

(2017) 05 GUJ CK 0057
In the Gujarat High Court
Case No : 5749 of 2017

Nilay Parag Joshi & Ors.

APPELLANT

Vs

State of Gujarat & Ors.

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions
Medical Council Act, 1956, Section 33 -
Medical Council of India Act, 1956, Section 10(d) -
Gujarat Professional Medical Educational Courses (Regulation of Admission in
Undergraduate Course) Rules, 2016, Rule 7

Citation : (2017) 05 GUJ CK 0057

Hon'ble Judges : R. Subhash Reddy, Vipul M. Pancholi

Bench : Division Bench

Advocate : Mitul Shelat, ?Disha N. Nanavaty, ?Manisha Lavkumar, ?Dm
Devnani, ?G.M. Joshi, ?Ankur Y. Oza, ?Mrugen K. Purohit, ?K.B. Pujara, Prerak P.
Oza

Final Decision : Dismissed

Judgement

1. The issue involved in this petition is whether the State Government is justified in taking decision to grant admission on prorata distribution of seats on the basis of school boards in M.B.B.S. and B.D.S. courses in Medical Colleges and Institutions situated in State of Gujarat after introduction of NEET. 2. The factual matrix of the case is as under : 2.1. Secondary and Higher Secondary Education is imparted in the State through schools which may be affiliated to Gujarat Secondary and Higher Secondary Board ("State Board" for short) or Central Board of Secondary Education ("CBSE" for short) or Council for Indian School Certificate Examination ("ISCE" for short) or International Board - International Baccalaureate ("IB" for short). On completion of Standard XII Board examination, successful students become eligible to secure admissions in undergraduate degree courses offered by the Colleges and Education Institutions

across the State. State of Gujarat has broadly classified the Professional Undergraduate Degree Courses into either Professional Technical Courses or Professional Medical Courses. For medical courses, Gujarat Professional Medical Educational Colleges or Institutions Act, 2007 is enacted and the Rules are framed thereunder. 2.2. The State of Gujarat has followed a policy of distributing seats between different Boards on the basis of the strength of number of schools of the respective Boards by offering seats to the students passing Standard XII on prorata basis, taking into consideration number of students passing from the Gujarat Board, CBSE, ISCE or IB. 2.3. The State Government has framed rules for admission for every academic year and for the last academic year i.e. for 2016-2017, Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Course) Rules, 2016 ("The Rules, 2016" for short) are framed by the State Government. Rule 7 provides for distribution of seats between the Gujarat Board and other Boards. 2.4. Prior to academic year 2016-2017, admission to the undergraduate courses in Medicine was granted on the basis of merit list prepared on the basis of performance in Standard XII examination and State conducted Gujarat Common Entrance Test ("GUJCET" for short) Examination. It appears that keeping in mind different syllabus of different Boards, the State Government has adopted policy of prorata admission for students coming from different Boards. 2.5. While exercising powers conferred under Section 33 of the Medical Council Act, 1956, the Medical Council of India with the approval of the Central Government has further amended regulations to the Postgraduate Medical Board (Amendment) Regulations, 2010. Similarly, by Notification dated 15.02.2012, Medical Council of India has amended the Regulations of Graduate Medical Education, 1997, whereby, it has been provided that admission to the undergraduate courses in the medicine is to be granted solely on the basis of National Eligibility-cum-Entrance Test ("NEET" for short) conducted by the Central Government/CBSE Board. Said regulations came to be challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the judgment rendered on 18.07.2013 in *Christian Medical College, Vellore v. Union of India and Ors.* reported in (2014) 2 SCC 305 quashed the said regulation and therefore, till 2015, the admission to undergraduate in medical courses were granted on the basis of GUJCET Examination conducted by the State Board. 2.6. The Review Petition being No.2159 of 2013 and allied matters came to be filed before the Hon'ble Supreme Court against the judgment dated 18.07.2013 rendered by the Hon'ble Supreme Court in the aforesaid case. The Hon'ble Supreme Court by order dated 11.04.2016 allowed the Review Application and recalled earlier order passed on 18.07.2013. The Hon'ble Supreme Court held that only NEET would enable students to get admission to MBBS or BDS studies. However, Government of India for the academic year 2016 - 2017 granted exemption to the Government colleges and permitted them to grant admission to medical and dental colleges on the basis of State Entrance Test. 2.7. It is the case of the petitioners that CBSE is assigned the work of conducting NEET test. The syllabus for the test is common for all students and is on the basis of course content existing in the syllabus of students of all boards.

