

(1992) 09 GUJ CK 0018
In the Gujarat High Court

Case No : Spl. Civil Application No's. 5220 and 5373 of 1992

Ekta Arvindkumar Shah (Minor) and Another

APPELLANT

Vs

H.S. Shah and Another

RESPONDENT

Date of Decision : 10-09-1992

Acts Referred:

Admission to M.B.B.S. Course Rules, 1992 — Rule 15, 2, 20, 29, 3
Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 115

Citation : AIR 1993 Guj 90

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : N.D. Nanavati and K.A. Puj, for the Appellant; S.N. Shelat, for the Respondent

Judgement

A.P. Ravani, J.—Two students who have passed their Higher Secondary Certificate Examination -- qualifying examination for being admitted to First M.B.B.S. course -- have filed two separate petitions challenging the constitutional validity of Rules 4(1), 5 and 9 of the Rules for Admission to the First M.B.B.S. Course in Smt. N. H. L. Municipal Medical College, framed by the Ahmedabad Municipal Corporation. One student being minor, the petition -- special civil application No. 5373 of 1992 -- is filed through his father and natural guardian. The students concerned have not been considered eligible for being admitted to the first M.B.B.S. course on the ground that they are not "local students" as defined in Rule 5 of the Rules for Admission to the First M.B.B.S. Course (for short "the Rules"). They have also prayed that the respondents be directed to consider them eligible for admission to the First M.B.B.S. course and be further directed to include their names in the merit list and they be called for interview for the purposes of admission to the First M.B.B.S. Course at Smt. N.H.L. Municipal Medical College, Ahmedabad. At the request and with the consent of the learned advocates appearing for the parties both the matters have been heard together and are being disposed of by this common judgment and order.

2. The factual data with regard to each of the students is as follows :

Spl. C.A. 5220/92

Spl. C.A. 5373/92

1.

Name of the student

Kum. Akta Arvindkumar Shah

Dholakia Advait Nityanand

2.

Marks obtained in SCC Examination held in March, 1990

540/700

567/700

3.

School through which the student passed SCC Examination

Firdaus Amrut Higher Secondary School Cantonment Area Ahmedabad (School situated outside Municipal Corporation limit)

Tripada High School 1, Ratnaraj Society Ghatlodia, Ahmedabad (School situated outside Municipal Corporation limit)

4.

Marks obtained in HSC Examination held in March, 1992(10 + 2 pattern)

392/450

396/450

5.

School through which the student passed HSC examination

Firdaus Amrut Higher Secondary School Cantonment Area Ahmedabad (School outside Municipal Corporation limit)

St. Xaver's High School, Loyala Hall Ahmedabad (School within Municipal Corporation Limit)

Both the students applied for being admitted to First M.B.B.S. course at Smt. N.H.L. Municipal Medical College for the year 1992. Their names have not been included in the merit list declared by respondent-College authorities on the ground that they were not "local students". As defined under Rule 5 of the Rules, only if a student has passed both SSC and HSC examinations from schools situated within Municipal Corporation limits he is considered a "local student".

Petitioner contend that the rules which prescribe eligibility criteria and restricts the admissions to the categories of "local students" only are violative of Article 14 of the Constitution of India inasmuch as the classification of "local students" and other students is not based on any rational or intelligible differentia, which distinguishes the persons grouped together from those who are left out of the group. It is further alleged that even if the classification is considered to be reasonable, which it is not, there is no rational nexus with the object sought to be achieved. In such cases the object is to select the best meritorious candidate.

3. In the State of Gujarat, Gujarat Secondary Education Board conducts the Secondary School Certificate Examination which is popularly known as SSC Examination. Similarly, the Board conducts Higher Secondary Certificate Examination (10+2 pattern). The schools from which both the students concerned in these two petitions have passed their SSC examination and HSC examination are affiliated to the Gujarat Secondary Education Board. The syllabus and standard of examination are the same for all the schools affiliated to the Gujarat Secondary Education Board. Thus there is common syllabus, common examination and there is common standard of evaluation. For all the schools affiliated to the Gujarat Secondary Education Board whether situated within the Municipal Corporation limit or outside the Corporation limit anywhere in the State of Gujarat, there is common examination and common standard of evaluation. This factual position is not in dispute.

