

(1996) 04 GUJ CK 0035
In the Gujarat High Court

Goyal Dipti Rajkumar

APPELLANT

Vs

Principal, Government Akhandanand Ayurved Mahavidyalaya
and Others

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 226
Dentists Act, 1948 — Section 10A, 10B(3)
Gujarat Ayurved University Act, 1965 — Section 24(v), 24(v)

Citation : (1996) 3 GLR 387

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—This petition filed by a student seeking admission to Post Graduate course of M.D. (Ayurved) to the pioneer institution of Ayurvedic education in the entire country, namely, the Gujarat Ayurved University, Jamnagar, represented through its Dean, has brought to the surface a very sorry, sordid and dismal state of affairs prevailing in the institution of higher education. So gross are the lapses and lack of coordination on the part of the Gujarat Ayurved Univeristy and the Principal of Government Akhandanand Ayurved Mahavidyalaya at Ahmedabad that this Court cannot help observing that even institution of higher education makes mockery of meritocracy and toss the life of the student to a stage of uncertainty and ultimately helpless student knocked the door of the Court of law for justice. The interference of this Court in the matter of admissions to any course in educational institution is a matter of dislike and is adversely commented upon by the Apex Court of the country and the scope of judicial reviewability of decision taken in educational matter by educational institution is gradually restricted or conditioned. Before this Court proceeds to deal with the scope of its jurisdiction in light of various binding decision of the Apex Court it would be necessary to refer to the facts giving rise to the present petition.

2. Case of the Petitioner:

(i) The petitioner passed her B.A.M.S. Examination held in October, 1994, the internship commenced from 1-1-1995 and she completed the same on 30th June, 1995.

(ii) On 14th March, 1995, respondent No. 2, Dean of Gujarat Ayurved University, issued a public advertisement inviting applications from the candidates holding the Degree of B.A.M.S. or equivalent for admission to (1) 3 years M.D. (Ayurvedic) course and (2) 2 years P.G. Diploma in Panchakarma course of the Jamnagar Institute of Post Graduate Teaching and Research in Ayurved. It was also stated that the application form and the rules for admission could be obtained from the Dean, second respondent and that they will be issued from 20th March, 1995. It stipulated that the last date for receiving the admission form duly filled-in at the Institute of Post Graduate Teaching and Research is 22nd May, 1995.

(iii) The petitioner initially in the memo of Special Civil Application simply stated that as she was interested in prosecuting her Post Graduate studies in Ayurved Medicine, she had tendered the admission form for securing admission. Prior thereto, she was misinformed or misguided by the staff of the first respondent College that she was ineligible to apply for admission as she has not completed her internship. However, her application form for admission to M.D. (Ayurved) Course was duly received and accepted as on 31st May, 1995 and that vide letter dated 25th June, 1995, issued by the Principal of the College, she was directed to appear at the Entrance Examination to be held on 29th of June, 1995 at 9-00 a.m. at the Dean's Office, Administrative Building, Gujarat Ayurved University at Jamnagar. She accordingly appeared at the Entrance Test Examination and duly passed the same. Till that date, she was never informed that she would be denied admission to M.D. (Ayurved) Course as her admission form was received late, i.e., on 31st May, 1995.

(iv) In response to the stand taken by the Dean of Gujarat Ayurvedic University in affidavit-in-reply to the effect that the last date for submitting the duly filled in application forms for admission was 22nd May, 1995 and that application from the petitioner was received on 31st of May, 1995, her application was not required to be considered and that she was not even entitled to appear at the Entrance Test, the petitioner in the rejoinder-affidavit filed by her pointed out that in fact the admission form was denied to her by P.G. clerk, other staff and Principal of the first respondent-College on the ground that the petitioner was not eligible to apply for admission to M.D. (Ayurved) Course as she has not completed her internship of six months on the date of the advertisement. In the affidavit-in-rejoinder, she has in greater detail stated as to how she approached the P.G. clerk, the staff and the Principal of first respondent-College upto 22nd May, 1995, and as to how even thereafter continuously they denied to her the admission form. She has also stated that she brought to the notice of the Principal the fact that admission forms were issued to number of other students who had not completed internship on the date of advertisement while the same

was denied to her. She has further admitted that ultimately, after great persuasion and having come to know that the admission forms were issued even to students who had not completed internship of six months on the date of advertisement, the Principal issued the admission form to her only on 31st May 1995 and on that very day she has filled in the form and has submitted the same. She has also stated that along with the admission form, Rs. 100/- being the fee for Entrance Examination was also accepted from her on 31st May, 1995 and subsequently even interview call letter was also issued to her, pursuant to which she has appeared in the interview and was selected and placed at Serial No. 1 in the waiting list.

3. Case of the Dean of Ayurvedic University, Jamnagar:

(i) It is the case of the Dean, the second respondent before this Court, during his personal submission that the Institute of Post Graduate Teaching and Research in Ayurved at Jamnagar is the pioneer institute in the entire country and it was established as back as 1967 and is fully sponsored and financed by Ministry of Health, Government of India. The Akhandanand Ayurved College at Ahmedabad is subsequently established and is affiliated to the second respondent-University and is fully sponsored and financed by the State of Gujarat. The said college has got Post Graduate Course in one subject of Kaya Chikitsa. It is the case of the Dean that Akhandanand Ayurved College at Ahmedabad is only a Post Graduate Centre for the purpose of imparting Post Graduate Teaching in the aforesaid subject.

(ii) It is the case of the Dean before this Court that the admission to the aforesaid course is governed by Post Graduate Ordinances to which detailed reference shall be made hereafter. According to the Dean, period of Internship after completing Graduation Course has changed from time to time and earlier it was not treated as part of the Degree Course. He stated before the Court that Central Council of Indian Medicine recommended two alternatives, namely,

(a) Four and half years" course to divide into one and half years term making three terms plus one year Internship, thus, making the course of five and half years.

(b) Five years" course comprising of two terms of one and half years and third term of 2 years and Internship of six months thereafter.

He also submitted that as per Post Graduate Ordinances, last date for completion of Internship is to be decided by Admission Committee. Detailed reference to the Admission Committee and its function shall be made hereafter.

(iii) According to Dean in his affidavit-in-reply as well as in his oral submission before this Court, completion of Internship is not necessary for being eligible to fill in the form of admission to the P.G. Course and to apply for admission to P.G. Course. While, according to the Principal of Akhandanand Ayurvedic College, Ahmedabad, in his affidavit-in-reply as well as in his oral submission before this

Court, he was and is of the view that completion of Internship was the criteria of making the candidate eligible to fill-in the form and apply for admission to P.G. Course. According to Dean even advertisement which was issued by the University did not specify completion of Internship as criteria of eligibility.

(iv) According to Dean, admission to M.D. Course, both at Jamnagar University as well as Akhandanand Ayurvedic College at Ahmedabad is governed by Ordinances known as "Post Graduate Ordinances". He has in this connection invited attention of the Court to Ordinances for the Post Graduate Degree Course of the Doctor of Medicine in Ayurvedic M.D. (Ayurved) which are framed by the Gujarat Ayurved University, Jamnagar under Statute 150 read with Section 24 (v) of the Gujarat Ayurved University Act, 1965. He has invited attention of the Court to P.G. Ordinance 2(a), 2(e) and 3(a) which are reproduced hereunder being relevant for the purpose of this petition:

P.G. 2(a) - Holders of AYURVEDACHARYA B.A.M.S./B.S.A.M. degree of G.A.U. or any other equivalent qualification having a course of not less than five years as determined by the Board of University Teaching from time to time are eligible for the admission.

P.G. 2(e) - The candidate should have completed the compulsory internship wherever it forms part of degree course.

P.G. 3(a) - Every candidate for admission to the M.D. (Ayurved) Course shall apply in a prescribed form by the date fixed for it.

(v) The Dean in his affidavit-in-reply as well as in his personal submission has clearly stated that last date for completion of internship was decided by Admission Committee which is constituted under P.G. Ordinance No. 6. Reference to P.G. Ordinance No. 6 is required to be made at this stage which provide for constitution of Admission Committee:

P.G. 6 - There shall be an Admission Committee consisting of the following members:

Admission Committee

1. The Dean, I.P.G.T. and R., Jamnagar - Chairman.
2. The Director, Indigenous System - Member of Medicine and Homoeopathy, Gujarat State, Gandhinagar/Or his representative not lower in the rank than the Asstt. Director.
3. Head of Deptt. of subject concerned in P.G. at the particular upgraded centre - Member
4. Two senior Heads of the P.G.T. Department - Member of the I.P.G.T. and R., Jamnagar.

(vi) According to Dean the first meeting of the Admission Committee was convened on 5th May, 1995 and by item No. 2(E) of the Minutes of the said

meeting, the following decision was taken:

The Committee also decided that for eligibility the internship of the student must be completed by 31st July, 1995 and if it is not expected to be completed by this date, then the student is not eligible for admission.

