
(1979) 08 GUJ CK 0009
In the Gujarat High Court

Dr. Nikhil V. Vacharajani

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-08-1979

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1979) 2 GLR 109

Hon'ble Judges : B.J. Divan, C.J;R.C. Mankad, J

Bench : Division Bench

Judgement

R.C. Makad, J.—The petitioner who is at present prosecuting his studies in M.S. (Orthopaedics) at the M.P. Shah Medical College, Jamanagar, has fded this petition praying for a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside Government Resolution dated December 30, 1977, Annexure "H" to the petition, issued by the State of Gujarat, respondent No. 1, and Director of Medical Education & Research, respondent No. 2, and restraining respondents Nos. 1 to 3 from impliemnting the said resolution.

2. The petitioner was a student at the M.P. Shah Medical College, while he has studying for MBBS degree and he passed his final MBBS examination with 6th rank in October 1976. M.P. Shah medical College at Jamnagar is one of the four medical Colleges run by the Government of Gujarat, the other three medical colleges are at Ahmedabad, Baroda and Surat. M.P. Shah Medical College is affiliated to the Saurashtra University and the examinations held by it are governed and regulated by the rules framed by the Saurashtra University. In the present petition, the petitioner has challenged the validity of the Government Resolution Annexure "H" in its application to the candidates who have passed the final MBBS Examination from M.P. Shah Medical College, Jamnagar, under the rules framed by the Saurashtra University and who are competing for appointment to the posts of Housemen and Registrars in the said college and the attached teaching hospital. Therefore, for the purpose of deciding the question

which is raised by the petitioner in this petition, we have made reference only to the systems of examination prevailing in Saurashtra University at the relevant time. We do not think it is necessary for us to refer to the systems of examination adopted by other Universities to which the other three Government Medical Colleges are affiliated. So far as the Saurashtra University is concerned, prior to April 1976, the candidates at the final MBBS Examination were examined under the system known, and which will hereinafter be referred to as, the system of "external and internal examination". From April 1976, the Saurashtra University discontinued or scrapped the internal assessment. In other words, from April 1976, the merits of the candidates at the final MBBS Examination were judged only on the basis of their performance at the external examination. When the petitioner was admitted to the third MBBS class, system of examination which was in force was the external and internal examination. In fact before he appeared at the final examination in April 1976, he had appeared at two tests held by his college for the purpose of internal assessment. However, since the Saurashtra University decided to discontinue the system of internal examination or assessment, the result of two college tests at which the petitioner appeared was not taken into account when he passed the third MBBS Examination. The petitioner's merit of performance at the third or final MBBS Examination was judged solely on the basis of his performance at the external examination held by the Saurashtra University.

3. Rule 177 of the rules relating to the courses of study for first, second and third MBBS Examination framed by the Saurashtra University prescribes subjects in which the candidate at the final MBBS Examination is to be examined. As pointed out above, before the change introduced from examination held in April 1976, the system of examination which was in force was the system of external and internal examination and this was under Rule 177. Rule 177 before its amendment read as under

RULE No. 177 (For final MBBS)

The subjects in which candidate will be examined are as under:

MEDICINE:

Theory: External: Two Papers each of 3 hours duration carrying 70 marks each.

Descriptive essay type of questions may be avoided as far as possible. Short note types of questions gradually leading to objective type of question paper should be aimed at.

Internal: 60 marks given by the Head of the Department as under: 40 marks based on the result of at least two test examination and 20 marks for attendance and general proficiency throughout the course.

Practical: External: A clinical examination in Medicine of 70 marks consisting of the following:

- (1) An examination of a patient and a written report thereon.
- (2) A short examination of not less than two cases and practical and oral examination carrying 70 marks.

Internal: 60 marks distributed as above.

SURGERRY: Same as above.

OBSTETRICS AND GYNAECOLOGY:

Theory: External: 3 hours paper of 70 marks.

Internal: 30 marks:

20 marks for attendance and General Proficiency.

External: 70 marks-Clinical case and practical Viva and 30 marks same as theory.

RULES FOR INTERNAL EVALUATION

In Theory & Practical of each subject shall be 30% of its total marks. The distribution of 30% will be-2/3rd for not less than prescribed number of tests and 1/3rd for the class work attendance and general performance.

