that a candidate has an option to change the number of number as well as order of his preference if as a result such a change in number of subject there is an exclusion of a subject or subject the only effect would be such a candidate will not be eligible for being admitted to the residency in those excluded for that term and also till the merit list for term remains in effect and operative for a period of one month as provided in Rule 9.4.

16. The second question which arises for our consideration is as to what is the width and scope of Rule 7.5. On plain reading of the rule, it is clear that it is more in a nature of a disqualification making the candidate ineligible for all times to come for being admitted to residency in any subject in future. The condition precedent for attraction of this rule is the decline by the candidate of an offer of residency in the subject of final choice. Once it is shown that an offer was made in the subject of final choice by a candidate and he declines to accept the same, such a refusal would make him ineligible for being considered for any other residency in any subject in future. It is, therefore, a provision more in the nature of a disqualification ensuing from the act of refusal by the candidate of an offer of residency in the subject of his or her final choice. It cannot clearly be equated with the provision of the exclusion clause in Rule 9.2 which we have already considered. The phraseology which has been adopted in Rule 7.5 as compared with that of the exclusion clause contained in Rule 9.2 makes it abundantly clear that the former appears to be a permanent disablement while the latter appears to be a partial disablement. If the Legislature had intended that Rule 7.5 should operate in the same fashion as one of exclusion clause contained in Rule 9.2, it would have certainly expressed itself in identical terms. Rule 7.5 is a categorical mandate in unequivocal terms that the decline of offer in final choice will disqualify the candidate for being considered for any other residency in any subject in future. If we compare the phraseology employed by the Legislature in the exclusion clause in Rule 9.2 prescribing that if a candidate excludes any subject from his or her preference, he or she will not be considered for any residency even if he or she stands in the merit for the same, and if the Legislature had intended that the exclusion clause was to have the same effect as envisaged in Rule 7.5, it would have certainly said it in categorical terms that a student excluding a subject would not be considered for any other residency in any subject in future. The very fact that in the same set of rules two different types of phraseologies have been adopted by the, Legislature clearly indicates

that the effect prescribed for exclusion of a subject and decline of an offer is not to be the same, namely, total disablement. We do not think that there is any other interpretation possible of Rule 7.5 than the one which we have indicated above. It is more a subsidiary question which arises in application of Rule 7.5 as to what is the meaning to be ascribed to the words "final choice". In order to appreciate the connotation of words final choice we have got to refer to Rule 9.2 where a candidate is given an option to make a change in the number and preference of his or her choice after knowing the actual vacancies available at the time. The candidate is required by the said Rule 9.2 to write down his or her final decision of choice and preference and sign it and this final choice is to be affixed to the application of the candidate concerned for purposes of record. We have already indicated while discussing the construction of Rule 9.2 that a candidate is required to write and sign his final choice irrespective of his exercise of the option for change either in the number of subjects and/or preference of his or her choices. A subsidiary question which therefore arises in application of Rule 7.5 is that if a candidate has not expressed his final choice by writing it out and signing it as required by Rule 9.2, what would be the effect. It is nobody's case and we think rightly that a candidate who fails to express his final choice and sign and submit renders himself ineligible for being considered for admission, to residency since there is a clear option to him or her in Rule 9.2 to change the number and preference of his or her choice. Therefore in a given case where a candidate fails to express his choice in writing, sign it and submit it, his or her initial choice would become the final choice. We must state at this stage that the authority should take greater care in the matter by insisting upon the candidate to expressly state his or her final choice in writing, sign it and submit it irrespective of the fact whether he exercises his option for changing the number and preference of his or her initial choice, in order to maintain proper records since this may involve and as a matter of fact it really involves before us, the question as to whether a candidate has excluded his subject or has declined to accept the offer of residency made in the subject of his or her final choice, we expect the authorities not only to prescribe appropriate proforma application form for expressing the initial choice as well as final choice so that this unseemly dispute may not crop up exposing the parties to protracted litigation. However, in the present case before us since the question arises as to what is the final choice of the petitioner-appellants since it has become difficult not only for the petitioners and the contesting respondent-doctors but also for the authorities to satisfy us one way or the other as to whether the petitioner-appellants had expressly indicated their final choice. The. uneviable consequence of this situation is that by necessary implication, the initial choice becomes the final choice. If that is so, a question may arise as to whether the authorities are under obligation to make an offer in each of the subjects of final choice, if the initial choice has become the final choice by necessary implication on account of the failure of the candidates to indicate their final choice expressly made in writing. It is this subsidiary question which has become a bone of contention between the parties before us.