The petitioners are students studying in Class XII in CBSE Schools within the State of Gujarat. Thus, the petitioners claim that admission within the State of Gujarat in Medical Professional Course be granted on the basis of common merit list prepared on the basis of NEET. However, grievance is made that report is published in the newspaper, wherein, concerned Minister has stated that Government of Gujarat would grant admissions on the basis of its prorata policy and ensure that majority of seats are reserved for the students who are studying in schools affiliated to the State Board. 2.8. In view of aforesaid statement given by the concerned Minister, the petitioners have filed present petition, in which the petitioners have prayed for following relief : "16(A) Issue a declaration that for admission to MBBS and BDS courses in colleges within the State of Gujarat there can be no distribution of seats between candidates of Gujarat Board and other Boards either under the government resolutions, rules governing admission to professional medical courses or at all and that students qualifying in the XII Board Examinations from schools within the State of Gujarat are entitled to be considered against all available seats in MBBS and BDS courses offered in Colleges and Education institutions within the State of Gujarat. B) The Hon''ble Court be pleased to issue a writ of mandamus or a writ order or direction in the nature of mandamus and be pleased to quash and set aside decision of the State Government as evidenced in the press note for prorata distribution of seats on the basis of the school boards in courses leading to MBBS and BDS and be pleased to direct the State Government to consider all students domiciled within the State of Gujarat on the basis of merit obtained at the NEET examinations as prescribed in the regulations framed by the Medical Council of India. C) Pending admission and final hearing the Hon''ble Court be pleased to stay the decision of the State Government of providing prorata distribution of seats on the basis of school boards, for admission in MBBS and BDS courses in the State of Gujarat. D) For ad-interim relief''s in terms of prayer (C) above. E) For costs F) Pass such other/further order as this Hon''ble Court may deem fit and proper in the facts and circumstances of the present case." 3. With the consent of the learned advocates for the parties, the petition is taken up for final disposal. Rule. Learned advocates for the respective respondents waive service of rule. 4. Heard Mr. Mitul K. Shelat, learned advocate assisted by Ms.Disha Nanavati for the petitioners, Ms. Manisha Lavkumar, learned Government Pleader with Mr. D.M.Devnani, learned AGP for respondent no.1 and 2, Mr. G.M. Joshi, learned advocate with Mr. Ankur Oza, learned advocate for respondent No. 3 to 28, Mr. K.B. Pujara, learned advocate with Mr. Preek Oza, learned advocate for respondent No. 29 to 47 and Mr. Mrugen Purohit, learned advocate for respondent No. 48. Submissions of learned advocates. 5. Mr. Mitul Shelat, learned advocate for the petitioners contended that this academic year, NEET is made compulsory for taking admission in Professional Medical Course. On the basis of result of NEET, the respondent State would prepare common merit list of all students of different Board. Thus, upon publication of common merit list, there cannot be any classification on the basis of school boards. It is pointed out that earlier respondent through its Minister had made a public declaration that for admission