This rule was amended by the Saurashtra University and system of external and internal examination was replaced by the system of only external examination (which will hereinafter be referred to as the system of only external examination"). Rule 177 after his amendment reads as under:

R. Med. 11 (OLD 177) of 3rd MBBS applicable from March/April 1976. Medicine: Theory: II Written Papers (total 200 marks).

Paper I: 100 marks 3 hrs. duration. Paper II: 100 marks 3 hrs. duration. Practical: Total 200 marks (a) A clinical case of 100 marks of following. (1) Long case 50 marks (2) Two short case of 50 marks. (b) Practical & Oral of 100 marks. SURGERY: Theory: II Written papers (total 200 marks). Paper 1: 100 marks 3 hrs. duration. Paper II: 100 marks 3 hrs. duration. Practical: Total 200 marks (a) A clinical case of 100 marks of following: (1) Long case 50 marks (2) Two short case of 50 marks (b) Practical & Oral of 100 marks. OBSTETRICS AND GYNAECOLOGY. Theory: One paper of 3 hours duration 100 marks. Practical: Total 100 marks.

4. After passing the final M.B.B.S. Examination under the system of external examination, the petitioner did internship for a period of one year from January 1, 1977 to December 31, 1977. The petitioner on successful completion of internship wanted to prosecute further studies. He wanted to join Post Graduate course in Master of Surgery in General Surgery or Orthopaedics. It is the case of the petitioner that those who have passed the final MBBS Examination become eligible for appointment to the posts of Housemen in different subjects or branches in the Medical Colleges and attached teaching Hospitals. A candidate

who aspires to join Post Graduate course applies for the post of Houseman in the subject of his mchoice. According to the petitioner the chioce of subject is made on the availability of posts of Housemen and furture prospects of getting an appointment as Registrar. The posts of Houseman and Registrar carry monthly stipends and therefore, the candidates who want to prosecute furtherstudies are interested in getting appointments as Houseman or Registrar. The posts of Houseman and Registrar are usually advertised twice in a year that is in the months of March and September. The tenure of Houseman and Registrar commences from 1st February or 1st August. Therefore, the candidates who want to join Post Graduate course after completion of the internship in December, have to choose their subject of preferemce by September. Such candidates naturally take into consideration availability of the posts of Houseman in the subjects of their choice and future prospects of being appointed as Registrar in the subject. The petitioner has stated tht a candidate makes a reasonable assessment of the situation, having regard to the persons competing with him and decides how much prospects he has of getting the post of Registrar. The petitioner has stated that a candidate, who wants to take up academic carrer and join teaching profession, has to think about his prospects of getting an appointment as Registrar because for appointment and promotion in teaching line, experience as Registrar is considered to be a teaching experience. The petitioner desires to join teaching profession and it was with that end in view that he chose his subject when he applied for Houseman in response to the advertisement for the post given in September 1976. According to the petitioner the candidates who were above him, meaning thereby, the candidates, whose ranks were 1 to 5 at the final MBBS Examination held in April 1976, chose the subject of General Surgery and applied for the posts of Houseman in General Surgery. Having regard to the number of posts of Housemen in General Surgery, the petitioner also had reasonable chance of getting appointment as Houseman in General Surgery but keeping in mind future prospects of being appointed as Registrar, he chose the subject of Orthopaedics.

5. The petitioner has contended that under the rules governing the appointment to the posts of Houseman and Registrar at the Govenement Medical Colleges and the attached teaching hospitals which were in force in September 1976, he stood first on the merit list of candidates for appointment to the post of Houseman in Orthopaedics. The petitioner further submits that on the basis of the rules in force in September 1976, he had bright prospects of getting the post of Registrar in Orthopaedics which was to fall vacant with effect from August 1, 1979. The above contention of the petitioner is based on Rule 15 of the rules governing the appointment of Registrar at Government Medical Colleges and attached teaching hospitals in the State. Rule 15 was substituted under Government Resolution dated April 28, 1977 which is at Annexure "F" The substituted Rule 15 reads as under:

The selection of the candidate for appointment to the post of Registrar shall be made subjectwise on the basis of external marks obtained in the subjects

concerned i.e. Medicine, Surgery and Obstetrics and Gynaecology. The order of preference in selection will be based on the merit list approved as per the categories given below with the order.