4. The relevant rules, copy of which is produced at Annexure-G in special civil application No. 5220/92 may be examined. As per Rule 2 the qualifying examination for admission to the First M.B.B.S. course is Higher Secondary Examination conducted by the Gujarat Secondary Education Board or its equivalent examination (10+2 pattern) recognised by the Gujarat University for admission to the First M.B.B.S. course. It is also stipulated in the Rule that last two years of study should comprise Physics, Chemistry, Biology and Mathematics and English as compulsory subject after the introduction of 10+2+3 years educational structure as recommended by the National Committee on Education. The candidates who have passed Higher Secondary or its equivalent examination prior to March/April of current year or October/November of preceding year are not eligible for admission.

5. As per the directive of the Supreme Court in Civil Writ Petition Nos. 348-352 of 1985, 15 per cent, of the total seats are to be filled up on all India basis. For these seats eligibility criterion is All India Pre-Medical Entrance Examination conducted by the Central Board of Secondary Education, New Delhi.

Rule 3 prescribes that the students will be admitted to the First M.B.B.S. course in order of merits, subject to reservation for candidates belonging to Scheduled Castes, Scheduled Tribes and other reserved categories. Rule 4 restricts admission to certain categories of students. Rule 6 defines "local students" and Rule 9 casts obligation on student claiming to be a "local student" to furnish certificate from the school/college concerned that the school or college is

situated within the Ahmedabad Municipal Corporation limits. All these three rules are relevant and are being reproduced hereinbelow:

"4. Admission to this Medical College will be restricted to the following categories of students only :

- (i) Local students as defined in Rule 5;
- (ii) Candidates belonging to Scheduled Castes, Scheduled Tribes, Nomadic Tribes and Denotified Tribes from Gujarat State, as specified in Rule 6;
- (iii) Local candidates belonging to Socially and Educationally backward class as notified by Government of Gujarat as specified in Rule 7;
- (iv) Students allotted for admission on the basis of All India pre-medical Entrance Examination as per Rule No. 29;

5. Local students means a student who has passed S.S.C./New S.S.C. Examination and the qualifying examination from any of the High Schools or Colleges situated within Ahmedabad Municipal Corporation Limits.

9. A student claiming to be a local student shall have to clearly state in the application form that he is a local student and shall have to furnish Certificate from the Head of the School from where he has passed his S.S.C. examination/ New S.S.C, Examination and from the Principal of the College/Head of the School from where he has passed the qualifying examination that the school or college is situated within the Ahmedabad Municipal Corporation limits."

Rule 15 provides that the merit order for admission will be determined strictly on the basis of aggregate marks at external evaluation in theory papers obtained in the science subjects (physics, chemistry, biology and mathematics) at the Higher Secondary Examination or its equivalent examination recognised by the Gujarat University for admission to the First M.B.B.S. Course. Rule 20 inter alia provides that the admission granted will be notified on the college notice board and "candidates residing outside Ahmedabad will be informed by telegram" as soon as they are selected for admission. Rule 29 provides that for the seats to be filled up on All India basis the number of seats, qualifying examination and procedure for admission will be as per the, rules applicable at the time of admission.

5A. There are about 59 seats which are available for open merits for "local students". Definition of "local student" as per Rule 5 means that such student should have passed SSC/New SSC examination and the qualifying examination from any of the schools or colleges situated within the Ahmedabad Municipal Corporation limits. Even for the reserved category of seats belonging to Scheduled Castes, Scheduled Tribes and socially and educationally backward classes, provision restricting the admissions to "local students" applies in certain respects. Thus the basis of classification is the physical existence of the school/ college within the Municipal Corporation limits. Only if a candidate has passed his SSC and Higher Secondary Examinations from any High School or College

situated within the Ahmedabad Municipal Corporation limits he would be eligible for being admitted to First M.B.B.S. course. Be it noted that residence within the Municipal Corporation limits is not the basis of classification. On the contrary Rule 20 indicates that the students residing outside Ahmedabad are also being treated eligible and they are required to be informed about their admission by telegram immediately after their selection for admission. Therefore the question : is the basis of classification, namely, physical situs of the school/college within the Ahmedabad Municipal Corporation limits an intelligible differentia distinguishing the persons grouped together from those who are left out of the group? Further question is : has the classification any rational nexus with the object sought to be achieved, namely, to select the best meritorious candidate?

