

(1985) 08 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 1419 of 1985

Fali F. Poncha

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-08-1985

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : (1985) MhLj 830

Hon'ble Judges : M.H. Kania, Acting C.J.; Sujata V. Manohar, J

Bench : Division Bench

Advocate : F.P. Bharucha with T.R. Andhyarujina and K.S. Venkateswaran instructed by M/s Bhogilal Desani and Berjis, for the Appellant; A.V. Savant, Advocate-General, with Liladhar Vyas and M.F. Seldhana and B.E. Patil, For respondent no. 1, F.N.P. D'Mello with S.M. Tidke, For respondent no. 2, P. Shankaranarayanan, For respondent no. 3, G.E. Vahanvatii instructed by M/s Anand Grover, For respondent no. 4, B.A. Shetty for Miss Nina P. Rao, Aspi Chinoy with S.M. Doctor, P.E. Devitre and Ms. Nina Kapadia instructed by M/s M.J. Madan for A.S. Shah and H.K. Velankar, K.S. Venkateswaran for Miss C.M. Patil, A.K. Hirani instructed by M/s Manjundar and Co. for A.N. Nirani and A.V. Apte for J.S. Apte, For Interveners, for the Respondent

Judgement

Mrs. Sujata V. Manohar, J.—The petitioner was a student of St. Xavier's College, Bombay in standards XI and XII. At the end of XIIth Standard he passed in 1985 the Higher Secondary Certificate Examination (hereinafter referred to as the "H.S.C. examination"), conducted by the Maharashtra State Board of Secondary and Higher Secondary Education, Pune Division. He secured 269 marks out of a maximum of 300 marks in the "science" subjects of Physics, Chemistry and Biology. These marks form the basis for admission to Medical Colleges affiliated to the University of Bombay. The petitioner claimed additional three marks for participating in an inter-collegiate water-polo tournament conducted by Y.M.C. A. This weightage was claimed on the basis of Rules framed by the State Government for the year 1984-85 for admission to the Medical Colleges conducted by the Government of Maharashtra. Similar weightage of 2.5 marks is

given by the Bombay Municipal Corporation under its Rules for admission to Medical Colleges conducted by the Bombay Municipal Corporation. The petitioner, however, was not given any additional marks for participation in the said tournament either by the Medical Colleges of the State Government or by the Medical Colleges of the Bombay Municipal Corporation. According to the State Government the petitioner is not entitled to this weightage under the Rules for the year 1985-86 which govern admission for the current year. According to the Bombay Municipal Corporation the petitioner is not entitled to this weightage on a correct interpretation of its Rules. As a result, the petitioner is unable to secure admission to any of the Medical Colleges affiliated to the Bombay University. Since he missed getting admission by one mark, he would have got admission if he had obtained additional marks for participation in the said tournament. The petitioner has, therefore, challenged the action of the State Government and the Bombay Municipal Corporation in not granting him any additional marks. Some other students similarly affected by not having been granted weightage for sports participation have also intervened in this petition. Other students who will be denied admission if the petitioners and other similarly situated are granted admission, have intervened to support the case of the respondents. We have also heard arguments submitted on behalf of petitioners in some other petitions where weightage for sports along with weightage in respect of other extra-curricular activities is the subject matter of controversy.

2. According to the petitioner, under the Rules for admission to Government Medical Colleges for the previous year 1984-85, he was entitled to the additional marks for participating in an inter-collegiate tournament. On the basis of these Rules, he participated in the inter-collegiate water polo tournament. The State Government is, therefore, estopped from denying these marks to him even though under the Rules of 1985-86 (which are the applicable Rules) he is not entitled to those additional marks.

3. The main basis of the petitioner's case against the State Government is promissory estoppel. The doctrine of promissory estoppel is essentially an equitable doctrine which has evolved over a period of time. The essential ingredients of a promissory estoppel are: (1) A party should have by his word or conduct given to the other Party a clear and unequivocal promise or assurance; (2) this promise or assurance was intended to be acted upon so as to create a binding legal relationship; (3) the promisee has in fact acted upon such promise and has significantly altered his position as a result. In these circumstances the courts have held that it would be inequitable to allow the promisor to resile from his promise. There is however, an important qualification on such estoppel. A promisor can ordinarily get over his assurance by giving a reasonable notice to the promisee. Secondly since promissory estoppel is an equitable doctrine it is also subject to other over-riding equities. For example, it must give way to supervening public interest. The promisor will not be held to his promise if public interest demands otherwise.