Despite aforesaid minutes of the meeting it was asserted before this Court that none of the Ordinances provides completion of internship as criteria of eligibility for admission to P.G. Course.

(vii) From the provision dealing with constitution of Admission Committee, it is clear that it comprises of the following persons:

1. Dean of the University
2. Director of Ayurved Collector of Gujarat (sic.)
3. Two senior Heads of Department at Jamnagar Ayurvedic University.
4. One Head of the Department of Akhandanand Ayurvedic College at Ahmedabad.

(viii) The Dean also submitted before the Court that the advertisement for admission to P.G. Course is separately issued both by the University at Jamnagar as well as by concerned Ayurvedic College at Ahmedabad. In fact, the draft of advertisement is prepared at University at Jamnagar and is sent to Akhandanand Ayurvedic College at Ahmedabad. He also categorically stated that in the matter of issuance of advertisement for admission to P.G. Course, Jamnagar University has no control over Akhandanand Ayurvedic College. In the oral submission made by Dean before this Court, he has categorically admitted that for the purpose of admission to P.G. Course, the Dean of the University and Principal of Akhandanand Ayurvedic College at Ahmedabad are put at par. The date for receiving the admission forms being 22nd May, 1995 was determined by the Dean of the University and the copy of the advertisement which was prepared by the University was sent to the Principal of Akhandanand Ayurvedic College, but, the Principal in his turn did not send the copy of his advertisement to the Dean. However, there is no dispute about the fact that in the advertisement which was issued by the Principal of Akhandanand Ayurvedic College, Ahmedabad, 22nd of May, 1995 was shown to be last date for receiving admission form.

(ix) It is an admitted fact that in fact the Jamnagar University did not approve any admission forms which were received late and in the meeting of the Admission Committee held on 2nd of June, 1995 at 4-30 p.m., 17 admission forms of students which were received late just by one day by the University were rejected and a decision was taken by the University at Item No. 3 in the following terms:

Item No. 3: To consider the late application forms received after 22-5-1995 for M.D. (AW.) and D.P.C. admission.

The Committee did not agree to consider 17 application forms received late as the last date for receiving the application was 22-5-1995.

(x) It is the further case of the Dean before this Court that he personally received telephone call from the father of the petitioner that the Principal of Akhandanand Ayurvedic College at Ahmedabad was not issuing the interview call to his daughter under the pretext that she has not completed her internship by 30th June, 1995. According to Dean, since completion of internship was not the criteria of eligibility, he thought it proper to immediately issue telegram to the Principal of the Akhandanand Ayurvedic College at Ahmedabad and that he issued the telegram on 23rd of June, 1995 to the Principal to the following effect:

As Per Decision of Admission Committee Candidates Completing Internship by 31st July Are Allowed to Sit in M D (Ayu) Entrance Test to be Held on 29th July. Take Action Accordingly. Dean (Ayu)

(xi) In the submission of the Dean by such telegram he has not extended the time for receipt of the admission forms and he has no authority to extend such time because date for receipt of admission forms was already fixed as 22nd of May, 1995 and Admission Committee has thereafter even rejected the prayer to accept the forms of the students which were received late by one day only.

(xii) It is unfortunate but it is admittedly the prevalent practice that forms of admission which are received from the students at Jamnagar University are scrutinised by the Dean himself while the forms of admission which are received from the students at Ahmedabad are scrutinised by the Principal of Akhandanand Ayurvedic College at Ahmedabad.

(xiii) The Dean has further submitted before the Court that on 27th June, 1995, in the evening he received letter through Clerk of Akhandanand Ayurvedic College at Ahmedabad which letter was addressed to the Dean by the Principal. In such letter, the Principal has stated that he has received admission forms for Post Graduate Courses upto 27th May, 1995, and that he was sending such forms to the Dean and according to him in all 52 forms were received for admission to P.G. Course, 24 being from students of State of Gujarat, 6 being from Scheduled Caste candidates and 22 forms from students outside Gujarat. He has also stated that out of the 52 forms, Form Nos. 51 and 52 were received late.

(xiv) It is the further case of the Dean that since the admission forms received by Principal of Akhandanand Ayurvedic College at Ahmedabad were received and since many of them were received by the Principal after 22nd of May, 1995, he immediately called the meeting of the Admission Committee and he put the case before the Admission Committee on 28th June, 1995. In such meeting, which was held on 28th June, 1995, he specifically put the case of the petitioner before the Admission Committee from Chair and at Item No. "D", the Admission Committee took the following decision:

Item No. D: To Consider the Letter of Principal, Govt. Akhandanand Ayurved

Mahavidyalaya, Ahmedabad Dt. 23-6-1995.

The perusal of the letter No. A.A.a Ma. Vi.: PG Navopravesh/Forma/95 1884-89 dated 23-6-1995 sent by the Principal, Govt. Akhandanand Ayurved Mahavidyalaya, Ahmedabad showed that in one place, it is typed that all the 52 applications have been received on 27-6-1995, i.e., in time while later on by handwriting it has been added that the applications of Roll Nos. 51 and 52 were received late, which are contradictory. Further, this handwritten addition has not been signed. The open letter has been delivered personally by the concerned clerk. It has also come to the notice of the Committee that call letters for Admission test to these two candidates have already been issued by the Principal of Govt. Akhandanand Ayurved Mahavidyalaya, Ahmedabad. Further, if there was any doubt to the Principal, the same should have been referred to the Committee separately with his remarks, but this has not been done. So, the Committee decides that it is not possible to intervene at this stage because it may create many other problems; all the responsibilities will be on the Principal, Ahmedabad if any dispute arise.

(xv) From the aforesaid decision of the Admission Committee dated 23rd of June, 1995, it becomes clear that the Committee found that letter of the Principal of Akhandanand Ayurved Mahavidyalaya was contradictory and that some words which were inserted by hand in the letter, were not duly countersigned. However, the Committee noticed that call letters for Admission test were issued to candidate Nos. 51 and 52 by the Principal of Akhandanand Ayurvedic College at Ahmedabad. The Committee also noted its displeasure that in case of doubt, the Principal should have referred the matter to the Admission Committee. The Committee, however, took the decision that it was not possible for it to intervene at that stage as call letters were issued to the petitioner because that might create many other problems and that in case the dispute would arise, it would be the sole responsibility of the Principal of the Akhandanand Ayurvedic College at Ahmedabad. Impliedly or tacitly, the Admission Committee agreed to interview the two candidates, whose admission forms were received late as well as those candidates whose forms were received upto 27th May, 1995. The Admission Committee remained silent about its decision as to why it was even interviewing the candidates, whose forms were received beyond 22nd of May, 1995. But, since the call letters were received (sic. sent) to the candidates by Principal of Akhandanand Ayurvedic College, whose forms were received beyond 22nd May, 1995, the Admission Committee decided to interview all candidates including those, whose forms were received on 31st of May, 1995.

(xvi) It is the case of the Dean that pursuant to the call letters issued, all students were permitted to appear at the interview before the Admission Committee including students, who submitted their admission forms after 27th May, 1995 and including the present petitioner. All such students were interviewed and screened. Thereafter, the merit list was prepared. It was a list of five persons as under:

2 students - being 50% of Gujarat State

2 students - being 50% of other States

1 Student - belonging to reserved category

(Total 5 students)

(xvii) The Admission Committee also prepared the waiting list of students from Gujarat State and admittedly the present petitioner, whose admission form was received late but to whom the call letter for interview was issued along with other candidates, who also submitted their admission form beyond 22nd May, 1995, was placed first in the waiting list. One candidate from Gujarat State who was selected and placed in the merit list, however, did not present himself to join the P.G. Course and therefore, when one seat from amongst the students of Gujarat State became vacant the question of operating the waiting list arose. Admittedly, the petitioner was on Serial No. 1.