(a) First group of those who have passed the final MBBS Examination in all the subjects at the first attempt be listed markwise in the subject concerned.

(b) Second group of those who have passed the whole examination at second attempt but passed in subject concerned.

(c) Third group of those who have passed the whole examination as well as the subject in the Second attempt will be issued markwise in the subject concerned.

(d) Fourth group of those who have passed the whole examination in the third attempt but passed the subject in the first attempt will be listed markwise in the subject concerned.

Foot Note: If in the same category the marks obtained in the subject by two or more candidates are equal the selection will be decided on the basis of total marks obtained in the whole examination. In the event of the tie in the total marks also, the selection will be on the basis of the marks obtained at the 1st and 2nd MBBS Examination (taken together).

Thus, as a result of substituted Rule 15, selection of candidates for appointment to the post of Registrar was to be made subjects-wise on the basis of external marks obtained in the subject concerned. The petitioner has contended that he made the choice of subject keeping in view Rule 15 which prescribed that selection was to be made on the basis of external marks obtained in the subject concerned. If the external marks alone were taken as the basis, submitted the petitioner, he expected to be on the top of the select list of the candidates for appointment to the post of Registrar in Orthopaedics, which was likely to fall vacant with effect from August 1, 1979. The petitioner, has submitted that under the said resolution Annexure "F" selection of eligible candidates for appointment to the post of Houseman was also to be made on the basis of total external marks obtained at the final MBBS Examination with certain modifications. The modifications are not relevant for our purpose. The petitioner submits that it was having regard to Rule 15 which was in force when he made the choice of subject that he chose Orthopaedics as his subject for prosecuting his post graduate studies for the degree of M.S.

6. The candidates who applied for the post of Houseman in response to the advertisement given in September, 1976, included the candidates who were examined under both the systems of examination, namely, system of external and internal examination and system of external examination. This was because the candidates who had passed the final MBBS Examination before April 1976 were also eligible to be appointed as Houseman. However, in view of the Government Resolution Annexure "F" the selection of candidates for the post of Houseman was made only on the basis of the marks obtained at the external

examination at the final MBBS Examination. In other words, for the purpose of selecting candidates internal marks of the candidates who had appeared at the final MBBS Examination prior to April 1976 were ignored and they had to compete with other candidates only on the basis to the marks obtained by them at the external examination. The petitioner had given first preference to the subject of Orthopaedics and his name appeared at the top of the select list of candidates selected for the post of Houseman in Orthopaedics. The petitioner was appointed as Houseman in Orthopaedics and he joined his post as Houseman on February 1, 1978. He worked as Houseman upto January 31, 1979 as his appointment was for a period of one year. According to the petitioner he was eligible to be appointed as Houseman in Orthopaedics for one year more but he did not choose to take up this appointment as he expected to be appointed as Registrar with effect from August 1, 1979. One of the requirements for being appointed as Registrar is one year's experience as Houseman and since the petitioner had already worked as Houseman for one year, it was not necessary for him to gain any further experience as Houseman and since the petitioner had already worked as Houseman for one year, it was not necessary for him to gain any further experience as Houseman for getting appointment to the post of Registrar in Orthopaedics. The petitioner apprehended that if he took up the appointment as Houseman for one year more, he might not be considered for appointment to the post of Registrar. It was, therefore, also, that he did not think it advisable to continue as Houseman after expiry of his tenure on January 31, 1979.