4. This doctrine has been expounded by the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , where the Supreme Court has observed," where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution..." But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government." In the case of Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, the application of this doctrine where the State pleads supervening executive necessity was controverted. We are not concerned with this aspect of the doctrine. A Full Bench of this Court in the case of Tapti Oil Industries and Another etc. Vs. State of Maharashtra and Others, unhesitatingly applied the doctrine of promissory estoppel as enunciated by the Supreme Court in the case of M. P. Sugar Mills v. State of Uttar Pradesh (Supra) to the case before it. and the doctrine of promissory estoppel has case to stay.

5. It is therefore Necessary to consider whether there is any promissory estoppel which operates against the State Government or the Bombay Municipal Corporation as result of which they are prevented from denying to the petitioners and other similarly situated the weightage of additional marks for participation in sports.

6. What is the nature of representation made by the authorities to students seeking admission to the Medical Colleges run by the State Government and the Municipal Corporation? This representation is in the form of Rules framed by these authorities from year to year for admission to their Medical Colleges. Under the Rules framed by the State Government for admission to Government Medical Colleges for the year 1984-85 the relevant provision was contained in Rule 6 B which deals with additional marks. Under sub-rule (iii) of Rule 6 B it was provided as follows :-

"6 B.(iii) - 3 marks for sports and cultural activities specified in each rule No. 4 C(x) (xi) may be given to a student who has represented his/her college and actually played in an inter-collegiate tournament arranged by the University, the State Government or a National Sports Organisation, during the period between his/her passing S.S.C. (or equivalent examination) and qualifying examination as defined in rule 3(ii) and attained the standards as specified in Rule 4 C(x) and (xi) or has represented his/her college during the aforementioned period in inter collegiate debates, elocution competitions or dramatic competitions, singing,

dancing, organised by the University, the State Government or National Authorised Organisation.

(a) Member of the team that participated in the tournament....3 marks

(b) Winner of the championship participation ...3 marks

(c) For representative participation in debate, elocution competitions, dramatics competitions3 marks.

(emphasis supplied).

Rule 4 C which is referred to in the above Rule enumerates, inter alia, various sports events which qualify for such marks and for which certificate is to be obtained in the prescribed form. These sports include water polo - the game played by the petitioner.

7. Under the Rules for admission to Government Medical Colleges for 1985-86 however, some alterations are made in this weightage. Under Rule F(iii) it is provided as follows :

"F (iii) A candidate claiming the benefit of representing his institute and actually participating in an inter-institutional tournament/competition organised at State/ National Level during the period between his passing S.S.C. (or equivalent) examination and the qualifying examination in any of the following games.... water polo.... or has represented his institution during the aforementioned period in debate, elocution competition or Dramatic competition organised by the State Government or. authorised State/National Organisation at a State/National level competitions, will be given additional marks as specified he rein below :-

(a) Members of the team that participated in the tournament and won the finals 3 marks.

(b) Winner of the championship in games where there is individual participation 3 marks

(c) For representative participation in debates or elocution competitions, dramatic competitions at State/National Level 3 marks

(emphasis supplied)

Under the Rules as applicable to admissions for the current year, therefore, in order to get weightage of 3 marks for sports a candidate should have participated in an inter-institutional tournament organised at State or National level and he should be a member of the winning team. Weightage for participating in an inter-collegiate tournament arranged by the University has been deleted. The qualifications for gaining weightage are now more stringent. The petitioner does not qualify for weightage marks under the Rules for 1985-86.

8. The petitioner contends that the Rules were changed only on 31st of December 1984 when the new Rules for 1985-86 were published. He had

participated in the inter-collegiate waterpolo tournament conducted by Y.M.C.A. in September 1984 before the Rules were changed. Since he had already earned the weightage relying upon the previous Rules, the State is now estopped from denying him this Weightage. This contention presumes that the petitioner was entitled to an additional 3 marks, had the Rules for 1984-85 continued to apply to 1985-86.