(xviii) In fact, by letter dated 1-8-1995 the petitioner was intimated that she was given admission to M.D. Ayurvedic Course. Immediately thereafter the Principal, the 1st respondent addressed another letter to the petitioner informing her that her admission to M.D. Ayurvedic Course stands cancelled. On 3-8-1995 the Principal, thereafter, perhaps under the dictates of the Dean, informs the Dean that last date for acceptance of admission form was fixed by him as 27-5-1995 but because of printing error it was printed as 22-5-1995. He also stated in the letter that thereafter admission form was issued to petitioner under political influence. This letter is handwritten letter by person other than Principal. It is signed by Principal. It is addressed to Dean. It is rushed to the Admission Committee on 4-8-1995. This last letter of Principal is factually incorrect and written at the dictates of the higher-ups becomes clear if one refers to the stand of the Principal in his oral submission before this Court. In fact, the Principal clearly stated that in the advertisement issued by him also, the last date for filling in the form of admission was 22nd May, 1995. All the admission forms which were received by the Principal upto 27th May, 1995 and two forms received later were sent to the Admission Committee and the Admission Committee has stated that the forms accepted upto 22nd May 1995 as valid. There is no notice issued by the Principal at any point of time to the effect that there was a printing mistake in his notice and that the admission forms will be accepted upto 27th May, 1995. The Admission Committee, however, treated the forms accepted upto 27th of May, 1995 as valid and therefore, the letter dated 3rd August, 1995 was called for from the Principal. In his oral submission before this Court the Principal has outright negatived the theory of any political pressure having been brought on him personally by the petitioner or her parents. It is unfortunate that with a view to concealing its own illegalities and irregularities, the Admission Committee not only brought the letter from the Principal but based thereon to the ultimate decision of denying admission to the petitioner which was granted to her on 1st August, 1995. The decision of the Admission

Committee dated 4th August, 1995 speaks volume about the colourable and mala fide exercise of power by the Committee. It could be noted that Item No. A in the Minutes of the said meeting was not on the Agenda, but it came from the Chair, i.e., the Dean of the University. Secondly, by that date, admission was given to the present petitioner and she has also resumed classes. The admission of the petitioner was also cancelled by the Principal and thereafter on 3rd of August, 1995 the letter was procured from the Principal solely with a view to justify the cancellation of admission of petitioner to M.D. Ayurvedic Course and secondly to justify the action of Admission Committee in considering candidates whose forms were received upto 27th of May, 1995 as if they were received within the cut off date. In fact, on 3rd of August, 1995, the Admission Committee has no written proof before it that Principal has extended the date for acceptance of admission forms upto 27th of May, 1995. But, then, the Admission Committee wanted to justify its action of considering as valid those forms which were received after 22nd of May, 1995. With this specific intention, the Committee proceeded to pass the Resolution in its meeting dated 4th of August, 1995 to which a detailed reference is made hereafter while recording the factual conclusions reached by this Court.

(xix) The petitioner thereupon immediately moved the Hon'ble High Court by instituting the present petition and R.K. Abhichandani, J. on 14th August, 1995 directed the respondents to allow the petitioner to attend the College pursuant to the Admission Letter addressed to her on 1st of August, 1995. The petitioner thereafter continued her studies by attending her classes regularly and was in fact for all purposes admitted to M.D. Ayurvedic Course and was attending the classes pursuant to her position at Serial No. 1 in the waiting list and Letter of Admission addressed to her.

(xx) A reference will be made to a very important fact as to how and under what circumstances such ad interim stay came to be vacated for no fault of the petitioner and how Dean of the University hastily and with a view to making the petition of the petitioner infructuous and meaningless proceeded to grant admission to third respondent in M.D. Ayurvedic Course on 30th September, 1995. It shall have to be kept in mind that the matter was found subjudice. The High Court has not vacated the ad interim relief on merits but only on out of (sic. account of) anger to teach lesson to the Advocate of the petitioner unknowingly thereby injustice is done to a deserving candidate and by not granting interim relief at point of time of admission when the petition was admitted and was found to be prima facie worthy of consideration by this Court, the injustice is perpetrated. A very crucial important year in the educational career is lost. Despite repeated requests made to a large number of single Judges as well as to Hon'ble the Chief Justice, the matter was not heard and when the matter was heard and the arguments were concluded, thoroughly illegal and invalid action of the respondents has become the fate accompli. The respondents with audacity to urge before the Court that nothing could be done by this Court as two academic terms were over and no relief could be granted to the petitioner. In my opinion,

deliberately and in unholy haste, the entire exercise is done and to lay the blame for this injustice meted out to a young student, at the door of anyone would not serve the ends of justice. It is for this Court to decide as to how the ends of justice would be met and as to how a relief could be moulded and granted in favour of the petitioner, though late, so that sense of helplessness and frustration do not permeate amongst the litigating public.

4. Case of the Principal of Akhandanand Ayurved Mahavidyalaya, Ahmedabad:

The Principal, respondent No. 1 herein has filed affidavit-in-reply and has also made oral submission before the Court. The stand taken up by the Principal in his affidavit-in-reply, is inconsistent with the stand of the Dean, Institute of Post Graduate Studies, Gujarat University, Respondent No. 2. At this stage, it would be necessary to refer to the stand of the Principal.

(i) It is the case of the Principal that to be eligible for admission to Post Graduate Course under the Post Graduate Ordinance No. 2 (e) the candidate should have completed the compulsory internship wherever it forms part of the Degree Course and since under the Degree Course adopted by second respondent-University, internship for a period of six months was essential, the aforesaid stipulation in the Post Graduate Ordinance was squarely attracted. He submitted that he always believed and is still believing that unless the candidate has completed the compulsory internship which is stipulated as part and parcel of Degree Course, the candidate is not eligible to fill-in and apply for admission to the M.D. (Ayurved) Course.

(ii) It is his further case that as per the advertisement for admission to P.G. Course issued by first respondent-College, the last date to apply for the course was prescribed as 22nd May, 1995. Under P.G. Ordinance No. 3(a) every candidate for admission to the M.D. (Ayurved) Course was required to apply in a prescribed form by the date fixed for it.

(iii) In his submission between 22nd of May, 1995 to 31st May, 1995, he was out of Ahmedabad City for some days and his staff as well as he himself were of the opinion that those students who have not completed internship of six months on the date of the submission of the form were not eligible for applying for admission to M.D. (Ayurved) Course. However, in his absence, some students, who had admittedly not completed the period of internship of six months, got the admission forms to P.G. Course from P.G. clerk and such students ought not to have been issued the form.

(iv) He categorically admitted before the Court that the present petitioner did come and ask for form for admission to P.G. Course but, P.G. clerk and he have refused the same as she had not then completed internship of six months. He also admitted that between 22nd of May, 1995 and 31st May, 1995, petitioner personally saw him and asked for admission form of P.G. Course and that he stated to her that those students who have not completed the internship, were not eligible to fill-in and apply for admission. The petitioner also complained to

him that those students who have not completed internship have got the admission form while she alone was being denied the admission form by the Office of the first respondent-College and Principal admitted that he might have initially denied the form to the petitioner when she was accompanied by her parents.

(v) In his submission before the Court he submitted that since the petitioner complained to him that some students who had not completed internship for six months, were issued admission forms, he addressed letter dated 23rd of June, 1995 to the Dean of the University and stated therein that the last date for accepting the admission form was 27th May, 1995 while some students who had not completed internship of six months were not issued the interview call letter and that Dean should take appropriate action in that behalf. The list of seven students included the name of the present petitioner at Serial No. 7. The fact that such letter is received by the Dean of second respondent-University is not disputed. The Dean has also issued telegram dated 23rd June, 1995 to the Principal of the College which is reproduced hereinabove while dealing with the case of the Dean and he has clarified that for applying for admission to P.G. Course (Ayurved), completion of internship was to be treated as 31st July, 1995 and that all students were allowed to sit in M.D. (Ayurved) Entrance Test which was to be held on 29th of June, 1995.

(vi) According to the Principal, he has extended the cut off date for the receipt of the admission form upto 27th May, 1995 and that his such action was endorsed by the Dean of the University. He further submitted that since it was clarified by the telegram that anyone who would complete the internship by 31st July, 1995 can apply for admission to M.D. (Ayurved) Course, he issued interview call letters to the candidates, whose forms were received beyond 27th May, 1995.

(vii) From the aforesaid stand taken by the Principal in his affidavit-in-reply as well as oral submission before this Court, it becomes clear that cut off date was fixed by the Dean for applying for admission to P.G. Course and it was 22nd May, 1995. The Principal of the first respondent College extended such date to 27th of May, 1995 and the University did not object to such extension of date. However, there was no further extension and the admission forms which were submitted after 27th May, 1995, would not have been in any case accepted and such students could not have been permitted to compete for admission to P.G. Course.

(viii) The Principal of the first respondent-College has taken up inconsistent stand in the affidavit-in-reply to the stand which he has taken up during his oral submission before the Court. In his affidavit-in-reply he has stated that the date for submitting the admission form was 22nd May, 1995 and that the form of the petitioner was received on 31st May, 1995 and therefore, she was not eligible to compete for admission to M.D. (Ayurved) Course. Once the cut off date is fixed which was admittedly extended by him upto 27th May, 1995, the admission form which was received on 31st May, 1995 from the petitioner was late. However, in view of his own interpretation of the Rules, admission forms were not supplied to

number of student who had not completed internship and that P.G. clerk or he might have refused such form to the petitioner also. When it was brought to his notice that admission forms were issued to students who have not completed internship, he issued the admission form to the petitioner on 31st May, 1995, who filled in the same and submitted the same on that very day, i.e., 31st May, 1995. The form was accepted beyond the date extended by him and he has, therefore, sought clarification from the University as to whether interview call letters should be issued to such students from whom the admission forms were received late and on affirmative reply being received, he has issued the interview call letter to the petitioner also.