7. The Government modified its resolution Annexure "F" dated April 28, 1977 by another resolution Annexure "H" dated December 30, 1977. By this resolution, the Government altered the criterion for the selection of eligible candidates for appointment to the post of Houseman and Registrar. By this resolution, the Government decided to make Registrar in accordance with the system of assessment of marks prevailing at the final MBBS Examination in different Universities in the States of Gujarat when the candidate had passed his final MBBS Examination. Thus according to this latest resolution, whatever the system of examination in force selection of the candidates was to be made on the basis of total marks obtained by him at the final MBBS Examination. In other words, the selection of candidate was not to be made on the basis of the marks obtained by him at the external examination as provided in the resolution Annexure "F" dated April 28, 1977. The petitioner has submitted that on account of the modification of the selection criterion, respondent No. 6 Dr. Anil Vasadia who would otherwise rank below the petitioner in select list of eligible candidates for appointment to the post of Registrar in Orthopaedics, if the selection was made on the basis of external marks in the subject concerned under Rule 15 as substituted by resolution Annexure "F", would rank above the petitioner. The petitioner has submitted that respondent No. 6 obtained 167 out of 280 marks i.e. 59.7% marks as against 242 out of 400 i.e. 60.5% obtained by the petitioner in the external examination of the subject concerned. Therefore if external marks

alone were to be taken into consideration, the petitioner would rank above respondent No. 6 in the select list of candidates for appointment to the post of Registrar in Orthopaedics. Respondent No. 6, however, got 91 out of 120 that is 76% in internal examination in the subject concerned at the final MBBS Examination. Therefore, if his internal marks are also taken into consideration as provided in Resolution Annexure "H" respondent No. 6 would rank above the petitioner and is likely to be appointed as Registrar in Orthopaedics defeating the right of the petitioner to be appointed to that post under the rules in force when he chose the subject of Orthopaedics and applied for the post of Houseman in Orthopaedics.

8. The petitioner has contended that the resolution Annexure "H" dated December 13, 1977 contravenes the provisions of Article 14 of the Constitution of India inasmuch as it treats unequals as equals. It is submitted that the candidates who were examined at the final MBBS Examination under the system of external and internal examination, cannot be compared with the candidates who were examined at this examination under the system of external examination. It is submitted that out of the total marks of 1000, 300 marks were for internal examination under the system of external and internal examination. Therefore, a candidate who was examined under this system would secure 30 per cent of the marks even before he appeared at the external examination. A candidate whose performance was assessed only on the basis of external examination, did not have such an opportunity. It is further contended that out of 300 marks for internal examination 100 marks, which represent 10 percent of the total marks, were for attendance and general proficiency. Students who were in the third MBBS Examination class required to attend minimum 75 per cent of the total working days and under the prevailing practice at the relevant time, the students whose terms were granted were given not less than 75 out of 100 marks for attendance and general proficiency. Therefore, 7.5 per cent marks were given to the candidates who appeared at the examination under external and internal system by their mere physical presence in the college, irrespective of their merit. According to the petitioner, internal assessment was on a footing different from the external assessment. Therefore, if external and internal evaluation was taken together such evaluation would not be the same as the evaluation made on the basis of external examination. In the result, the candidates who have appeared under the system of external and internal examination cannot be treated at par with the candidates who were examined under the system of only external examination. The petitioner has therefore, contended that the resolution dated December 30, 1977, Annexure "H" treats unequals as equals and therefore, violates Article 14 of the Constitution. It may be mentioned here that out of various contentions raised by the petitioner in his petition, this is the only contention pressed by Mr. B.P. Tanna learned Advocate for the petitioner at the hearing of this petition. We have not therefore, set out other contentions raised by the petitioner in the petition and the facts relating to those contentions. Since the challenge to resolution Annexure "H" was confined

to Article 14 of the Constitution, we have set out only those facts which are relevant for the purpose of examining this challenge.