9. Now the Rules for 1984-85 prescribe that the candidate should have participated in an "inter-collegiate tournament arranged by the University" The candidates, however, have to participate in such a tournament during the time that they are in "junior college." The students of Standards XI and XII are not students of a University. Standards XI and XII are under the Maharashtra State Board of Secondary and Higher Secondary Education. These standards are known as "Junior College" but they can be attached either to a college or to a secondary school. The Bombay University has filed an affidavit pointing out that Junior Colleges are not attached to the Bombay University at all. They come within the jurisdiction of the State Secondary and Higher Secondary School Board. The students of Junior Colleges are not students of the Bombay University. They are not eligible to participate in any inter-collegiate tournament organised by the University since such tournaments are open only to the students of the Bombay University. The University has categorically stated that it does not organise any tournament for Junior Colleges. Since the Rules for 1984-85 cover only inter-collegiate tournaments arranged by the University, State Government or a National Sports Organisation, the Rules for 1984-85 do not cover an inter-collegiate tournament arranged for Junior Colleges by a private body other than a National Sports Organisation.

10. The Rule for sports weightage for the year 1984-85 was similar to the Rule for sports weightage for the year 1983-84. The Rule came up for consideration before this High Court in two previous cases. In the case of Madhuvanti Purushottam Thatte Vs. State of Maharashtra and Others, , a Division Bench of this Court at Nagpur was required to consider admission Rules for Medical Colleges run by the State. The Rule for additional marks for sports was identical with the Rule for 1983-84 and 1984-85. In that case the petitioner had participated in rifle shooting and riding in the courses; conducted by the Bhonsala Military School, Nasik. There were no inter-collegiate tournaments organised in rifle shooting or riding. The petitioner contended that she had obtained proficiency in these two sports and she was entitled to the weightage of 3 marks for having participated in these two events at Bhonsala Military School at Nasik. The court while negating her contention, observed :

".....It is for participation in games or sports at a certain level and obtaining a certain degree of proficiency therein. A mere participation or mere fact of having played in all the sports or partaking in any of the tournaments or activities which are included in Rule 16 (iv) does not entitle any benefit of addition of marks. That he may do so for his own advantage. In order to earn marks he must

further acquire a status or proficiency in that branch, in that he must represent his institution and must participate in any of these levels of tournaments specified."

The Court emphasized a degree of proficiency as demonstrated by participating in a tournament at a certain level. The question of promissory estoppel was not raised in that case.

11. This Rule again came up for consideration in the case of *Rajashri Yeshwant Jadhav and etc. Vs. State of Maharashtra and Others*, . In this case several Rules for admission to Medical Colleges run by the State Government for the year 1983-84 were under challenge. One of the Rules which was challenged was the rule dealing with weightage for sports. These Rules were challenged on the ground that they had no nexus with criteria for admission to Medical Colleges and were therefore ultra vires. The Rule granting weightage for participation in sports was upheld by the Division Bench on the ground that participation in Sports improved the character of the participant and could be said to have some nexus with eligibility for medical education. In the course of its judgment the court analysed the provisions of this Rule. It emphasised the observations in *Madhuvanti's* case (supra) that the qualification for marks is not simple participation in games or sports. It is for participation in games or sports at a certain level. It observed that in order to gain weightage under the Rule, the tournament should be at University, State or National level.

12. The Rules for 1983-84 and 1984-85 in terms do not mention any level of participation. The relevant Rule merely speaks of an inter-collegiate tournament arranged by the University, the State Government or a National Sports Organisation. But the Rule has been interpreted by the Division Benches of this Court to mean that participation should be at the University, State or National level.

13. Since the students of a Junior College cannot participate at the University level at all, those who participated in inter-collegiate tournaments for junior colleges organised by private bodies do not fall within the Rule for sports weightage. The relevant Rule for 1984-85 relied upon by the petitioner is the same as the corresponding Rule for 1983-84 and 1982-83. Thereafter both on a plain reading of the Rules as also the Rule as interpreted by this Court, the petitioner cannot get additional marks for taking part in an inter-collegiate waterpolo tournament even on the footing that previous Rules constitute a promise. The representation contained in the previous Rules, therefore, is of no assistance to the students of junior colleges who have participated in inter-collegiate tournaments at levels other than University, State or National levels.