6. In the affidavit-in-reply it is submitted that the respondent-Corporation is competent to define the source of admission in respect, of the college administered and managed by it. It is further submitted that the respondent Municipal Corporation is competent to limit the admission only to the students who have passed their SSC/New SSC Examination and Higher Secondary Certificate Examination, i.e. the qualifying examination from the schools and colleges situated within the Ahmedabad Municipal Corporation limit. It is also asserted that by the said classification merit has not been ignored and it is averred that the admissions are granted to the students on merits only. Classification is sought to be justified by stating that "it is a college managed and administered by the Municipal Corporation which is also responsible for providing facilities for medical education". It is also averred in the affidavit-in-reply in special civil application No. 5220 of 1992 that the Corporation is responsible for providing such facilities (medical education) only to the city and within the city no artificial restrictions are placed.

7. It is further averred that the rules are in force for last about twenty nine years and everyone concerned knew about the eligibility criteria prescribed by the Municipal Corporation for admission to the First M.B.B.S. course at Smt. N.H.L. Municipal Medical College. On this basis it is submitted that the petition be rejected.

8. The contention that the rules are in force for last about twenty nine years and therefore the challenge to the constitutional validity of the Rules should not be entertained has no merits. Simply because the provisions of rules have not been tested on the anvil of constitutionality for a period of about three decades, the vice of unconstitutionality, if there be any, does not make it constitutionally valid. Again it may be noted that the constitutional validity of the Rules is challenged on the ground of violation of Article 14 of the Constitution of India which ensures to all the citizens of the country equality before the law. It is a fundamental right guaranteed under the Constitution. As far as the fundamental rights are concerned, there is no waiver or acquiescence. On this point, if any authority is needed, reference may be made to the decision of the Supreme Court in the case of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, ,

wherein it is held that there cannot be any estoppel against the paramount law of the land and that a person cannot waive any of the fundamental rights conferred upon him by the Constitution in Part III by any of its acts. Hence the contention that because the rules are in force for a period of about 29 years the constitutional validity of the same need not be examined has no merits and the same is rejected.

9. Learned counsel for the respondents has relied upon the following decisions of the Supreme Court:

(1) Chitra Ghosh v. Union of India, reported in AIR 1970 SC 35; (2). D.N. Chanchala Ors. Vs. The State of Mysore and Others, ; (3) N. Vasundara Vs. State of Mysore and Another, .

In the case of Chitra Ghosh (supra) the rule providing for reservation of seats which were to be filled in by nomination by Central Government came up for consideration. In para 9 of the judgment it is inter alia observed that it is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to the students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education.

In the case of D.N. Chanchala Ors. Vs. The State of Mysore and Others, the Supreme Court upheld the university-wise classification and held that one could be given preference to one's own university.

In the case of N. Vasundara Vs. State of Mysore and Another, the Supreme Court upheld the rule framed by the State of Mysore which inter alia provided that a candidate should be domiciled and resident in the State of Mysore for not less than ten years at any time prior to the date of the application for a seat.

After referring to the aforesaid decisions, reliance is placed on certain observations made by the Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , wherein it is inter alia stated that the aforesaid decisions relate to admission to MBBS course and were binding. On this basis it is also observed that residence requirement in a State can be imposed as a condition for being admitted to M.B.B.S. course, and that it was open to the respondent Municipal Corporation to classify the sources of admission as the Corporation was responsible for administering and financing for the

expenditure incurred in running the college.

