

**(1995) 02 GUJ CK 0001**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 13689 of 1994**

Kirtan Sharatkumar Gandhi

APPELLANT

Vs

Gujarat Higher Secondary Education Board

RESPONDENT

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**Date of Decision : 09-02-1995**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

Higher Secondary Certificate Examination Regulations, 1977 — Regulation 19A

**Citation : AIR 1995 Guj 217**

**Hon'ble Judges : N.N. Mathur, J**

**Bench : Single Bench**

**Advocate : Hardik Raval, for Y.N. Oza, for the Appellant; M.C. Bhatta, M.P. Prajapati and Y.M. Thakkar, Assistant Government Pleader, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

N.N. Mathur, J.—Rule.

2. M. C. Bhatt waives service of Rule for respondents Nos. 1 and 2 and Mr. Y. M. Thakkar waives service for respondent No. 3.

3. By was of this Special Civil Application under Article 226 of the Constitution of India, the petitioner seeks direction to allow her to appear at the Higher Secondary School Certificate Examination (general stream) (hereinafter referred to as "H.S.C. Examination") which is going to be held in March, 1995.

4. In order to appreciate the controversy involved in the present petition, it is necessary to state the scheme of H.S.C. Examination with respect to external and regular students. The Board conducts Standard XII H.S.C. Examination as per Higher Secondary Certificate Examination Regulations, 1977. Regulation 19 makes provision for eligibility of regular student appearing at Std. XII Examination. Such regular student is required to complete the requisite attendance and to undertake certain external assignments etc. as provided under the regulations 19A which deals with the external students provides that a

candidate not attending the registered school may be permitted to appear at the examination provided he has passed the new S.S.C. Examination and the candidate has completed 20 years of age. Condition No. 3 which is relevant for the present controversy reads as follows:

"(ii) a period equal to the number of years the applicant would have ordinarily taken to appear for the Higher S. C. Examination if he had continued in the school and appeared as a regular candidate, plus, more year must have elapsed since the applicant's leaving the school."

This regulation was amended under the Government Notification dated 11-1-1984 modifying age limit and also eligibility. Modified provision reads as follows: (English translation made available to this Court is reproduced as under).

"(1). For New S.S.C. Examination, 16 years should be completed on the first date of month in which the examination is held.

(2) For the Higher Secondary Certificate Examination (except science stream), the Candidate should have spent two years after passing S.T.D. X Examination and should have completed 18 years on the first date of month in which said examination is held.

(3) The orders effecting adequate modifications corrections in the aforesaid Regulations will be issued hereafter."

This direction of the State Government was carried out by the Board as late as in the year 1992 by adopting resolution Annexure "C". The said modification of eligibility for the external students is now incorporated as instruction 7 in the memo of instruction, the english translation of instruction 7 is given under:--

"Two years must have elapsed after passing S.S.C. Examination."

5. The say of the petitioner is that she appeared at X standard examination conducted by Gujarat Secondary Education Board in the month of March, 1993 and she passed examination in July, 1993. In October, 1994, the petitioner made application for permission to appear in the H.S.C. Examination to be held in March 1995 through Bright School, Kareli Baug, Vadodara. The said application was rejected by respondent No. 2 by order dated 8-12-1994. The petitioner was told that as per circular dated 14-2-1992, she has not completed two years from the date of passing S.S.C. Examination and as such she is not eligible to appear at the XII Standard H.S.C. Examination. The petitioner states that there are 1100 students like petitioner who are denied permission for appearing at Standard XII Examination on the ground that 2 years have not elapsed after passing the S.S.C. Examination.

6. In response to the notice, respondent-Board in reply has stated that as per the Government Resolution a external candidate must have completed 17 years of age and 2 years must have elapsed between the date of passing of the S.S.C. Examination and the date of the XII Standard Examination. As the petitioner and

other similarly situated students does not fulfill the said eligibility criterion their applications were rejected. It is also stated that a regular student who can appear completing his or her study in Standard X and XII in a registered school has to comply with various requirements including the attendance of the candidate in the school etc. The candidate who intends to appear as ex-student is not required to complete any formality of attendance etc, if the period of regular student and private student would be the same, then in that case, all the regular measures for regular students would render nugatory because all the students who are eligible as regular student would opt for ex-student and no school would be in a position to enforce any discipline among the students. Therefore, according to the respondents, there is a rational behind fixing the gap of two years between date of passing the S.S.C. Examination and Standard XII Examination i.e. H.S.C. Examination.