(ix) In the further affidavit-in-reply to the amended petition, which is filed by the Principal, he has reiterated that no irregularity was committed by him and that petitioner was ineligible candidate who cannot be given admission as she has not completed the internship. He has further asserted that he has written the letter dated 23rd of June, 1995 to the Dean of the University stating that in all seven candidates who were ineligible and who cannot be given the admission in M.D. (Ayurved) Course, had submitted their forms and that such forms were received late. He has clearly stated in the affidavit dated 16th October, 1995 as under:

I submit that there is no importance of visiting again and again to the Principal to ask for getting the application form as she is not eligible as she has not completed the internship on the date of advertisement. I submit that only eligible candidates have the right to get the admission in the M.D. (Ayurved) Course. I submit that visiting again and again after advertisement to get the application form has no relevancy as she is not eligible on the ground of non-completing the internship. I submit that on the instructions of the respondent No. 2 the call letter was issued to all the candidates and for which though the petitioner was late she was wrongly given the call letter. I submit that the last date of application was 27th May 1995 and for which the petitioner has filled in form on 31st May 1995. I submit that on this count on receiving the late application as well as ineligibility of not clearing the internship examination, she cannot claim the right of admission in M.D. (Ayurved) Course and therefore, the petition is required to be rejected in limine.

(x) During the course of hearing of this petition, the learned A.G.P. and at one time the Principal of Akhandanand Ayurvedic Mahavidyalaya took up the stand that the petitioner otherwise did not deserve any admission as she tried to bring political pressure for giving admission form to her. When he was specifically interrogated about the name of the Minister and the nature of influence which he exercised, he stated in the Court that the Hon"ble Minister was the Cabinet Minister but was not holding the portfolio of Health. He further stated that the concerned Cabinet Minister had straightway rushed to Jamnagar and has referred to the various files and forms for admission as he was interested in anyhow securing the admission of his own daughter in M.D. Ayurvedic Course. About the visit of the Cabinet Minister of the State of Jamnagar University, his calling for

the admission forms and going through the various files and the purpose of his visit, the Dean of the University has observed deliberate silence but asserted in the affidavit-in-reply that the Principal informed him by a subsequent letter that he has received the admission form of the petitioner on 31 st may, 1995 and he has done so under political pressure. These assertions made by the Dean in his affidavit-in-reply is not at all supported by the Principal of the College in his oral submission. From what is stated hereinabove, it becomes clear that political influence, if any, was sought to be exercised by concerned Cabinet Minister for securing admission to his own ward and that too at the level of respondent No. 2-University. The Dean has tried to lay the entire blame at the door of the Principal, i.e., first respondent and has tried to justify his stand by reference to various decisions taken by the Admission Committee. The aforesaid letter to which the Dean has made reference allegedly to have been received by him from Principal of the College is dated 3rd August, 1995 and on the reading thereof, it appears to be an inspired letter or procured letter obtained to save the skin of the Institution. Such a letter is obtained from the Principal as the Admission Committee having miserably failed in discharge of its statutory duty wanted to deny admission as per its own list to petitioner. The Principal has frankly and fairly stated before the Court that admission form was denied to the petitioner as she has not completed the internship and secondly that it was subsequently given to her because the matter was clarified by the Dean of the University that completion of internship has no relevance to the eligibility for getting the admission form and for filling-in the admission form. From the aforesaid allegations, it is difficult to assume that the petitioner has in fact resorted to any unfair means for getting admission to M.D. Ayurvedic Course. She has been in fact frantically trying for getting admission form for M.D. Ayurvedic Course on the basis of her merit but the admission form thereof was denied by P.G. clerk and the Principal at Akhandanand Ayurvedic College, respondent No. 1. On the contrary the case of the petitioner as introduced in the petition by way of amendment is very specific that the admission form was withheld in her case with some ulterior motive as the authorities wanted to oblige influential persons or because of the wrong understanding of the P.G. Admission Ordinance by the Principal of first respondent-College to the effect that those candidates, who had not completed their internship were not eligible to fill-in the form for admission to M.D. Ayurvedic Course. The petitioner and her parents have even complained to the Dean of the University that the call letter for interview is not being issued to the petitioner and the Dean of the University confirms this position. The Dean of the University was fair and just in stating before the Court that since number of admission forms were issued late by respondent No. 1-College, it was decided to issue interview call letters to all candidates including those whose forms were received late. The Dean has been also fair and reasonable in stating before the Court that since Principal of the first respondent-College has extended the date of receipt of the admission forms upto 27th May, 1995 those students were considered to be eligible for being issued the interview call letters and had any candidates been selected and included in the merit list from such candidates, the

Gujarat Ayurvedic University would have given him the admission on the basis of merit. However, he states that fortunately, no candidates, whose form was submitted beyond 22nd May, 1995 found place in the merit list or ultimately came to be admitted because respondent No. 3 who also got admission from the waiting list had submitted the application on 22nd of May, 1995. Otherwise they would have given admission to the students from Ahmedabad College who had submitted the admission forms upto 27th May, 1995. That eventuality has not occurred and purely accidentally in the facts of the case the cut off date of 22nd May, 1995 for submitting the admission form is observed. She has stated that one student, namely, Snehlata Patel, who is the daughter of a Minister, namely, Arvind Patel, was also studying in Akhandanand Ayurvedic College, Ahmedabad, who has completed the B.A.M.S. Examination but has not completed the internship and who was to complete the internship on 30-6-1995. She was given the admission form by the Principal of Akhandanand Ayurvedic College. There was one another candidate, namely, Falguni Patel, who happens to be the daughter-in-law of the Professor in the College had also not completed her internship and yet she was given the admission form. She was, however, consistently denied the admission form by the Principal of the respondent No. 1- College. Other two students, namely, Himanshu Parikh and Vipul Vyas were also given the admission forms though they had not completed their internship on 30th June, 1995. According to her, she was thus denied the equal and just opportunity of prosecuting her higher studies in Post Graduation despite her name being included in the waiting list at Serial No. 1 and such action of the respondent is in every respect violative of Articles 14 and 16 of the Constitution of India and of the right of the brilliant student to prosecute his/her higher studies or studies involving research work.

5. In the case of Dr Pramod Kumar Joshi Vs. Medical Council of India and Others, even the Apex Court having found and accepted that refusal of admission to the petitioner to Diploma Course in Paediatrics was contrary to the regulations framed by Indian Medical Council, noted its helplessness in granting any substantive relief as the academic sessions was almost complete and it was felt that it would not be proper to allow him admission belatedly and disturb others who have already been admitted and have been undergoing the course. The observation of the Apex Court in the penultimate line of its order to the effect "petitioner may look for admission in a future year" would generally prove to be a teasing illusion or promise of unreality to a meritorious student submits the learned Counsel for the petitioner. If a student may look for admission in the subsequent year despite her claim to admission, a Court of law cannot be helpless to grant such student admission in the next year when for no fault of the student admission was denied to her.

6. Coming still nearer to the recent past, in the case of the Slate of Punjab v. Renku Singh la reported in 1993(6) JT 524 the Apex Court was concerned with admission in Medical Course and it found that such admission was governed throughout India by different statutory provisions including regulations framed

under different Acts. The Division Bench of the Apex Court has noticed that in last number of years, attempts have been made to regulate and uniformalise the admissions to different medical institutions, in order to achieve academic excellence but such attempts have failed partially because of filing of writ petitions in the High Court or in the Apex Court by candidates and by obtaining interim or final directions seeking admittance to a medical course. The Apex Court showed its disapproval to frequent unwarranted and uncalled for interference by the High Courts or issuance of an interim or final directions in the matter of admittance to any course in educational institution in the following words:

We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. It cannot be disputed that technical education, including medical education, requires infra-structure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infra-structure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on "compassionate ground". The High Court should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. According to us, there does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent No. 1 on "compassionate ground" and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10A and Section 10B(3) of the Dentists Act referred to above.

The Aforesaid decision, in fact, has no bearing as this Court does not propose to direct the respondents to create a supernumerary post in P.G. Ayurvedic Course and to give admission to the petitioner in such course. In fact, the educational term for the first year of P.G. Ayurvedic Course has already ended or is likely to end within a week and it would be an exercise in the futility as well as it would be unjust and unreasonable to direct the respondents to create any supernumerary post and to give admission to the petitioner on such post. Even otherwise, as per the aforesaid ratio of the Supreme Court, it is not open to this Court to issue direction of nature.