9A, The contention cannot be accepted. In the case of Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, in the last four lines in para 9 of

the judgment it is also observed that if the sources are properly classified whether on territories, geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification". Thus, even while recognising the power of the State to identify the sources, the Court has not relieved the State from its obligation to conform with the requirements of Article 14 of the Constitution, namely, that the classification should be on reasonable basis and that it must have nexus with the object to be achieved. In fact in the case of Nidamarti Maheshkumar Vs. State of Maharashtra and Others, , the Supreme Court in para 3 of the judgment has made reference to the decision in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, and has observed that the judgment in the case of Pradeep Jain reviewed all the previous decisions given by the Supreme Court starting from D.P. Joshi Vs. The State of Madhya Bharat and Another, and ending with Dr. Jagadish Saran and Others Vs. Union of India (UOI), . In para 3 of the judgment the Supreme Court has summed up as follows :

"The Court pointed out that the primary consideration in selection of candidates for admission to the medical colleges must be merit and the object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students. This was in fact the consideration which weighed with the Court in Minor P. Rajendran Vs. State of Madras and Others, , in striking down a Rule made by the State of Madras allocating seats in medical colleges on districtwise basis and so also in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, .

In the case of P. Rajendran (supra) the Supreme Court struck down the rule made by the State of Madras in allocating seats in medical colleges on districtwise basis, and in the case of Periakaruppan (supra), the Supreme Court struck down the unitwise scheme of selection of candidates for appointment to medical colleges in the State of Tamil Nadu which provided for constituting the medical colleges in the city of Madras as one unit and each of the other medical colleges in the mofussil as a separate unit and selection being made unitwise. Thereafter, in the same para the Supreme Court has observed as follows:

"The Court in both these cases clearly and categorically proceed on the basis of the principle that the object of any valid scheme of admissions must be to "select the best candidates for being admitted to medical colleges" and that if any departure is to be made "from the principle of selection on the basis of merit", it must be justified on the touchstone of Article 14. This principle was affirmed by the Court in Dr. Pradeep Jain's case (supra)".

In para 4 of the judgment, observations from the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, have been extensively quoted and thereafter it is observed :

"It was pointed out by the Court that there are two considerations which may legitimately weigh with the Court in justifying departure from the principle of

selection based on merit. One is what may be called State interest and the other is what may be described as region's claim of backwardness".

In the instant case the departure from the principle of selection based on merits is not sought to be justified on either of the aforesaid grounds. It may be noted that the students in both the petitions have been denied admission only on the ground that they are not "local student", meaning thereby, they have not passed their SSC and HSC examinations from schools/colleges situated within the Ahmedabad Municipal Corporation limit. They are not denied admission on the ground that they are not residents of Ahmedabad. In fact learned counsel for the petitioners submitted that had it been the case of respondent Corporation, they would have produced the necessary evidence to show that the students are as a matter of fact residents of city of Ahmedabad.

10. The contention that the respondent-Municipal Corporation is competent to identify the sources of admission since it bears the burden of expenditure for running the college may be examined in the context of the judgment of the Supreme Court in the case of *Deepak Sibal Vs. Punjab University and Another*, . Therein the constitutional validity of the rule for admission in the evening class of Three Year L.L.B. degree course conducted by the Department of Laws of Punjab University came up for consideration. There were 150 seats in the evening class in the Three Year LL.B. Degree Course. The Rule provided that admission to evening classes was open only to the regular employees of Government, Semi Government institutions/affiliated colleges/Statutory Corporations and Government Companies. One student was denied admission to Three Year Degree Course because it was stated that he was an employee of a public limited company and did not fall within the exclusive category mentioned in the rule. Another student was denied admission on the ground that she was only a temporary employee. It was contended before the Supreme Court that the University being an educational institution it was entitled to identify the sources of admission to the evening classes and therefore the Rule was not violative of Article 14 of the Constitution. In support of this contention reliance was placed on the decision of the Supreme Court in the case of *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, . Repelling the contention, the Supreme Court in para 22 of the judgment has held that there was no difference between identification of source and classification. If any source is specified such source must also satisfy the test of reasonable classification and also that it has rational nexus with the object sought to be achieved. In para 23 of the judgment the Supreme Court has observed that a classification by the identification of a source must not be arbitrary, but should be on a reasonable basis having a nexus with the object sought to be achieved by the rules for such admission. In view of the aforesaid principles laid down by the Supreme Court, reliance placed by the learned counsel for the respondents on certain observations made by the Supreme Court in the aforesaid decisions in the case of:

(1) *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, ; (2)

D.N. Chanchala Ors. Vs. The State of Mysore and Others, and (3) N. Vasundara Vs. State of Mysore and Another, cannot be accepted. These observations are required to be read in proper context and in the context of the decisions explained and interpreted by the Supreme Court in its subsequent decisions in the case of Nidamarti Maheshkumar Vs. State of Maharashtra and Others, and Deepak Sibal Vs. Punjab University and Another, . Reading all the decisions in proper perspective, it becomes evident that it may be open to the "State" to identify the source of admission, and thereby restrict admission to certain well defined categories. But this could be done only in conformity with the provisions of the Constitution. Simply because State Government or any other instrumentality of the "State" incurs expenditure for running the College, it is not relieved of its constitutional obligations. By financing for the expenditure of running the college, the State cannot encroach upon the fundamental rights of the citizens.

11. Learned counsel for the respondents submitted that no reliance should be placed on the decision of the Supreme Court in the case of Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, . It was a case wherein admissions to the Post Graduate Courses in different branches of medicine based on institutional preference was struck down. Therefore it was submitted that the case related to Post Graduation courses and the observations made therein should not be held as applicable to the Rules for Admission to MBBS course. It was also submitted that the said decision of the Supreme Court has been referred to a larger Bench of the Supreme Court by order dated August 28, 1989 passed in SLP No. 9183 of 1989. On these two grounds it was submitted that the contention of the petitioners that the said decision would apply to their case should be rejected. Even if it is assumed that the principles laid down by the Supreme Court in the case of Greater Bombay Municipal Corporation (supra) are not applicable to the admission to the M.B.B.S. course and the case of the petitioners is required to be considered on the basis of earlier decisions of the Supreme Court which have been referred to herein-above, the contention raised on behalf of the respondents that the Corporation could make classification and the classification made is reasonable cannot be accepted.

12. Learned counsel for the respondents relied upon the decision of the Supreme Court in the case of Dr Fazal Ghafoor Vs. Principal, Osmania Medical College, Hyderabad and Others, . It was a case pertaining to admission in super speciality of DM Neurology course in Nizam Institute of Medical Sciences, Hyderabad. The student concerned was denied admission on the ground that he was not a local candidate within the meaning of Presidential Order. It is not clear from the reported decision "as to what was the definition of local candidate in the Presidential Order which has been referred to in the judgment. On facts it was found by the learned single Judge of the High Court that the student could not be considered a local candidate as he studied for M.D. course in Telangana region only for three years while the requirement was that the candidate should have studied in an educational institution in the local area for a period not less than

four consecutive years ending with the academic year in which he first appeared in the relevant qualifying examination. The petitioner failed before the Division Bench of the High Court and he could not succeed even before the Supreme Court. However, it appears that in this judgment the Supreme Court has not laid down any principle nor it is clear as to what was the definition of "local candidate". The judgment in the case turned on the facts of the case and no new principle has been laid down by the Supreme Court which permits departure from the principle of selection based on merits.

13. Reference may be made to certain observations made by the Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . In para 19 of the judgment the Supreme Court has inter alia observed that no discrimination can be made between schools affiliated to the State Board and schools affiliated to the Central Board of Secondary Education. While, in the instant case discrimination is sought to be made between schools affiliated to the State Board or to the Central Board of Secondary Education only on the ground that as to whether the school is situated within Ahmedabad Municipal Corporation limit or not. No rational and intelligible criteria is pointed out for making classification on this basis.

14. Reference may be made to the decision of the Supreme Court in the case of Minor P. Rajendran Vs. State of Madras and Others, . In that case the rules relating to admission to first year Integrated MBBS course framed by the State of Madras which provided for allocation of seats districtwise came up for consideration. In para 11 of the decision the Supreme Court observed that Article 14 does not forbids classification, but the classification has to be justified on the basis of nexus between classification and the object to be achieved. The Supreme Court observed as follows :

"The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges, the allocation of seats districtwise has no reasonable relation with the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources."