7. After filing of the reply by way of an amendment the petitioner has challenged the resolution of the Board dated 14-2-1992 at Anenxure "B" and instruction 7 of the H.S.C. Examination referred above ultra vires of the provision of Articles 14 and 16 of the Constitution of India.

8. I have heard Mr. Hardik Raval, learned Counsel for the petitioner and also Mr. H. J. Nanavati, learned Counsel appearing in identical petitions and also Shri M. C. Bhatt and Mr. Prajapati, learned Counsel for the Board as well as Mr. Y. N. Thakkar, learned A.G.P. for the State.

9. Learned Counsel appearing for the petitioner contends that the Board has misconstrued the impugned resolution and instruction 7 of the H.S.C. Examination referred above with respect to lapse of 2 years between S.S.C. & H.S.C. Examinations. It is known in the academic field that when duration of a course is provided in years, it is not understood exactly in arithmetical sense or years, but academic year or term. Therefore, the contention is that instruction 7 should be interpreted in a harmonious way to make it meaningful. On the other hand, learned counsel for the respondents Mr. Bhatt submits that when the precise words are plain and unambiguous, the Court is bound to construe them in their ordinary sense and give them full effect. Learned counsel for the petitioner contends that application of the petitioner and all the other candidates similarly situated were accepted and the fees were also received as back as in October, 1994 and as such the respondents are estopped by principle of promissory estoppel from not allowing the petitioner to appear in March, 1995 examination.

10. I am not inclined to express any opinion with respect to the aforesaid two contentions as I propose to proceed with the question of validity of the impugned resolution's and instruction 7. In the background of the facts stated above, I may consider the validity of the resolution dated 14-2-1992 and instruction 7 of the H.S.C. Examination on the touchstone of Article 14 of the Constitution of India. In order to consider the question as to the reasonableness of the classification, it is necessary to take into account the objective of such

classification. According to the respondents a regular student after completing S.S.C. Examination is required to study in Standard XI & XII at a registered school and is also required to comply with various requirements including the attendance. On the other hand, the external student is not required to attend the school. As such the candidate may opt to be private candidate or external candidate instead of regularly attending the school, in such a situation, it will be difficult to enforce the discipline amongst the students. When the respondents say so, they have completely forgotten underlined objective for providing the provision for external students. To be a regular student or ex-student is not a matter of choice, but matter of compulsion. Every one is not fortunate to afford regular studies, because the family circumstances which compells him to earn. If one can afford to be a regular student he would not like to be ex-student. It can also be not said as a rule that regular students are the only most meritorious and disciplined students. It is pointed out that in State of Gujarat normally the S.S.C. Examinations arc held in March, and the results are declared in May or June. The regular students after prelims in December does not attend the School. They return to school, almost after about 5 months, except for appearing at the examination in March, Thus keeping in view the social and economic condition the theory of "earn and learn" provision of ex-student is provided in the Regulation. It may also be noted that in the Regulation, 1977, with respect to ex-student the provision was "a period equal to number of years applicable to regular student plus one more year". The amendment of 1984, the duration was reduced from 3 years to 2 years. Now the interpretation given is 2 years means, 2 arithmetical years, between the date of passing of S.S.C. Examination and date of H.S.C. Examination. The gap between the date of passing the examination and date of examination can never be of exactly one year. Therefore, if the interpretation given by the Board is accepted, then in spite of amendment, 3 years duration as existed prior to amendment shall continue and the amendment will become meaningless. In any case, ultimately, it is the merit of individual ex-student. There appears to be no rationality in asking such ex-student to wait for one more year. Thus, in my view, the clause (2) of impugned resolution and instruction 7 of the H.S.C. Examination instructions are unreasonable, unjust and does not subserve any logical objective.

Impugned Rule also suffers from vice of uncertainty and vagueness. Nothing can be said definitely when the result of the examination would be declared as it depends upon the various factors. It is known that the results are delayed for months, therefore, there is always uncertainty.

11. Thus, in my view, the Clause (2) of impugned resolution dated 14-2-1992 and instruction 7 of the H.S.C. Examination referred above is violative of the principles of equality enshrined in Article 14 of the Constitution India and thus deserves to be struck down.

12. In the result, this petition succeeds, Clause (2) of Resolution dated 14-2-1992 at Annexure "B" and instruction 7 of the H.S.C. Examination

instructions as extracted above are struck down as ultra vires being opposed to Article 14 of the Constitution of India. Respondent-Board is directed to allow the petitioner and other similarly situated students, if they are otherwise eligible to appear at March, 1995 and all subsequent examination. It is, however, made clear that a candidate who has been admitted as regular student will not be entitled to the benefit of rule of external student.

13. Rule made absolute accordingly.