9. There is no dispute that so far as Saurashtra University is concerned, system of external and internal examination was in force upto the year 1975. Under this system of examination, candidates at the final MBBS Examination were examined in two papers each of three hours" duration carrying 70 marks each in each of the subjects of Medicine and Surgery. 60 marks of theory were to be given by the Head of the Department for internal assessment. Out of 60 marks 40 marks were based on the result of at least two tests and 20 marks for attendance and general proficiency throughout the course. There was also practical examination in Medicine and Surgery. In this examination 70 marks were for external examination and 60 marks for internal assessment were to be given on the same basis as theory. So far as the subject of Obstetrics and Gynaecology was concerned, candidates had to appear at one paper of theory of three hours" duration carrying 70 marks. 30 marks were reserved for internal assessment in theory. Out of 30 marks 20 marks were for the tests and 10 marks for attendance and general proficiency. Candidate had also to appear at the practicals in the subject of Obstetrics and Gynaecology. Here also, 70 marks were for external examination and 30 marks for internal assessment, on the same basis as theory. It would thus be seen that under the system of external and internal examination, maximum total marks were 1000. Out of these marks 300 marks were for internal assessment. Out of these 300 marks for internal assessment 100 were assigned to attendance and general proficiency. Saurashtra University changed the system of examination with effect from March/April 1976. Under the new system, Saurashtra University discontinued the internal assessment of candidates at the final MBBS Examination and decided to assess the performance or merits of the candidates at this examination only on the basis of their performance at the external examination. Under this system of examination, candidates at the final MBBS Examination have to appear at two paper in theory in each of the subjects of Medicine and Surgery. Each paper is of 100 marks. Thus there would be 200 marks for theory in each of the subjects of Medicine and Surgery. Practicles in each of these subjects are of 100 marks. Similarly, there is one theory paper of 100 marks and practicals of 100 marks in the subject of Obstetrics and Gynaecology. The total marks under the new system of examination remain the same, namely, 1000. If comparison of two systems is made, there is no doubt that the method of assessment of the merit of the candidates at the final examination is not the same under both the systems. There is no difference between the two systems so far as the external examination is concerned. However, so far as internal examination is concerned, the performance of the candidate is to be judged on the basis of the tests held by his college and attendance and general proficiency. As pointed out above, out of total 1000 marks, 100 marks, that is 10 per cent of the total marks, are reserved for attendance and general proficoency. A candidate examined under the system of external and internal examination would get certain marks out of

100 by his mere physical presence in the college. We are told that under the practice prevailing under this system of examination, no candidate was given less than 75 marks that is 7.5 per cent of the total marks for attendance and general proficiency. These marks were given on the basis of the terms granted. A candidate was required to attend minimum 75 per cent of the total working days to get his terms granted and, therefore, once his terms were granted, it would mean that he had attended 75 per cent of the working days. It was on that basis that each candidate whose terms were granted was given minimum 75 marks for attendance and general proficiency. Therefore, in practice according to the petitioner, 7.5% of the total marks were given to the candidate at the final MBBS Examination on account of his mere physical presence in the college which he was attending. Whether or not, this allegation made by the petitioner is true, the fact remains that certain percentage of marks was given to a candidate for attending classes. The merit or performance of the candidate at the examination cannot be judged by his mere physical presence in the class or by his attending class. It would, therefore, appear that a candidate under the system of external and internal examination got certain marks or a certain percentage of marks without reference to his merit or, in other words, irrespective of his merit. Under the system of external examination, merit of a candidate is judged only on the basis of his performance at the examination in both theory and practicals. Each mark that he earns in theory and practicals is on the basis of his merit and performance at the examination. In other words, he does not get any mark which has no reference to his merit or performance at his examination. It is, therefore, obvious that the two systems of examinations taken as a whole are not comparable. Only the external examination under the system of external and internal examination is comparable with examination under the system of external examination because the method of assessment of merit of a candidate at external examination under both the systems is common. But if the internal assessment is taken into account, performance or merit of the candidate under the system of external and internal examination cannot be compared with that of the candidate under the system of external examination. The method of assessment or evaluation of merit of a candidate, if internal assessment is also taken into account, is different under two systems. Internal assessment is not on the same footing as external assessment. Therefore, if the internal assessment is taken into account, candidates under the two systems cannot be treated as equals.

10. The Government itself recognised and accepted the position that if internal assessment is taken into account the candidates under the two systems of examination could not be treated as equals. This is evident from its decision which is embodied in its resolution Annexure "F" dated April 28, 1977, to select candidates for the posts of Registrar and Housemen, only on the basis of external marks obtained in the subject concerned. Before this resolution dated April 28, 1977 was passed by the Government, selection of candidates for the appointment to the post of Registrar was to be made subject-wise on the basis of