7. In the case of *Hetalkumar B. Shah v. Maharaja Sayajirao University* reported in 1993(2) GLH 691 M.B. Shah, J. of this Court (as His Lordship then was) was dealing with a case of eligibility for admission to a autonomous institution like the Indian Institute of Management. The rules of the institution required that those who have not completed Bachelor's Degree examination at the time of being admitted to institution would have to produce a certificate on a particular date from the Registrar to the effect that the student has appeared for the

examination in all subjects. The petitioner before the Court could not obtain such certificate as all examinations in the University were delayed and his inability was not referable to any negligence, inaction or omission on his part nor was it possible for the Court to lay blame at his door. Even in such fact situation, the learned single Judge held that in such cases, Court cannot ask any autonomous institution to relax the conditions for eligibility. The Court felt that when the last date to produce the certificate at the time of registration was fixed as 30th June, 1992, the petitioner and other eligible candidates have also appeared in the examinations for obtaining Bachelor's Degree, non-fulfilment of the aforesaid requirement would automatically result in the cancellation of the provisional admission and though inability was not referable to lapse on the part of the student, since he failed to produce his certificate, the learned single Judge felt that he has been rightly refused admission. Fixing of any cut off date, felt the Court, may create some hardship or heart-burning, but, that would not justify the Institution to relax such requirement or the Court to direct relaxation of such requirement. The late conduct of the examination by the University would not provide any ground either to the Institution or to the Court to relax the requirement of submitting the certificate by the date fixed. The Court, therefore, refused to interfere and grant any relief though it must be stated that the maxim of law is that law does not compel a man to do that which he cannot possibly perform, i.e., a person cannot be compelled to perform an impossible act and yet the reluctance to interfere and grant any relief by the Court is perhaps motivated by the spirit of least or minimal interference in the matter of admittance to educational course in educational institutions. Even in the recent pronouncement of the Apex Court in the case of *B.C. Chaturvedi v. Union of India and Ors.* reported in 1995(8) JT 65, in the concurrent opinion given by His Lordship Justice Mr. B.L. Hansaria, it is stated that even the High Court has power to do "complete justice" even if there is no expressed provision under Article 142 of the Constitution of India which specifically confers the power of doing complete justice on the Supreme Court. His Lordship has taken the view that if such power is available to the Apex Court under Article 142, such power to do complete justice between the parties must be read in the power conferred upon the High Court under Article 226 of the Constitution of India and if such power is not read, a very large percentage of litigants are not in a position to approach to the Apex Court. His Lordship, however, observed that there is no provision parallel to Article 142 relating to the High Courts, can be no grounds to think that the High Courts have not to do complete justice and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Court thinks that absence of provision like Article 142 is not material at all and power to do complete justice inheres in every Court not to speak of a Court of plenary jurisdiction like High Court. Undoubtedly, power of the High Court is not as wide as that of the Supreme Court under Article 142. Therefore, though the Courts of law may adopt the approach of minimal interference in the matter of admittance to educational courses, it shall have to be kept in mind that when a meritorious student is being denied admission not on any fault on his/her part but because of

two different views held by the Principal of Government Akhandanand Ayurvedic College at Ahmedabad - respondent No. 1 and the Dean, Institute of Post Graduate Studies, Gujarat Ayurvedic University - second respondent and also because of a situation of impossibility having been created for the student by not supplying her the forms for admission upto the last date of acceptance of the form, the Court of law shall not and in my opinion must not find itself helpless but it must strive to do complete justice any manner by which least harm is caused to the other parties.

8. However, slightly different note is sounded by a very recent decision of the Apex Court in the case of Dr. (Mrs.) S. Santosh Kumari v. Union of India reported in 1994(7) JT 565, where the Division of the Apex Court laid stress on merits for admission to medical education course and held that allotment of seats in medical education should go according to merit and not depend upon who comes to Court and who does not. The Court found that the matter is one of principle and should not depend upon who comes to the Court. A more deserving candidate may not have the means to approach the Court. The appellant before the Supreme Court got admission to M S. (Gynecology and Obstetrics) in the Medical College at Jaipur, in the All India merit quota, for the academic year 1993-94. 25 per cent of the available seats in the post-graduate medical courses were reserved for being filled from among the candidates allotted by Director General of Health Services on the basis of an All India Examination keeping in view the preferences indicated by each candidate. According to the order of the Apex Court, any seat remaining unfilled on the prescribed date should be surrendered to the State quota. The third respondent appeared in the All India Examination expressing her first preference for Jaipur Medical College and for the speciality of Gynecology and Obstetrics. She also sought admission on the State quota whereas the appellant applied for a seat only under the State quota. In the All India Examination, the third respondent was assigned the merit ranking at 1816 and therefore, she could not be given admission in M.S. (Obstetrics and Gynecology) Degree course. Four other candidates above her in the merit list were allotted seats. One of the candidates so allotted to degree course in Obstetrics and Gynecology in Jaipur College did not join within the prescribed date, with the result, one seat remained unfilled. As per the Order of the Apex Court, said seat was to be surrendered to the State quota and accordingly the appellant got admission. Thereupon, the third respondent filed petition in the Rajasthan High Court seeking admission against the vacant seat. It was dismissed by the learned single Judge. The matter was carried in Appeal to the Division Bench which allowed the Appeal in part and directed that the third respondent should be admitted and that seat could not have been surrendered to the State quota. This decision of the Division Bench of Rajasthan High Court was overturned by the Division Bench of Apex Court and the principle of law aforesaid was laid down. This decision, therefore, laid stress on merit of the student and it held that once the seat was rightfully surrendered to State quota, the meritorious student from the State quota having got admission, his admission cannot be

disturbed. Though the decision has no direct impact or effect on this case, it can be said that the Apex Court duly emphasised the fact that in the higher education the merit which should prevail and nothing else.

9. To counter the aforesaid propositions of law, more particularly about the approach of non-interference by the Courts of law in the matter of admission to educational course, the learned Counsel appearing for the petitioner invited attention of this Court to the case of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, , where three-Judge Bench of the Supreme Court was dealing with the case of a candidate (student) who was allowed to appear in examination - and whose admission to examination was later on withdrawn by the University on the ground that while giving admission to the student, infirmity which disentitled him to admission was not noticed. The Apex Court took the view that if the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the Examination, then by force of the University Statute the University had no power to withdraw the candidature of the candidate. Based on the similarity of fact situation obtaining before the Apex Court, in the facts of the present case, it was submitted very strenuously before this Court that if, despite late submission of forms by the petitioner, the Admission Committee of the University permitted the petitioner to appear in the Entrance Examination held on 29th of June, 1995, and yet on merit the petitioner was posted at Serial No. 1 in the waiting list, admission to M.D. (Ayurved) Course could not have been denied to her on the ground that she was late in submitting the admission form beyond the date fixed, i.e., 22nd of May, 1995. On facts, the decision of the Apex Court in this case is said to be applicable on all force and it is urged before this Court that the petitioner must succeed on the ratio decidendi of this decision of the Apex Court.

10. The petitioner also pressed into service another decision of the Division Bench of the Apex Court in the case of *Sanatan Gauda Vs. Berhampur University and others*, . The regulations of the University dealing with admission to Law course prescribed no requirement of any particular marks for post graduate students. The petitioner who passed M.A. Examination with 36% in the aggregate was held to be duly qualified to be admitted to Law course. The University also permitted him to appear in Pre-law and Intermediate Law examinations and he was also admitted to final year course. The University, however, thereafter refused to declare results of examinations on the ground of ineligibility of the petitioner to be admitted to Law course. In the said case, the petitioner was admitted to the Law course and he studied for a period of two years. The petitioner was granted admission card for the Pre-law and Intermediate Law Examinations. He was also admitted to the final year of the course. Only at the stage of declaration of his results of the Pre-law and Intermediate Law Examinations that the University raised the objection of the ineligibility to be admitted to the Law course. By applying the principle of estoppel, the Apex Court compelled the University to declare the results of the appellant and in a concurring judgment, *L.M. Sharma, J.* held that it was the

bounden duty of the University to have scrutinised the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his results. Before the Apex Court also, the Principal who sent the Admission forms assured the University authorities that he had verified the position and that all the candidates were eligible. The forms which are submitted later are also sent by the Principal to the second respondent along with the Junior Clerk and according to him excepting the fact that the candidates have not completed the requisite internship (which was criteria of eligibility) all candidates were eligible for being admitted to Entrance Examination. The Admission Committee also did not deny admission to her but for reasons to which reference will be made hereafter, permitted the petitioner to appear at the Entrance Examination which was held on 29th of June 1995 and included her name at Serial No. 1 in the Waiting list. The name of the third respondent appeared at Serial No. 3 in the Waiting list and admittedly the third respondent is admitted to M.D. Ayurvedic Course while petitioner is denied admission on the ground that she has submitted her admission form late beyond the cut off date of 22nd of May, 1995.

12. Factual Conclusions:

(i) Admittedly, the petitioner Ms. Dipti Goyal and respondent No. 3 Ms. Hinal A. Parikh had passed their B.A.M.S. Examination held in October, 1994. Both of them were to complete their internship by 30th June, 1995. According to the first and the second respondent, both of them were eligible for admission to M.D. (Ayurvedic) Course based on their notifications.