17. On behalf of the petitioner-appellants it has been urged that if the initial choice of the petitioners had become the final choice and which is the case since they have not indicated their final choice expressly and the authorities have not insisted for obtaining it in writing under their signatures and affixing to the applications for admission to the residency, it is incumbent upon the authorities to make offer of residency in each of the subjects of final choice if they wanted to apply the disqualification prescribed in Rule 7.5. On the other hand on behalf of the contesting respondent-doctors as well as the authorities, it is urged, and which submission has found favour with the learned Single Judge, that if an offer is made in any one of the subjects of the initial" choice which has become final choice by necessary implication, and if such an offer is rejected, the candidate would be disqualified under Rule 7.5 even though the authorities might not have offered the residency in all the subjects comprising the final choice. We are afraid that the interpretation which has been canvassed on behalf of the respondent-doctors and the authorities does not carry conviction with us mainly for "two reasons. Firstly, the consequence of Rule 7.5 as indicated by us above is total disablement rendering the candidate ineligible for being considered for admission to any residency in any other subject in future. If a candidate in the hush of the matter at the interview fails to indicate expressly his-final choice in writing, and the authorities equally not insisting for such express final choice for which he is to be saddled with such far-reaching consequences which affect his career, we must be slow in accepting that interpretation which, in our view, not only too restrictive but also goes against the basic object of the scheme contained in the rules of residency. Apart from this reason, the rule is more in the nature of disqualifying "clause and, therefore, we must strictly construe it. If by necessary implication an initial choice of more than one subject becomes the final choice, it necessarily follows that the offer in order to attract the disqualification contained in Rule 7.5 must be in all subjects which comprised the final choice. This interpretation will advance the basic objective of the scheme, namely, it will not close the prospects of the student seeking admission to residency in future by the narrow interpretation of this rule which has been canvassed on behalf of the authorities as well as the contesting respondent-doctors.

18. The learned Assistant Government Pleader, however, invited, our attention to Rule 9.3 where it has been enjoined upon the authorities to offer residency to candidate at the time of interview according to his or her highest available, choice. In other words, the contention is that the candidate is entitled to be offered residency which is available in his or her highest choice in the subject. We are unable to agree with the learned A. G. P. that the provision contained in Rule 9.3 would have any bearing and would conclude the question of construction of Rule 7.5 for the obvious reason that this is not. the only obligation enjoined upon the authorities since they are further required to adjust and offer the residency to the candidates who have not obtained the admission in the subjects of their choice for a period of one month from the date of commencement of the term, that is, 1st January or ;1st July, as the case may

be, as provided in Rule 9.4 read with Rule 12.1 and rule "12.2. It should be recalled that the merit list is to remain in operation for a period of one month so that the candidate would be eligible for subsequent vacancies in case of the drop out. This clearly indicates that the obligation of the authorities does not end at the first interview when they make offer in the available subjects. The obligation to adjust the candidates and consider them as eligible for any subsequent vacancies arising out of the drop out clearly indicates that the authorities are under obligation to keep the question open till the prescribed period. In that view of the matter, therefore, we do not think that the offer of residency in highest available choice and its decline would" result into disqualifying the candidate for good. In that view of the matter, therefore, we are of the opinion that Rule 7.5 should be so construed that the disqualification prescribed therein could be invoked only when the offer is made in the subject of final choice where it comprises of one subject and in each of the subjects of the final choice if it comprises of more than one.

19. It is in light of this interpretation that we have to decide as to whether the petitioner-appellants have been disqualified for good as held by the learned Single Judge. As stated above, and as we find from the record, which has been produced before us, the petitioners have not, as required under Rule 9.2, indicated expressly in writing under their signatures their final choice with the result that "their initial choice as indicated in column 3 of the table which we have set out above, becomes final choice. It should be recalled that the authorities have been also remiss in insisting for express indication by the candidates of their final choice. In a given case it may be that the candidate might have orally expressed his inclination for a particular subject and expressed his disinclination for others which he might have indicated as his initial choice alongwith the application for seeking admission to residency. But that would not absolve the authorities from insisting that the students must indicate their filial choice expressly in their hands and under their signatures so that there may not be any controversy between that candidate concerned and the authorities as also between the competing candidates inter se. If, therefore, by necessary implication the initial choice becomes the final choice, that cannot disqualify the candidates for good for being considered for residency in future till the candidates complete four years of standing after passing final "M.B.B.S. examination on the ground that the offer was made in one of the highest available choice which the particular candidate had declined and, therefore, he is hit by Rule 7.5.

20. The learned Assistant Government Pleader, as well as the contesting respondent doctors have invited our attention to the letters by which the respective offers were declined and urged that this is tantamount to exclusion of the number of subjects at the time of expressing their final choice and, therefore, as rightly held by the learned Single Judge, they have rendered themselves ineligible for being considered for any residency under the exclusion clause as contained in Rule 9.2. In order to appreciate the contention we may

shortly refer to those letters by which the offers in residency were declined. Dr. H.G. Patel petitioner-appellant of Letters Patent Appeal No. 302 of 1984 by his letter of December 14, 1983 addressed to the Director of Postgraduate Studies and Research stated that he has got the admission in Pathology residency but he did not want to take the residency in Pathology and, therefore, declined the offer. Dr. Rita Koradia-appellant of Letters Patent Appeal No. 303 of 1984 by her letter of December 14, 1983 addressed to the Dean, B.J. Medical College, informed him that she wanted to do studentship in Paediatrics only though residency and registration in General Medicine was offered to her.