In the instant case even the classification is not reasonable. There is no rational basis on which the classification is made. The classification has no nexus with the object sought to be achieved, i.e. selection based on merit for admission to the college.

15. As disclosed in the affidavit-in-reply filed on behalf of the respondents in one of the petitions, 59 seats are available for open merit students with the

respondent-Medical College. Admission to these seats, as per the rules, is restricted to local candidates as defined in Rule 5 of the Rules. If the rules are allowed to remain in operation, the result would be that local students will have many more chances of getting admission to First M.B.B.S. Course in different medical colleges. Judicial notice of the fact can be taken that there are in all six medical colleges in the State. They are (1) B. J. Medical College, Ahmedabad (Government College); (2) Govt. Medical College, Baroda; (3) Government Medical College, Surat; (4) M: P. Shah Medical College, Jamnagar (Government College); (5) Smt. N.H.L. Municipal Medical College, Ahmedabad; and (6) a College (run by) a public trust situated at Karamsad in Kheda (sic). As far as admission to first MBBS. course on the basis of open merit is concerned, students passing their SSC and HSC examination from schools situated outside the Municipal Corporation limit will not be eligible to compete for 59 open seats in respondent-Medical College. While the students who have passed their SSC and HSC examinations from schools situated within the Corporation limit would be eligible for 59 seats in respondent-Municipal Medical College. In addition they would also be eligible for being admitted to first MBBS course in all other medical colleges of the State. Thus the chances of being admitted to first MBBS course of the students who are not "local students" will be reduced by 59 seats. Reservation of seats for "local students" as defined under the rules is not permissible under any of the provisions of the Constitution. Therefore also the rules cannot be held to be constitutionally valid.

16. The student concerned in special civil application No. 5220 of 1992 has passed her SSC and HSC examinations from Firdaus Amrut Higher Secondary School which is situated in Ahmedabad Cantonment Area. Ahmedabad Cantonment area is surrounded by the Corporation limit of the City of Ahmedabad. The student concerned in special civil application No. 5373 of 1992 has passed his SSC examination from a school situated in Ghatlodia area which is on the periphery of the Corporation limit. This student has passed his HSC examination which is the qualifying examination for being admitted to first MBBS course from St. Xavier's School, Loyala Hall, which is situated within Ahmedabad Municipal Corporation limit. Both these students are denied admission only on the ground that they are not "local students" meaning thereby they have not passed their SSC and HSC examinations from schools situated within Ahmedabad Municipal Corporation limit. The students concerned are not denied admission on the ground that they are not residents of Ahmedabad, As per the provisions of the rules even nonresidents of Ahmedabad who might have been attracted to better educational facilities that may be available in the city of Ahmedabad and who might have secured admission in one or the other school/college situated within Ahmedabad Municipal Corporation limits and passed their SSC and HSC examinations from such school/college would be eligible for being admitted to the respondent-Medical College. Thus the contention that the rule has been framed with a view to serve the interest of the residents of Ahmedabad has also no merits. There may be many students residing outside Ahmedabad but they

might be staying in boarding and hostels. There may be many students who might be residing outside the Municipal Corporation limits, but studying in the schools situated within the Corporation limits. Thus the rule discriminates between the students on the basis of an irrational and fanciful criterion which has no nexus with the object sought to be achieved.

17. In view of the aforesaid discussion, Rule 4(1), Rule 5 and Rule 9 of the Rules cannot be said to be constitutionally valid. The provisions of these rules cannot be said to be in conformity with the provisions of Article 14 of the Constitution of India and therefore the provisions of these rules are required to be declared as violative of Article 14 of the Constitution of India.

18. Now the question of relief to be granted in each case be considered :

It is an admitted position that the petitioners in both the cases have secured admission in B. J. Medical College, Ahmedabad. The students concerned in special civil application No. 5220 of 1992 has secured 392 marks out of 450 in qualifying examination. The last admission in the respondent-College was at 393 marks. Thus even if she were to be considered eligible, she would not have been able to get admission in the respondent-College on the basis of merit. Therefore it would be futile to grant relief for considering her for admission to first M.B.B.S. course in respondent-Medical College.