(ii) It is also an admitted fact that in the matter of admission to M.D. (Ayurvedic) Course (P.G. Course), though the second respondent-University is the main authority, equally autonomous powers are being enjoyed by the Principal, Government Akhandanand Ayurvedic College, respondent No. 1. Ordinarily, uniformity and co-ordination is to be maintained between the two institutions but at times, the first respondent, Principal being the autonomous body, directly under the control of the State Government, exercises his certain powers, which may not fully coincide with the exercise of powers by the second respondent.

(iii) In the advertisement which was published for admission to M.D. (Ayurvedic) Course both by the first respondent and the second respondent, the last date for submission of admission forms was stated to be upto office hours of 22nd of May, 1995.

(iv) Nowhere in the advertisement issued by the first or the second respondent it was stated that only those candidates will be eligible to apply for admission to M.D. (Ayurvedic) Course who had completed the internship. According to second respondent, through its Dean, completion of internship was not the criteria of eligibility for admission to M.D. (Ayurvedic) Course and those who had not completed their internship were also entitled to fill in the form of admission to M.D. (Ayurvedic) Course.

(v) If reference is made to the Ordinances framed by second respondent - University under Statute 158 read with Section 24(v) of the Act, following three Ordinances assume importance and it is conflicting interpretation thereof by respondent Nos. 1 and 2 which has created the present chaos:

(i) Admittedly, the P.G. 2(a): Holders of Ayurvedacharya B.A.M.S./B.S.A.M. degree of G.A.U. or any other equivalent qualification having a course of not less than five years as determined by the Board of University Teaching from time to time are eligible for the admission.

P.G. 2(e): The candidate should have completed the compulsory internship wherever it forms part of the degree course.

P.G. 3(a): Every candidate for admission to the M.D. (Ayurveda) Course shall apply in a prescribed form by the date fixed for it.

Admittedly, P.G. 2(a) is satisfied both by the petitioner and the respondent No. 3.

As regards P.G. 2(e) the case of the University through Dean is that completion of the compulsory internship is not the criteria of eligibility and that those students who have not completed internship were and are eligible to apply for admission to M.D. (Ayurvedic) Course. On the other hand, the Principal, the first respondent, has consistently in all the affidavits-in-reply filed by him taken the stand that completion of the compulsory internship was and is a criteria of eligibility and that those candidates who have not completed such internship were and are not eligible to apply for admission to M.D. (Ayurvedic) Course. The stand taken by the respondent No. 1 is extensively quoted hereinabove in his own words and he has stuck to such stand all throughout the proceedings.

As regards requirement of P.G. 3(a) it is contended that cut off date is fixed for receiving the admission form and every candidate for admission to the M.D. (Ayurvedic) Course shall apply in a prescribed form by that date. The second respondent, Dean of the University, submits that all those applications for admission which were tendered or received beyond office hours of 22nd May, 1995 were liable to be rejected and in fact all such applications from students at Jamnagar which were received beyond 22nd of May, 1995 were rejected.

According to the Principal, the first respondent, and his staff firmly believed and maintain that the admission forms could not be issued to the students who have not completed the period of compulsory internship and that he as well as his P.G. clerk refused forms for admission to number of students. Around 22nd May, 1995 and thereafter for some days he was out of town and during this period, the P.G. clerk had issued certain admission forms to the students, who had not completed the period of compulsory internship. He states and maintains that the petitioner or her parents did approach him and asked for the admission form but since he was holding the view that the petitioner has not completed the period of compulsory internship, she was not eligible to apply for admission, he refused admission form to her. However, when it was brought to the notice that

admission forms were issued to some of the students, who had not completed the period of compulsory internship, as he was in confusion, he sought clarification from the second respondent-University and by telegram message sent by the second respondent-Dean he was informed that as per decision of the Admission Committee candidates completing internship by 31st July, 1995 are allowed to sit in M.D. (Ayurvedic) Entrance Test to be held on 29th of June, 1995. He was further informed to take action accordingly. This telegram though does not expressly referred to the completion of compulsory internship as criteria of eligibility, it does state that the candidates completing the internship by 31st July, 1995 are allowed to sit in M.D. (Ayurvedic) Entrance Test.

Thus, there exists a just and bona fide dispute about interpretation of P.G. 3(a) between the Principal and the Dean of the University, second respondent and admittedly, the first respondent has not issued admission forms to number of candidates on the ground that they had not completed period of compulsory internship and were, therefore, not eligible while according to the Dean of the University, such students were eligible and they ought to have been issued the form of admission.

Though it is true that P.G. 2(e) does not refer to eligibility, it does state that candidates should have completed the compulsory internship. It could, therefore, be said that if literal interpretation is placed on the Ordinance, completion of compulsory internship by the candidates was essential. On the other hand, the Ordinance does not refer to the date on which compulsory internship should have been completed. According to Dean, completion of compulsory internship by the candidate has no relevance at the date of the issuance of the admission form or on the date of interviewing the candidates at Entrance test. In case, a candidate is selected and included in the merit list, but he/she turns out to be one, who does not complete the compulsory internship by 31st of July, 1995, he/she shall not be entitled for admission to M.D. (Ayurvedic) Course. On either of the interpretation, completion of compulsory internship can be said to be a criteria of eligibility for admission to M.D. (Ayurvedic) Course, though it would not assume much importance at a time when only admission forms are received from the candidates. This is also to be read in light of the fact that advertisement issued, both by the first and the second respondent, nowhere prescribed that candidate must have completed the compulsory internship on the date of submission of the admission form. In the absence of any such stipulation, the second respondent, Dean of the University, may be said to be right in contending that completion of compulsory internship was not the criteria of eligibility. However, the view held by the Principal of the first respondent-College is also not unreasonable or unsustainable. The second view is possible. He has consistently taken that view and has stuck to his interpretation all throughout the proceedings. He has denied or refused forms of admissions to number of students who have not completed the period of compulsory internship and petitioner is admittedly one of such students. Unfortunately, in his absence, P.G. clerk has issued admission forms to such students who had not completed the period of compulsory internship. The

benefit of this conflicting interpretation cannot go to the University nor can the University sit tight over its own interpretation and can disregard the just, fair and bona fide claim of a meritorious student. When the Principal has consistently said and even, written to the second respondent, Dean of the University, that the students who have not completed the period of compulsory internship were not eligible for issuance of admission form, the University could have better clarified the position in clear terms rather than issuing a very vague telegram which does not make any sense. This Court would, therefore, hold that even if two interpretations of P.G. 2(e) Ordinance are possible and even if interpretations placed by the Dean of the University may be a permissible interpretation, the second view held by the Principal of the College was also plausible and permissible and when under such interpretation admission form is admittedly denied to the petitioner from 22nd May, 1995, no fault could be found on the part of the petitioner nor could it be said that she did not follow the cut off line, that being 22nd of May, 1995.

(vi) Even otherwise, the admission forms accepted by the Principal of the Ahmedabad College upto 27th May, 1995 are not regarded as invalid. In fact, according to the Dean of the University, the Principal of the first respondent-College being autonomous and since he is exercising his power independent of the power of Dean of the University, he might have extended the period of acceptance of the form upto 27th May, 1995 and, therefore, the Admission Committee decided to call all those candidates, whose forms were received from Ahmedabad College for interview for Entrance test. Thus, the concept of cut off date under which now the University wants to protect its action assumes no importance. In fact, the admission forms which were accepted by Ahmedabad College upto 27th of May, 1995 were regarded as validly accepted and all those students were issued interview call letters for Entrance test. The Principal of the first respondent-College has in his letter dated 23rd June, 1995 addressed to the Dean of the University along with which he has sent all the admission forms clearly stated that in all 52 admission forms were received out of which 2 forms being Form Nos. 51 and 52 were received late, i.e., after 27th May, 1995 and on 31st May, 1995. Therefore, as pointed out hereinabove, if any candidate, who has submitted his form at Ahmedabad College between 22nd May, 1995 and 27th May, 1995, in case of his/her selection, would have got admission to M.D. (Ayurvedic) Course, despite the fact that the form was received beyond the cut off date, i.e., 22nd May, 1995 which was fixed by the advertisement. If the Principal of the Ahmedabad College could have extended such date and could receive the form, one fails to understand as to how he could not receive the two forms of the two students on or before 31st May 1995 especially when he himself was convinced that he has wrongly withheld the issuance of the form to the petitioner under his belief that she was not entitled to issuance of form for M.D. (Ayurvedic) Course as she has not completed the period of compulsory internship. However, when his doubt was cleared and when he found that number of other students were issued admission forms who had not completed

period of compulsory internship, he acted with the sense of fairplay, justice and equity and accepted the form of the petitioner and forwarded the same to the second respondent-University. I, therefore, conclude that the rigid stand of the second respondent-University about cut off date as regards forms received from Ahmedabad College was not correct.

(vii) At this stage it would be necessary to refer one another (sic.) conclusion which flows from Ordinance P.G. 6 providing for constitution of Admission Committee and its functions. Under the said Ordinance, the Committee shall have the following functions:

(A) to scrutinise the applications of the candidates for determining eligibility or otherwise of the candidates for Admission test;

(B) to conduct the Admission test;

(C) to determine the merit of candidates on their overall performance;

(D) to recommend admission of candidates as per Rules, and

(E) distribute the candidates and to allot specialised subjects in the departments on the basis of their merit obtaining in the Admission test.