the marks obtained in the subject concerned, that is Medicine, Surgery, Obstetrics and Gynaecology. The order of preference in the selection was based on the merit list approved as per the categories given in Rule 15 of the Rules for appointment or Registrar. Selection of the candidates was to be made on the basis of the marks obtained in the subject concerned, obviously because there was only one system of examination prevailing prior to 1976. It was only with effect from April 1976 that the Saurashtra University brought about a change in the system of examination by doing away with or discontinuing the internal assessment. It was urged on behalf of the petitioner that the system of internal evaluation was discontinued because there was tendency on the part of the college authorities to favour the students of their college. This system was strongly criticised by those who were vitally concerned and interested in the medical education and it was as a result of such criticism that the Saurashtra University decided to discontinue the system of internal assessment. We are not concerned with the reasons which weighed with the University authorities in discontinuing the system of internal assessment. The fact, however, remains that the University did discontinue the system of internal examination from the year 1976. It would appear that it was in the light of the change in system of examination introduced by the University that the Government passed the resolution Annexure "F" dated April 28, 1977. By this resolution, selection of the candidates for appointment to the post of Registrar was to be made subjectwise on the basis of external marks obtained in the subject concerned, that is Medicine, Surgery or Obstetrics and Gynaecology. The candidates who had passed the examination held in April 1976 became eligible for appointment to the post of Housemen after completing one year of internship, which was to end in December 1977. As pointed out above, appointments to the posts of Housemen and Registrar are made twice in a year with effect from either 1st February or 1st August. The candidates who appeared at the examination held in April 1976 became eligible to be appointed at the examination from February 1, 1977, Those were the candidates who were examined under the system of external examination only. It was, therefore, that the Government, it would appear, decided to revise or amend the rule regarding selection of candidates for appointment to the posts of Registrar and Houseman. Under the amended rule, as pointed out above, selection of candidates for the appointment to the post of Registrar and Houseman was to be made solely on the basis of external marks obtained in subject concerned. Candidates who had passed the final MBBS Examination in April 1976 and earlier were eligible to be appointed as Houseman and Registrar from the year 1978. Thus, so far as the M.P. Shah Medical College and attached teaching hospital were concerned, the candidates who were examined under the two different systems were to compete with one another for the post of Houseman, tenure of which was to begin from February 1, 1978. The question which naturally arose before the Government was how to assess the comparative merits of such candidates. It was, therefore, that the Government decided to assess their comparative merits only on the basis of the external marks obtained in the subject concerned. In our opinion, this was the only

rational method of assessing the comparative merits of the candidates who were examined under two different systems of examination. There was no difference between the two systems so far as the assessment of performance or merits of the candidates at external examination were assessed on the same basis. It was, therefore, that the Government decided to assess comparative merits of the candidates on the basis of their performance at the external examination.

11. Application for appointment to the posts of Housemen in different subjects were invited by the authorities concerned in September 1977. The petitioner, who was to complete his internship on December 31, 1977, was eligible to be appointed as Houseman from February 1, 1978. The petitioner has stated that he stood 6th at the final MBBS Examination and having regard to his rank he could have chosen either General Surgery or Orthopaedics for prosecuting his Post Graduate studies. The first five candidates who were above the petitioner in rank opted for General Surgery. The petitioner says that he also could have chosen General Surgery, but keeping in mind his future prospects he decided to choose Orthopaedics as his subject for the Post Graduate studies. It was submitted by Mr. Tanna that the petitioner chose the subject of Orthopaedics with reasonable expectation of getting the post of Houseman and later on of Registrar in the subject of Orthopaedics. Under the existing rules, the post of Registrar carries a consolidated stipend of Rs. 625/- per month. Students prosecuting Post Graduate studies are usually anxious to take up appointments as Houseman or Registrar, because besides gaining experience they also earn while they learn. Mr. Tanna submitted that having regard to the resolution Annexure "F" dated April 28, 1977, passed by the Government, the petitioner thought that in all probability he would get the post of Houseman and later on the post of Registrar in Orthopaedics. It was submitted that selection of the candidates for these posts was to be made on the basis of external marks and as per the information, which the petitioner had, he stood first on the merit list for the post of Houseman in Orthopaedics for the tenure beginning from February 1, 1978. It was further urged that if external marks were to be taken as basis, the petitioner would in all probability get the post of Registrar in Orthopaedics which was to fall vacant with effect from August 1, 1979. It is not disputed that the only other candidate for the post of Registrar in Orthopaedics which has fallen vacant from August 1, 1979, is respondent No. 6. It is also not disputed that if external marks are taken as the basis, the petitioner would stand above respondent No. 6 on the merit list. It is, therefore, submitted that the petitioner reasonably expected to be appointed as Registrar with effect from August 1, 1979, and it was, therefore, that the petitioner chose the subject of Orthopaedics for his post graduate studies in M.S.