14. It is, therefore, contended on behalf of the petitioner that the relevant Rule was widely construed in the past to cover all inter-collegiate tournaments which were organised for Junior Colleges (including Standards XI and XII in secondary Schools) by private organisations. The representation, therefore, on which

promissory estoppel rests, is not the relevant Rule for 1984-85, but the Rule coupled with the conduct of the State Government. Can such conduct, at variance with the relevant Rule, give rise to promissory estoppel ?

15. The conduct of the State Government in this regard does not seem to be clear or unequivocal. For example, an inter-collegiate tournament may be arranged between Junior Colleges in a certain area or locality, such as North Bombay or South Bombay. Will this qualify as an inter-collegiate tournament ? Will it be equivalent to a tournament arranged by a University ? Even an inter-collegiate Junior College Tournament for Greater Bombay would not be equivalent to a tournament arranged by the University because the Bombay University has colleges situated outside Greater Bombay also, if we take the State Secondary and Higher Secondary Board as a body equivalent to the University for the purposes of the Rule, the Poona Board to which Junior Colleges in Bombay are attached, has many more Junior Colleges under its wings. A tournament between only some Junior Colleges under the Poona Board cannot be considered as equivalent to a University tournament. There is also no clear course, of conduct recognising organisation whose tournaments are accepted by the State Government for the purpose of weightage. There may be private bodies which organise such tournaments efficiently, by inviting participation from Junior Colleges well in time. Their tournaments may be of a good standard. But there may be others which organise tournaments without proper notice and without making proper arrangements where the standard of participation may be very low. From the material on record we are unable to see any course of conduct of the State Government indicating which private tournaments are granted weightage under the Rule and on what basis or whether all tournaments are granted weightage. If the authorities are to be held to such vague representations there would be considerable scope for arbitrary grant of weightage for participation in such tournaments. In our view there is no clear unambiguous representation by conduct of the kind alleged by the petitioner.

16. Moreover, conduct which is contrary to Rules cannot give rise to a promissory estoppel. The language of the rule is not open to an interpretation that it covers such tournaments. The words "inter-collegiate tournaments arranged by the University" cannot be interpreted to include inter-collegiate tournaments for junior colleges arranged by private bodies. Giving weightage for tournaments other than those prescribed by the Rule itself is acting contrary to the Rule. Such action cannot give rise to any estoppel.

17. This is not to say that Rules of admission do not constitute a representation. this Court has held that the statements contained in rules of admission give rise to a promissory estoppel. Thus in the case of *Chahdrashekhar Mahadeo Deshpande v. The State and others* W. P. So. 2044 of 1982 decided on 12-8-1982 by *Dharmadhikari & Kurdukar JJ* the court was required to consider Rule for admission to Engineering Degree courses for the year 1982-83. The previous Rules for admission granted certain additional marks for technical subjects taken

by students in the year prior to admission -Standard XI or the First year of the Diploma Course with a view to taking a degree course in engineering. Students who had taken such subject were given an addition of 15 marks, which is a heavy weightage. The Rules were sought to be changed for the year 1982-83 in June 1982, just before the admission opened, by limiting the weightage only to certain specialities. The Division Bench held that the earlier Rules did constitute a representation on the basis of which the students had already acted by selecting certain subjects for the previous year. The doctrine of promissory estoppel would apply in such a case. The court also held that the notice of change which was given was wholly unreasonable looking to the nature of the Rule which was sought to be changed. In the present case, however, the petitioner is not covered by the representation contained in the Rule. Secondly, the rule grants only a small weightage. Such few additional marks are not granted as an inducement to the students to curtail their studies and take to sports instead. Nor can the students be said to alter their position in any significant manner on the basis of the Rule in question. Hence there can be no promissory estoppel here.