From the aforesaid functions of the Admission Committee, it becomes clear that it is the primary duty of Admission Committee firstly to scrutinise the admission forms for determining eligibility or otherwise of the candidates for Admission test. It is thereafter that the Committee conducts the Admission test. Ordinarily, therefore, the Admission Committee is expected to determine the eligibility of the candidates first in point of time and thereafter to proceed to conduct the Admission test. It thereafter proceeds to determine the merits of the candidates on their overall performance. The meeting of the Admission Committee was held on 28th June, 1995 where four out of five members attended. Immediately on the next date, i.e., 29th June, 1995, the interviews for the Entrance test were to be conducted. It was in this connection that one item being item No. "D" was moved by the Chair along with the decision taken by the Admission Committee thereon is required to be reproduced extensively:

Item No. D: To Consider the Letter of Principal, Govt. Akhandanand Ayurved Mahavidyalaya, Ahmedabad Dt. 23-6-1995.

The perusal of the letter No. A.A.a. Ms. Vi.: PG Navo pravesh/Forma/95 1884-89 dated 23-6-1995 sent by the Principal, Govt. Akhandanand Ayurved Mahavidyalaya, Ahmedabad showed that in one place, it is typed that all the 52 applications have been received on 27-6-1995, i.e., in time while later on by handwriting it has been added that the applications of Roll Nos. 51 and 52 were received late, which are contradictory. Further, this handwritten addition has not been signed. The open letter has been delivered personally by the concerned clerk. It has also come to the notice of the Committee that call letters for Admissions test to these two candidates have already been issued by the

Principal of Govt. Akhandanand Ayurved Mahavidyalaya, Ahmedabad. Further, if there was any doubt to the Principal, the same should have been referred to the Committee separately with his remarks, but this has not been done. So the Committee decided that it is not possible to intervene at this stage because it may create many other problems; all the responsibilities will be on the Principal, Ahmedabad if any dispute arise.

From the aforesaid decision taken by the Admission Committee, it becomes clear that it has found number of faults in the letter received from the Principal of Akhandanand Ayurved Mahavidyalaya, Ahmedabad dated 23rd of June, 1995. It has also noted that according to Principal in all 52 applications were received on 27th June, 1995, i.e., in time but later on by handwriting it has been added that the applications of Roll Nos. 51 and 52 were received late. By usual bureaucratic approach, number of defects are noted in the letter of the Principal of the first respondent-College by the Committee. The Committee also noticed that interview call letters were also issued to last two candidates including petitioner by the Principal of Akhandanand Ayurved Mahavidyalaya. According to Committee, at least for these two forms, which were received late, i.e., beyond 27th May, 1995, the matter could have been referred to the Admission Committee. It is thereafter that the Committee has recorded its decision which is already underlined in the aforesaid quotations of the Minutes. The Admission Committee thus did not reject the forms of Roll Nos. 51 and 52 including petitioner as ineligible for admission. In fact, as per P.G. Ordinance No. 6, the Committee was expected to determine the eligibility or otherwise of the candidate at that very stage. It could have even refused to conduct the Admission test of Roll Nos. 51 and 52 as it was of the opinion that the said two forms were received beyond cut off date. It could have been in the alternative suspended its results about said two candidates and could have kept them in the provisional list. In the present case, unfortunately, the Committee did not do either of the things but it proceeded to conduct the Admission test of the petitioner and another student and also proceeded to determine the merits of the petitioner on her overall performance. It also recommended admission of candidates and placed the petitioner at Serial No. 1 in the waiting list which would obviously be operated only when the candidates who are included in the merit list fails to turn out and to get the admission. In my opinion, the aforesaid decision of the Admission Committee would estop the Committee from now contending that the form of the petitioner was liable to be rejected as it was submitted late. The Committee itself scrutinised the form and recorded a very halting finding and decided to determine the merits of petitioner on her overall performance. The Committee itself included the petitioner at serial No. 1 in the waiting list. To say that in case of difficulties, responsibilities will be that of the Principal of Akhandanand Ayurved Mahavidyalaya is nothing but to run away from the discharge of statutory functions which were to be performed by the Admission Committee under Ordinance P.G. 6. In my opinion, the Committee miserably failed in discharging its functions by its own conduct it treated the

form of Roll Nos. 51 and 52 as valid and eligible, it proceeded to conduct their Admission test and it proceeded to determine the overall performance of the petitioner at Entrance test and lastly it even included the name of the petitioner at Serial No. 1 in the Waiting list. This Court fails to understand as to how the Admission Committee through Dean of the University can now take up the stand that the very admission form of petitioner was liable to be rejected and that she was not entitled to be selected. Laying all blame on the shoulder of the Principal of Akhandanand Ayurved Mahavidyalaya by the Admission Committee would not absolve the Admission Committee from scrupulous compliance of its statutory duties and when it has miserably failed in complying with such duties, the petitioner could not be denied admission to M.D. (Ayurvedic) Course as per the selection list and the waiting list prepared by the Admission Committee. The Admission Committee cannot state that the merit list and waiting list by it was illegal or invalid or was subject to certain conditions. Such a course is never open to highly responsible Admission Committee scrutinising the candidates for Post Graduate Studies and Research in Ayurved. In my opinion, decision taken by the Admission Committee as extracted hereinabove and subsequent actions consistently taken by Admission Committee go to establish that petitioner was a meritorious student and that she could not be denied the outcome of her selection by the Committee on grounds which are jejune, unsustainable and created by the Admission Committee itself. It could have outright rejected the forms of Roll Nos. 51 and 52 as they were submitted beyond cut off date. In the alternative, it could have refused to conduct the Admission test of these candidates. In the third alternative, it could have suspended its decision on merits of these two candidates and could have desisted from including their name, in case of selection, in the select list or in the merit list. These were all powers available to the Committee under Ordinance P.G. 6. The Committee unfortunately did not exercise the power and selected the petitioner and included her at Serial No. 1 in the Waiting list. The Committee is, therefore, estopped from contending that petitioner was not eligible or that her admission form wrongly accepted. In fact, the Admission Committee itself has scrutinised the form and had conducted the Admission test. Such responsible statutory Committee determining the life of the meritorious students for their further educational pursuit by granting them admission on merits cannot be permitted to adopt double standard or to blow hot and cold. The decision of the Admission Committee as well as of the second respondent-University, therefore, in not giving admission to the petitioner to M.D. (Ayurvedic) Course is thoroughly unsustainable in law as well as on facts and is liable to be quashed and set aside. In any case, at no stage, the candidate was at fault and to deny her admission despite her merit and despite inclusion of her name at Serial No. 1 in the waiting list would amount to violation of Article 14 of the Constitution of India as absolutely unreasonable, arbitrary, flimsical and capricious decision of the Admission Committee would mar the educational prospects and the life of the petitioner.

(viii) In view of the aforesaid findings reached by this Court, the decision taken by the Admission Committee on the letter of the Principal of the first respondent College and more particularly in connection with admission of the petitioner to M.D. (Ayurvedic) Course, reference is required to be made to the Minutes of the meeting dated 4th August, 1995 of the Admission Committee which was attended by all the five members and on an item introduced from the Chair, Dean of the University as regards the case of the petitioner, following decision was taken:

Item No. A: To Consider the Case of Dipti R. Goyal for M.D. (Ayu.) Admission.

Dean put the office note dated 3-8-1995 received from Vice-Chancellor's Office and Registrarshri including the application of Kum. Snehlata A. Patel and a letter No. 2412 dated. 3-8-1995 received from Principal, Govt. Ahd. Ayu. College, Ahmedabad. The Committee discussed the case of Kum. Dipit R. Goyal in detail and studied the whole case very carefully.

Committee noted the decision taken by its meeting dated 28-6-1995 vide item No. D, which clearly mentions that if there was any doubt regarding the eligibility of Kum. Dipit R. Goyal, then the Principal should have referred her case with detailed note and his remarks, which has not been done by the Principal so far.

Committee observed that even upto this date the Principal did not referred the case of Kum. Dipit R. Goyal to the Admission Committee properly. Instead Principal has written a vague letter No. 2294-95 dated 28-7-1995, the copy of which has been given to Dipti R. Goyal. Committee felt it was not proper on the part of the Principal to give copy of the letter to Kum. Dipit R. Goyal till he decided her case.

The Committee also took serious note for providing the xerox copy of the Confidential letter containing whole waiting list of Ahmedabad P.G. Centre by the office of the Principal, Govt. Akhandanand Ayurved College, Ahmedabad as evident from the enclosure of Kum. Snehlata's complaint.