12. State Government, however, modified this resolution Annexure "F" dated April 28, 1977 by its resolution dated December 30, 1977 Annexure "H". By this modification, the Government directed that selection of eligible candidates for appointment to the post of Houseman and Registrar should be made in accordance with the system of assessment of marks prevailing at the final MBBS Examination in different Universities in the State of Gujarat when the candidates

had passed their final MBBS Examination held by different Universities. In other words, Government decided to select candidates for the posts of Houseman and Registrar not on the basis of external marks only as laid down in the resolution Annexure "F" dated April 28, 1977, but on the basis of total marks obtained by the candidates at the final MBBS Examination irrespective of the system of examination under which he was examined at the final MBBS Examination. As a result of this resolution Annexure "H" dated December 30, 1977, the candidates who passed the examination under the system of external examination were treated on par with or as equals of candidates who were examined under the system of external and internal examination. As pointed out above, the basis of assessment of merit or performance of the candidates under the two systems is not the same. Inequality in the assessment arises on account of the method of internal assessment. We have already discussed above, how this inequality arises. It is, therefore, obvious that as a result of the resolution Annexure "H" dated December 30, 1977, unequals are treated as equals for the purpose of selection to the posts of Houseman and Registrar. There is no explanation given for this abrupt change in the policy of the Government in making appointment to the posts of Houseman and Registrar. By the time the resolution dated December 30, 1977, was passed, selection to the post of Houseman for the tenure beginning from February 1, 1978 was already made. It is stated by the petitioner that selection to the post of Houseman was made only on the basis of external marks obtained by the candidate in the subject concerned. At this selection, only external marks of the candidates who appeared at the examination under the system of external and internal examination were taken into consideration. Government, however, for the reasons best known to it, made a departure and changed this basis, which, in our opinion, was the only rational basis for making selection from amongst the candidates who had passed the final MBBS Examination under two different systems of examination. As pointed out above, so far as external examination was concerned, the basis for assessing the merit of the candidate was the same under both the systems. It was, therefore, but rational to assess the comparative merits of candidates examined under the two systems on the basis of their performance at the external examination only. If their performance at the external examination only is taken into consideration, the candidates examined under the two systems and who were competing with one another would stand on the same footing. By revising or changing the method of selection by making the total marks obtained by the candidate at the final MBBS Examination as the basis, the Government introduced an element of inequality and treated unequals as equals. The candidates who had appeared at the final MBBS Examination under the system of external and internal examination were definitely at an advantage as compared to the candidates who were examined under the system of external examination only, because a certain percentage of marks was given to them for attendance in college, irrespective of their merit.

13. It is no doubt true that as urged by Mr. J.R. Nanavati, learned Assistant

Government Pleader, appearing for the respondents, the State Government has power to frame rules to regulate appointments to the post of Registrar. It cannot be disputed at the same time that the State Government must frame rules in conformity with the guarantee of equal protection conferred by Article 14 of the Constitution of India. The rules framed by the Government should not therefore operate in a discriminatory manner. In other words, the Government cannot frame rules which would result in discrimination, violation Article 14 of the Constitution. Dealing with Article 14 in *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, , the Supreme Court has made the following important observations :

What is meant by the power to classify without unreasonably discriminating between persons similarly situated, has been stated in several other cases of this Court. The same applies when the legislature reasonable applies a uniform rate after equalising matters between diversely situated persons. Simply stated the law is this. Differences in treatment must be capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differentially treated. When differential treatment is not reasonably explained and justified the treatment is discriminatory. If different subjects are equally treated there must be some basis on which the differences have been equalised otherwise discrimination will be found. To be able to succeed in the charge of discrimination, a person must establish conclusively that persons equally circumstanced have been treated unequally and vice versa.