19. As far as the student concerned in special civil application No. 5373 of 1992 is concerned, he has secured 396 marks out of 450, in qualifying examination. Thus he could be considered on merits. Had he not been denied eligibility on the ground of aforesaid rules. However, there are two other students who have applied for admission and have been denied consideration on the same ground that they were not "local students". Details regarding those two students are as follows:

1

1

2

1.

Name of the student

Fatel Ankit Manibhai

Shah Viren Pravinchandra

2.

Marks obtained in SSC examination held in March, 1990

...

...

3.

School through which the student passed SSC examination.

* Sharda Higher Secondary School, Sola Road, Ahme-dabad

*Shri Gyan Jyot V. V. School, Ghatlodia, Ahmedabad

4.

Marks obtained in HSC Examintion held in March, 1992 (10 + 2 pattern)

412/450

405/450

5.

School through which the student passed HSC examination.

St. Xavier''s Higher Secondary School, Loyala Hall, Ahmedabad.

Vijayanagar High School, Naranpura, Ahmedabad.

* School is situated outside Municipal Corporation Limits.

Both these students have passed their SSC examination from schools situated on the periphery of Ahmedabad Municipal Corporation limit, while they have passed their HSC examination, i.e. the qualifying examination from schools situated within Ahmedabad Municipal Corporation limit. If the student concerned in special civil application No. 5373 of 1992 is required to be considered eligible for being admitted to first M.B.B.S. course in respondent-Medical College, the Court is required to take care to see that by granting relief no injustice is done to any other citizen who has not come before the Court. The Court by its judgment and order would not meet out injustice to any one. Powers under Article 226 of the Constitution of India are conferred on the High Court to remove injustice and to see that the fundamental rights and other rights of the citizens are not violated and the same may be enforced in accordance with law. Therefore, while granting relief to the student in special civil application No. 5373 of 1992, suitable direction will have to be given for considering the case of the aforesaid two students also.

20. It will also be necessary to see that the seats on which the students have secured admission do not go waste in case they secure admission in respondent-Medical College. It may be noted that in special civil application No. 5220 of 1992 by way of interim order it was directed that one seat may be kept vacant. Therefore, if direction is given to the respondents to consider the case of any of the students on merits no injustice would be caused. However, while considering the case of these students it should be insisted that they produce certificate from the college authorities in which they have secured admission that in case they are admitted to the respondent-Medical College the seats on which they have

secured admission will not be wasted.

21. In the result both the petitions are allowed. It is declared that Rule 4(1), Rule 5 and Rule 9 of the Rules for admission to the First M.B.B.S. Course in Smt. N.H.L. Municipal Medical College, Ahmedabad, framed by the Ahmedabad Municipal Corporation, are discriminatory and violative of Article 14 of the Constitution of India, and hence unconstitutional and invalid.

As far the student concerned in special civil application No. 5220 of 1992 is concerned, for the reasons stated in the judgment, no consequential relief for considering her case by the respondent authorities is granted.

As far as the student concerned in special civil application No. 5373 of 1992 is concerned, it is directed that his case will be considered on merits for being admitted to first M.B.B.S. course along with the other students, namely, (1) Patel Ankit Manibhai, and (2) Shah Viren Pravinchandra. The cases of these students shall be considered by the respondents only on production of certificate from the college authority in which they have secured admission to the effect that the seat that may fall vacant in case they leave the college and secure admission in the respondent-Medical College will not go waste. If such certificate is not produced, their case will not be considered by the respondents. The respondents are further directed to inform the aforesaid two students namely, Patel Ankit Manibhai and Shah Viren Pravinchandra about the judgment and their eligibility for being considered on merits for admission to first M.B.B.S. course at respondent-Municipal Medical College. Rule made absolute accordingly in both the petitions, with no order as to costs.

22. At this stage learned counsel for the respondents states that the operation of the aforesaid order be stayed for some time so as to enable the respondents to challenge the legality and validity of the same before the superior forum as it may be available to them. In facts of the case it is directed that the process of consideration of the case of the petitioner of special civil application No. 5373 of 1992 and the case of other two students may be started. However, admission may not be granted to any student up to September 30, 1992.