The Committee further noted that the Principal vide his letter No. 2412 dated 3-8-1995 clearly admitted that the last date of receiving the M.D. (Ayu.) form of Ahmedabad College was fixed by him as 27-5-1995. He also admits that he has issued the application form to Kum. Dipti R. Goyal on 31-5-1995 and it was received back on the same day. He was aware of the fact that he has issued the form to Kum. Dipti after the expiry date of issuing the form as well as received it late. Even then he has issued the Admission test call letter to Kum Dipit Goyal, though her form was received late by his office. Thus, office of the Principal has committed a mistake which should have been corrected by the Principal long back as provision in P.G. Ordinance 3(a) is very clear. Thus, this is a clear-cut case which should have been decided by the Principal vide P.G. Ordinance 3(a).

In view of all the above facts, Committee decided that Principal should ractify the mistake of giving the Admission test call letter to Kum. Dipti Goyal even though

her application form was received late by him immediately and take necessary further action as per Waiting list supplied by the Dean vide his Letter No. 940 dated 11-7-1995, immediately.

(ix) From the aforesaid decision taken by the Admission Committee, it becomes clear that the Admission Committee having already permitted after scrutiny of the admission forms, the petitioner and other candidates who appeared for the Entrance test and having already conducted the Admission test, and after determining the overall performance of the petitioner at the Entrance test, it having included the name of the petitioner at Serial No. 1 in the Waiting list, it wanted to back out from such decision and therefore, much after that date, in the meeting convened on 4th August, 1995, attempts were made by the Members of the Admission Committee to go back from its decision and to deny admission to the petitioner. From the Minutes of the meeting, it appears that the Admission Committee has laid all blame at the door of the Principal of Ahkandanand Ayurvedic College, Ahmedabad - respondent No. 1 and has adversely commented upon him. It is to be regretted that high educational authorities in whose hands, lie the future of the bright candidates, enter into such inter se dispute and thereby ultimately deny the admission to the meritorious candidates. As concluded by me hereinabove, from the provision of Ordinance PG-6, the function of the Admission Committee are very clear and the Admission Committee having exercised such functions consistent with the Ordinance PG-6 and having determined the eligibility or otherwise of the petitioner for Admission Test and it having selected the petitioner and having included her name in the Waiting list at SI. No. 1 and it having also forwarded such Waiting list to the Principal, Respondent No. 1 herein, it has no authority whatsoever to subsequently back out such decision by convening meeting of Admission Committee on 4th of August, 1995 and to pass resolution which was contrary to the action already taken by him. When it has already selected the petitioner and included the petitioner in the Waiting list at SI. No. 1, it goes without saying that the petitioner No. 1 is found to be meritorious for admission to the M.D. Ayurvedic Course and she could not have been denied such admission when the regular student from the merit list did not appear for admission. In my opinion, the Admission Committee was estopped from taking such decision as it has already prior thereto acted in conformity with the requirement of Ordinance PG-6 and has already selected the petitioner and included her name in the Waiting list at SI. No. 1. The subsequent exercise of the Admission Committee was totally unconstitutional, beyond the power conferred upon the Admission Committee and was an ideal illustration of colourable exercise of power as it wanted to back out from its decision and it wanted to lay blame at the door of the Principal - respondent No. 1. In every respect, the subsequent decision taken by the Admission Committee is null and void, without authority of law, contrary to the provisions of Ordinance PG-6 and also contrary to its own decision whereby it has already selected the petitioner and included her at SI. No. 1 in the Waiting list. The Committee was thereafter estopped from

taking any contrary stand as such action was to the detriment of the petitioner who was already selected. The decision of the Committee thus being arbitrary, capricious and prohibited by the doctrine of estoppel by conduct, the respondents were not justified in not giving admission to the petitioner to the M.D. (Ayurvedic) Course as and when the vacancy arose on non-appearance of regularly selected candidates.

13. What Relief and How to Mould the Relief:

Now at this stage, it becomes necessary for this Court to decide as to what relief, if any, could be granted to the petitioner. The petitioner is now not entitled to admission to M.D. Ayurvedic Course in the terms commencing from July 1995 to December and January to June, 1996, because firstly, the two terms have practically expired and secondly, the respondent No. 3 Ms. Hinal Anupbhai Parikh is already granted admission and she has completed her two educational terms. Such admission was undoubtedly provisional and subject to the result of the petition but this Court must take care that she has fully studied for one year in M.D. Ayurvedic Course and she cannot be non-seated at this stage when she has completed two terms of the First Year of M.D. Ayurvedic Course. It is unfortunate that initially the learned single Judge (R.K. Abhichandani, J.) of this Court granted ad interim relief directing the respondents to permit the petitioner to attend the classes of M.D. Ayurvedic Course pursuant to Admission Letter issued to her on 1st of August, 1995 and pursuant to her resumption report dated 1st of August, 1995. It is pursuant to such injunction that the petitioner has attended the classes of M.D. Ayurvedic Course regularly from 1st of August, 1995 to 16th September, 1995. It appears that thereafter there was change in the allocation of work and another single Judge of this Court felt aggrieved by inaction on the part of the then Advocate, who was representing the petitioner and the annoyance is reflected in the order passed by the learned single Judge vacating the interim relief. The order passed by the learned single Judge on 16th September, 1995 is required to be reproduced and is reproduced hereunder:

Learned Counsel Mr. Dastoor appearing for the petitioner requests for time as he needs so for further preparation in the matter. This matter is being argued since yesterday forenoon. Keeping his difficulty in mind, this Court has no objection to adjourn the same to the date which he requests, i.e., 22nd Sept. 1995. However, it is made clear to the learned Counsel that in case if he wants adjournment, the interim relief granted by this Court shall not continue further. Despite this understanding and/or fully knowing the implications of this, he requests for time and this Court has no objection to grant the same. Hence, S.O. to 22nd September, 1995. However, the interim relief granted by this Court on 14th August, 1995 to the effect that respondent is directed to allow the petitioner to attend the College pursuant to the Admission letter said to have been issued on 1st August, 1995 and referred to in the joining report dated 1st August, 1995 is vacated. Learned A.P.P. Shri Y.F. Mehta tenders one additional affidavit-in-reply for respondent No. 2 as it contains statement of fact there will be no harm in

accepting the same and keep it on record. However, the same will be appreciated subject to what the other side has to say about it. This matter may be treated as part heard.

From the aforequolcd order it becomes clear that the interim relief was vacated as another Counsel who appeared for the petitioner wanted some time to prepare the matter. The learned Counsel was given to understand that the interim relief shall not be extended and yet he sought adjournment upto 22nd September, 1995. The interim relief which was granted by the Court on 14th August, 1995 directing the respondent to allow the petitioner to attend the College pursuant to the Admission Letter said to have been issued on 1-8-1995 was vacated. In fact, the petitioner was already provisionally admitted to the course and Admission Letter was also issued to her. By vacating the interim relief, the learned single Judge has permitted the respondents to give admission to some other candidate. The last date by which the admission could be granted was 30th September, 1995 and on that date immediately the Letter of Admission was issued in favour of the third respondent Ms. Hinal A. Parikh. It is unfortunate that the order passed by the learned single Judge of this Court has resulted into the gravest miscarriage of justice for no fault of the litigant. The litigant engaged the Advocate for the purpose of rendering assistance to the Court. The petitioner never knew that the Advocate who was engaged by her was a retired District Judge and was Unaware of the proceeding under the Constitution of India. The said Advocate did not appear on number of occasions. The learned single Judge thereupon passed certain conditional order and when another junior Advocate was engaged, he also asked for adjournment. While granting such adjournment, condition was put that no further adjournment shall be granted and in view of such observation, the learned single Judge has passed the aforequoted order. The effect of order is that the Letter of Admission which was already issued to the petitioner pursuant to which she was already admitted to M.D. Ayurvedic Course is set at naught and some other candidate is given admission and petitioner is rendered absolutely helpless. The injustice is perpetrated in the temple of justice itself. The Letters Patent Appeal preferred against such order unfortunately failed because the Division Bench was of the opinion that the matter should be immediately heard and three Courts thereafter consecutively failed to hear the matter finally. At no stage, no blame (sic.) can be laid at the door of the petitioner. The Courts of law are not meant for perpetrating injustice. They are established for the administration of justice and to dispense justice. It is in this fact situation that the Court shall have to modulate the relief so as to see that now no injustice is done to respondent No. 3 who is subsequently granted admission and at the same time petitioner is not denied admission and she is not denied an opportunity to prosecute her studies further by having recourse to M.D. Ayurvedic Course.

13.1 In the aforesaid fact situation, it is directed that respondents shall give admission to the petitioner in M.D. Ayurvedic Course in the term commencing from 1st of June/July, 1996. Rule is made absolute accordingly. The cost of the

petition is quantified at Rs. 2,000/- and respondent No. 1 is directed to pay Rs. 1,000/- and respondent No. 2 is directed to pay Rs. 1,000/- to the petitioner towards the cost of the petition.