Applying the above test laid down by the Supreme Court, there is no doubt that the resolution Annexure "H" dated December 30, 1977, violates Article 14 in a case where candidates examined at the final MBBS Examination under two different systems of examination stated above are competing with one another. As pointed out above, unequals have been treated as equals for the purpose of selection to the posts of Registrar and Houseman. Therefore, to the extent, resolution Annexure "H" dated December 30, 1977, cannot be held to be valid. It is, however, urged by Mr. Nanavati that the basis adopted by the Government was rational inasmuch as it had decided to compare relative merits of the candidates seeking appointment to the posts of Registrar and Houseman on the basis of the marks obtained by them at the final MBBS Examination Mr. Nanavati submitted that the Government was not in any way concerned with the system of assessment of merits or performance at the examination adopted by the University. It was not for the Government to decide whether the system of examination adopted by the University was rational or not. Government was entitled to proceed on the basis that the system adopted by the University was rational and marks obtained by the candidates at the final examination were on the basis of their respective merits. Mr. Nanavati submitted that whether the candidate was examined under the system of external and internal examination or whether he was examined under the system of only external examination is not relevant and when the Government decided to select candidates on the basis

of the total marks obtained by them at the final MBBS Examination it cannot be said that such decision was arbitrary or discriminatory. In support of his contention Mr. Nanavati relied on the decisions of the Supreme Court in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, *Ganga Ram and Others Vs. The Union of India (UOI) and Others*, *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, and *Mohamad Shujat Ali v. Union of India* AIR 1974 S.C. 1931. We do not consider it necessary to refer to the decisions of the Supreme Court cited by Mr. Nanavati since in our opinion decision of the Supreme Court in the case of *Twyford Tea Company (supra)* is directly on the point. We have already pointed out above that the Government itself has recognised and accepted the position that the assessment of relative merits of the candidates under the two systems of examination referred to was not the same. It was, therefore, that it had decided by its resolution Annexure "F" dated April 28, 1977 to select candidates on the basis of external marks obtained by them in the subject concerned. Having recognised this position, it is not now open to the Government to say that the method of selection adopted by it under the resolution Annexure "H" in a case where the candidates who were examined under both the systems of examination are competing with one another is rational. In our opinion, as already observed above, the method of selection adopted in the Resolution Annexure "F" dated April 28, 1977, was the only rational method for making selection for appointment to the post of Registrar and Houseman from amongst the candidates who were examined under both the systems of examination. Resolution Annexure "H" dated December 30, 1977, brought about inequality between candidates examined under two different systems of examination and treated unequals as equals. Such treatment is not reasonably explained by the Government. It is also not stated as to with what object in mind, such a course is adopted. Resolution Annexure "H" in our opinion is therefore, discriminatory in case where the candidates under the two systems are competing with one another. We, therefore do not agree with Mr. Nanavati that the basis adopted by the Government under Resolution Annexure "H" dated December 30, 1977, is rational.

14. In the view which we are taking the petitioner must succeed in this petition. In our opinion, resolution Annexure "H" dated December 30, 1977, is discriminatory and violative of Article 14 of the Constitution, in cases where candidates who appeared at the final MBBS Examination under two different systems of examination referred to above are competing with one another for the post of Registrar or Houseman and it is liable to be struck down as invalid only to that extent.

15. In the result, we allow this petition. Resolution Annexure "H" dated December 30, 1977 in so far as it applies to a case where candidates who appeared at the final MBBS Examination under the two systems of examination, namely, the system of external and internal examination, and the system of external examination only, are competing with one another for the post of Registrar or Houseman, is struck down as invalid being violative of Article 14 of

the Constitution of India. Respondents are directed to make selection of eligible candidates for the post of Registrar in Orthopaedics in the M.P. Shah Medical College and attached teaching Hospital, which has been vacant and which is to be filled up with effect from August 1, 1979 without taking into consideration Resolution Annexure "H" dated December 30, 1977. In other words, the respondents are directed to make selection for the said post of Registrar on the basis of Rule 15 as it obtained prior to the passing of the said Resolution Annexure "H"

Rule made absolute to extent stated above with no order as to costs.