21. Dr. Dhru appellant of Letters Patent Appeal No. 304 of 1984 by her letter dated nill addressed to the Dean, B.J. Medical College, stated that her first preference was Obstetrics and Gynaecology which were not offered to her and, therefore, she was not willing to take registration in any other subject. Dr. Ragini Patel appellant of Letters Patent Appeal No. 305 of 1984 by her letter of December 14, 1983 addressed to the Director of Post-graduate Studies informed that she wanted to do diploma in Gynaecology and Obstetrics and did not want to do registration in Ophthalmology. On above consideration, of the contents of the letters we can treat this as exclusion of subjects at the time of indicating the final choice as required under Rule 9.2. All these letters indicated that this is for the purposes of declining the offers of residency in particular subject. We do not think, therefore, that Rule 9.2 can be attracted and applied as was sought to be urged on behalf of the authorities and the contesting respondent-doctors. The question is to be considered only from the angle of the provision contained in Rule 7.5 and on the interpretation which has recommended to us. We do not think that this decline of the respective offers as evidenced by the letters which we have referred to can be so construed as to dis-qualify them for good.

22. In the view of the matter which we are taking we ordinarily require to remit these matters to the authorities for reconsideration in light of the interpretation which has appealed to us. However, since there is no dispute on the ground that the appellants would be entitled for admission to the residency in the subjects in which they have been permitted to be appointed under the interim orders of this Court - first at the stage of the learned Single Judge and thereafter by us in the division bench it would, therefore, not be necessary for us to do that formality again since particularly for the reason that the first term is almost nearing its closure on 31st December, 1984 and, therefore, in order to save public time and costs, we direct the respondent-authorities to give final admission to the residency to the petitioner appellant Dr. H.G. Patel in General Medicine, Dr. Rita Koradia in Paediatrics and Dr. P.S. Dhru in Obstetrics and Gynaecology. So far as Dr. Ragini Patel, who was permitted under the interim order of the Court to be admitted to the residency in the subject of Paediatrics is concerned, she is to be moved to the subject of Obstetrics and Gynaecology since her immediate preceding candidate Dr. Doly Bhatia has resigned from the residency after being appointed in the subject. The result of his shifting of Dr. Ragini Patel would entitle the respondent Dr. N.D. Suchak to be shifted to Paediatrics from where Dr.

Ragini Patel is shifted since he is immediately succeeding Dr. Ragini Patel in the merit list and Dr. N.D. Suchak be appointed accordingly.

23. It is unfortunate, however, that another contesting respondent Dr. Vijay N. Mistry, who has been admitted to the residency in the subject of T. B. & Chest diseases is the lone candidate who does not get residency in the subject of his choice. On the interpretation which had found favour with the learned Single Judge Dr. Mistry would have got the residency in the subject of his choice, namely General Medicine. It is only on account of the interpretation canvassed by the petitioner-appellants and which has found favour with us that Dr. Mistry may have to rest satisfied with his admission to the residency in the subject of T. B. and Chest diseases. We are, therefore, of the opinion that having regard to the two facts, namely, the inapt drafting of the rules and the uncertain position emerging from it, and also because Rule 9.2 so far as it prescribes the necessity of expression of final choice which has not been so scrupulously insisted upon by the authorities, these young doctors have been exposed to the vagaries of litigation. Dr. Mistry was also a student who was entitled to the residency on his ranking in the merit list and in order that a bright young doctor may not be disappointed at the initial stage of the cross roads of his career which may consequently result into the community being deprived of being good doctors in the subject of their choice, we recommend strongly to the Government and we hope and pray that the authorities, having regard to this overall situation some unfortunate aspects of which we have emphasised, will decide to have one supernumerary post of residency in the subject of General Medicine. In the subject of General Medicine on the ranking in the merit list between Dr. Patel and Dr. Vijay Mistry there was an intervening candidate Dr. Praful Mehta. Dr. Praful Mehta has not thought fit to move this Court for being a party to these proceedings either before the learned Single Judge or before this Division Bench nor has he accepted the offer in the residency in any subject since at that time he was interested only in General Medicine. The fact remains that he has not come before this Court for being joined as a party. It should also be noted that he has not kept the first term for the postgraduate studies and, therefore, the University may also find it difficult to recognise his term, if he is considered at this stage. In the circumstances, therefore, we recommend to the State Government that Dr. Mistry should be appointed on the supernumerary post as may be created in terms of the recommendation as aforesaid in General Medicine. The authorities shall also consider to treat the experience which Dr. Ragini Patel and Dr. Mistry have gained in the residencies in their respective subjects in which they were appointed pursuant to the interim orders of this Court as equivalent experience in the subjects in, which they have been now required to be shifted. The respondent authorities shall decide about the recommendation by 31st January, 1985 and report back about the same to this Court.

24. The result is that these letters patent appeals are allowed accordingly by setting aside the order of the learned Single Judge. Having regard to the fact

that this was a question of interpretation of the rules, there should be no order as to costs.