18. Learned Advocate General drew our attention to a decision of the Division Bench of this Court at Aurangabad in the case of *Asmita Ghandrahas Patodekar v. State of Maharashtra and others*. 1983 Mh. L. J. 833 In that case there was a challenge to the Rules for admission to Medical Colleges in the Marathwada University for the year 1982-83. The doctrine of promissory estoppel was not invoked in that case by the petitioner. The Division Bench, however, in the course of its judgment observed that no representation of any sort had been made to the students by the authorities. We need not examine this case in detail. It was cited by learned Advocate General in support of his arguments. But even without resorting to this decision, we are of the view that there is no promissory estoppel in the circumstances of the present case. Hence the merits of this decision need not be gone into. We, however, should not be taken to have approved of this decision since we feel that the decision in the case of *Chandrashekhar Mahadeo Deshpande* (Supra) was binding on the court and was not properly distinguished in that case.

19. What is more important in the present case, it cannot be said that the petitioner or other students in his position have altered their position significantly by acting upon the representation. Every representation will not give rise to a promissory estoppel. For example, a representation in the rules that children of freedom fighters will get some extra marks does not give rise to a promissory estoppel because it cannot be said that anybody had altered his position as a result of such a representation. Secondly, every minor alteration in position also cannot give rise to promissory estoppel. The alteration must be significant enough to hold the promisor to his promise-. A small weightage given for sports does not and is not intended to persuade the students in any manner to change their course of conduct. The students are not expected to give up their studies for the purpose of participating in sports. Nor can it be said that had they spent this time in studies instead, they would have secured 3 more marks in the

examination. Essentially, the extra marks are not to compensate a student for any lost time in pursuit of extra activities. The additional 3 marks are given in recognition of a good standard attained by a student in an extra-curricular activity such as sports. Of course to a student who is short of a couple of marks for getting admission to a Medical college, these 3 marks will make all the difference. But it will be a sad day when students try to become good sportsmen for the sake of couple of marks. It is possible that some students would not have participated in sports if weightage were not given to sports during the relevant academic year. But there cannot be any exact or mathematical correlation between the time spent in sports or studies and the marks obtained. The weightage would then defeat its very purpose. As this weightage is granted for a certain degree of proficiency in sports [as held in *Madhuvanti and Rajshri's* cases (supra)] this proficiency is not likely to be attained simply by taking to sports for the sake of additional marks. A good standard in sports required a certain innate ability sharpened by training over a period of time—often a number of years. The students cannot, merely for the asking, attain a high degree of proficiency resulting in their selection to represent their institution in University, State or National tournaments, for the sake of 3 additional marks. There is, therefore, neither any inducement held out to alter one's position, nor does anyone materially alter one's position, relying on any representation. The case of the Engineering College admissions [*Deshpand Vs. State of Maharashtra (Supra)*] was a very different case where a heavy weightage of 15 marks was given under the Rules. This weightage directly affected the choice of a course of studies which the students had already pursued in the previous academic year. Hence the Rule relating to weightage in the case gave rise to a promissory estoppel. Such is not the present case. In another case before the Nagpur bench of this Court, *Arati Bhaskarrao Band v. State of Maharashtra*, being writ petition No. 1241/85, *Mohta and Vaze JJ.* by their judgment dated 11-7-85 considered some other alterations in Rules in admission to Medical Colleges in the current year. These alterations have been held to be arbitrary and unreasonable. We are however, not concerned with those Rules.

20. The rule of promissory estoppel is subject to the qualifications that the promisee can resile from his position on giving reasonable notice. Mr. Bharucha Learned Counsel for the petitioner, submitted that any notice of change given before a student actually participates in an inter-collegiate tournament would be a reasonable notice. But in our view this does not solve the problem at all. If a student, for example, participates in such a tournament held just before the final examination, then in his case a notice given just before the final examination would be an adequate notice. In the case of another student who may have participated in such a tournament in the previous year, the notice would have to be a longer notice given prior to that tournament. Logically, therefore, the notice would have to be at least for a two years' period (the period during which such participation entails additional marks)—But since under the Rule, emphasis is on acquiring a certain degree of proficiency, the preparation period will probably

date back to more than two years, Hence in such cases any alteration in the Rules would require a notice of even five or six years depending upon each case. Reasonableness of notice for changing a Rule for admission to a college cannot be made to depend upon such factors.

21. In the present case the Rules were altered on 31st December 1984. The alterations to some extent are related to the observations made by a Division Bench of this Court in the case of *Karuna Hanumant Katti v. The Dean Government Medical College, Miraj* W. P. No. 3238 of 1984 decided on 17/20-9-1984 by Dharmadhikari and Kantharia, JJ. In *Rajashree's* case (Supra) some of the Rules pertaining to weightage had been struck down by the Court. These were, inter alia, weightages in respect of persons coming from families whose lands were taken away in irrigation projects, weightage for participation in the Samyukta Maharashtra Movement and so on. In spite of the decision in *Rajashree's* case, the Rules for admission to medical colleges were not amended in the next academic year to remove the weightages which had been struck down. As a result, a number of writ petitions were filed in this Court challenging these rules. The learned judges hearing these petitions accepted the undertaking given in an affidavit filed by the Secretary of the Government Department concerned that the Rules for the next academic year would be amended in accordance with the decision in *Rajashree's* case and the amended Rules would be notified on or before 31st December 1984. The Court in these writ petitions gave a direction that the Government should amend the Rules for admission for the next academic year to bring them in tune with the decision in *Rajashree's* case and should notify the amended Rules for the next year (i.e. 1985-86) on or before 31st December 1984. In giving these directions the court also observed that the Government should bring about a uniformity in the Rules framed for admission to medical colleges as also other professional colleges such as Dental and Engineering Colleges and other technical institutions. The requisite changes for this purpose were also to be brought about by 31-12-1984. The court also recorded in the judgment a statement made by Learned Counsel for the petitioner in Writ Petitions Nos. 3317 and 3318 of 1984 that in Marathwada University the weightage given on the ground of sports or other similar grounds was being deleted since it created various complications such as procuring fraudulent and bogus certificates. The court observed that this aspect of the matter should also be considered by the Government while framing new admission Rules. Thus the Rules for the next year were to be amended by 31st of December 1984. It was contemplated that the amendments would give effect to the court decision. It was also contemplated that some alterations in sports weightages were also in the offing. When the Court gave directions that the Rules should be published by 31st December 1984 all these aspects were present before the Court. The Court considered the publication of Rules by 31st December 1984 as reasonable notice to all the parties. In this context, it is not possible to say that altered Rules for the year 1984-85 which were published by 31st December 1984 do not constitute reasonable notice. It is true that there

was no specific direction contained in the earlier judgments requiring the State Government to alter the weightage given for sports participation. But the fact that such alteration was being contemplated was made known to the court when it gave its direction for publication of new Rules. In these circumstances if the Rules have been amended for the year 1985-86 on 31st December 1984 it cannot be said that there is no reasonable notice given to the students about the change in Rules for admission for the forthcoming academic year.

22. The students are aware that fresh Rules for admission are published for each year. These Rules have not remained unaltered. Unless the changes are basic and would affect the course of conduct of students, they do not give rise to promissory estoppel. As we have stated earlier the relevant changes which are effected in the present Rules do not have any direct nexus with the course of studies adopted by the students in the previous year as in the case of the Engineering students. A notice of about 6 months therefore, cannot be considered as an unreasonable notice in the present case. If the argument of the petitioner is to be accepted a reasonable notice for changing sports weightage will have to be at least two years, if not more. Since we are not inclined to hold that there has been any significant alteration in the course of conduct of the students for the previous two years as a result of the small weightage of marks given for sports we do not think that reasonable notice should have been of two years or more as contended by the petitioners.

23. It has been submitted by learned Advocate General that the Rule regarding weightage given to sports and extra curricular activities was required to be changed in order to prevent malpractices. The previous Rule was capable of being interpreted very widely to cover all kinds of tournaments at uncertain levels of proficiency. Hence the Rule was being made more stringent in order to ensure that the student who was given the additional marks was a student who had attained a certain level of proficiency and had won a tournament at State or National level. The Rules have been amended to secure this objective. In altering the Rule, therefore, there is clearly a supervening public interest which affects any equity in favour of the petitioner. The possibility of this Rule being amended for this purpose was referred to in *Rajashri's* case. As the amendment has been made to secure prevention of malpractices it is an amendment inspired by public interest and it cannot be subject to any promissory estoppel which is an equitable doctrine and hence subject to any supervening equities.

24. The Rules for admission to Medical colleges of the Bombay Municipal Corporation are somewhat different. These Rules also give additional marks for sports and other extra-curricular activities. The relevant Rules for admissions to Municipal Colleges have not changed for the current year. The Rules for 1985-86 remain the same as the Rules for 1984-85. The relevant Rule for 1985-86 in this connection is Rule 5 sub-rule(xiv) which deals with various certificates to be annexed to the application for admission to Medical Colleges. Sub-Rule(xiv) requires a certificate regarding "representation and actual participation in games/

sports/tournaments/competitions organized by University/State/National bodies at University/State/National level during the period between S.S.C (or equivalent) examination and the qualifying examination in any of the following games: namely Water Polo Debate, Elocution competition, Dramatic competition, Singing, Dancing and Musical Instrument Competition." For representation and actual participation in such games etc. 2.5 marks can be added to the total marks of a candidate. Since this Rule has not changed at all, the question of promissory estoppel in the case of Rules for admission to Municipal Medical Colleges is merely confined to estoppel by past conduct. In the case of Municipal Rules there is, unlike the State Rules, a clear reference to participation at University, State or National level.

25. As in the case of the State, so in the case of the Municipal Rule, the difficulty arises in applying the phrase "competition organised by the University at University level" to competitions for Junior Colleges. There is no competition for Junior colleges organised by the University at University level. The Municipal Corporation has however, granted weightage in the past to some candidates who had participated in inter-collegiate tournaments for Junior Colleges organised by some private bodies. As in the case of the State Government, the Bombay Municipal Corporation also seems to have given credit to some candidates who had participated in some tournaments. It is difficult to spell out any criteria on the basis of which such weightage has been given in the past and such uncertain conduct cannot give rise to promissory estoppel.

26. The Municipal Corporation, in view of the actual language of his Rule, has, for 1985-86, amended its form of certificate annexed to the application form by deleting from the form column for participation at University level. It has rightly submitted that since no such competition is held, it is meaningless to provide in the form for participation at University level.

27. In connection with the course of conduct on which the petitioner relies, it is also necessary to bear in mind that such course of conduct has been against the provisions of the Rules framed by the State Government as also the Bombay Municipal Corporation. We have no doubt that had the grant of such weightage been challenged in the past on the ground that it was not warranted by the Rules, the weightage would have been struck down. Such conduct, which is contrary to the Rules, cannot give rise to an estoppel. In these circumstances in our view there is no promissory estoppel in favour of the petitioner. The State Government was entitled to change its rules for admission for the year 1985-86. The Rules have been changed after reasonable notice. The petitioner is, therefore, not entitled to an additional three marks (or 2.5 marks for Municipal Colleges) for participating in an inter-collegiate tournament organised by Y.M.C.A.

28. It was submitted by the petitioner and persons intervening on the side of the petitioner that only about 11 students are affected by not being given weightage for sports in Bombay. These students are students who would get admission if they get the additional marks but who will not get admission without the help of

these additional marks. There are a number of other students who may get weightage also but whose admissions are not affected because they would get admissions even without the help of these additional marks. It was urged that since only 11 students are affected we should direct that 11 additional seats should be created in order to accommodate them. We find it difficult to give such a direction. We do not have sufficient material before us to show how many students would have submitted such certificates had they known that the previous Rule was being applied to admissions for this year also. We also find it difficult to assess whether creation of such additional seats would be consistent with the maintenance of educational standards, and whether facilities exist in Medical Colleges for training additional students. We also cannot say why preference should be given to these students rather than others who may be eligible on the basis of their academic performance. If the Medical Council, after taking into account all relevant factors, decides to permit any additional seats for such students it will be open for the Medical Council to do so. That question is best left to the Medical Council and we do not propose to give any direction in that regard.

29. The petition is therefore dismissed and the rule is discharged. In the circumstances of the case there will be no order as to costs.

30. The interim order for stay will be considered when the next three petitions are disposed of.