to medical and dental colleges for the academic year 20172018, admissions would be granted solely on the basis of NEET result by operating a common merit list and there would be no prorata allocation of school boards. Relying on said declaration, the petitioners continued the education in the CBSE affiliated schools and therefore, it is not open for the respondent State to continue the policy of giving admission on prorata on the basis of school boards. 5.1. It is pointed out that on the basis of policy of State, during the academic year 2015 16, Central Board students had opportunity to secure admission only against 5.4% of the available seats and in the academic year 201617 only against 4.32% of the available seats and therefore, all throughout the students with lesser merit having appeared in Standard XII examination through school affiliated to the State Board are given precedence over students who have higher merit but have appeared in Standard XII through a school affiliated to the Central Board or other Boards. 5.2. It is further submitted that once there is common merit list prepared for the purpose of grant of admission the only permissible reservation is in favour of students who have studied in schools situated within the State of Gujarat and therefore, it is impermissible for distribution of seats on the basis of the school board. Such segregation would amount to discriminating students solely on the basis of their school board. Such policy is against the decision rendered by the Hon"ble Supreme Court in the case of Pradeep Jain v. Union of India reported in (1984) 3 SCC 654. Thus, impugned policy and rules seek to deprive the petitioners from being considered for admission to all available seats in various graduate courses offered by the colleges and education institutions only on the ground that the petitioners did not pass Standard XII from a school affiliated to the State Board. It is contend that such policy is violative of Article 14 of the Constitution of India which denies equal opportunity to the petitioners to secure admission on the basis of their merit. 5.3. Mr. Shelat, learned advocate for the petitioner would thereafter, contend that on publication of common merit list there is an explicit uniformity in the assessment of the performance of the candidates and thereafter, there remains no rationale for distribution of seats on the basis of the school board. Therefore, the impugned policy and rules framed by the State Government is arbitrary, illegal and violative of Article 14 of the Constitution of India. It is further contended that respondent State has no authority or jurisdiction to declare policy contrary to the regulations framed by the Medical Council of India. Learned advocate has placed reliance on regulations of Graduate Medical Education (Amendment), 2012 (Part-I) which provides for distribution of seats to the State domicile to the extent of 85%. It is therefore, contended that State has no jurisdiction and power to further classify the said 85% domicile seats on the basis of different board. 5.4. It is submitted that this Court may declare that for admission to MBBS and BDS courses in colleges within the State of Gujarat, there can be no distribution of seats between the candidates of Gujarat or other Board either under the Government Resolutions, rules governing admission to professional medical courses and students qualifying in XII Board Examinations from schools within the State of Gujarat are entitled to be considered against all available seats in MBBS and BDS course

offered in colleges and education institutions within the State of Gujarat and the respondent State be restrained from continuing policy of prorata distribution of seats on the basis of school board in the aforesaid course. It is urged that while granting admission in MBBS and BDS courses, result of NEET be considered. 5.5. Learned advocate Mr. Shelat has placed reliance on following decisions : (1) The State of Andhra Pradesh and Ors. v. U.S.V. Balram reported in (1972) 1 SCC 660 (2) Dr. Pradeep Jain and Ors. v. Union of India and Ors. reported in (1984) 3 SCC 654 (3) State of Uttar Pradesh and Ors. v. Dinesh Singh Chauhan reported in (2016) 9 SCC 749 6. On the other hand, Ms. Manisha Lavkumar, learned Government Pleader would contend that for the academic year 2016 - 2017, Rules of 2016 were framed for giving admission in the course of MBBS and BDS, wherein provision is made for prorata distribution of seats for the students who have passed from Gujarat Board, CBSE, ISCE and IB. It is submitted that said policy has been in existence for last several years. Learned Government Pleader submitted that now after decision rendered by the Hon"ble Supreme Court only NEET would enable the students to get admission to MBBS and BDS courses and therefore, the result of NEET for granting admission would be considered. It is submitted that rules for admission for the academic year 2017 - 18 are not yet published, however, the respondent State has taken decision that for the current academic year i.e. 2017 - 18, admission to medical courses shall be given on the basis of past policy of prorata distribution of seats based on percentage of students passing from various Boards. At this stage, it is clarified by learned Government Pleader that said policy would be made applicable for this year only in view of peculiar facts and circumstances of the case. Learned Government Pleader would submit that approximately 75,000 students i.e. 95% of the total number of students seeking admission to medical and BDS courses are studying in the Gujarat Board. Various representations were received by the State Government from students' association and other part of the society, wherein, they have requested to continue with the admission process this year on prorata basis considering NEET score. It is submitted that NEET examination is based on CBSE syllabus and most of the CBSE schools are in urban areas whereas, Gujarat board students come from rural background. Further there is substantial difference in the syllabus of the Gujarat Board and CBSE board. Thus, syllabus of Gujarat board is different from syllabus of CBSE and therefore, for preparation of NEET supplementary booklet were provided to the students in June, 2016. Thus, students of Gujarat Board started preparation for NEET when they joined Standard XII. Thus, looking to peculiar facts and circumstances of the present case, for this academic year i.e. 2017-18, the State Government has decided to continue policy to give admission in the medical courses on the basis of prorata distribution of seats based on the percentage of students passing from various Boards. It is submitted that the respondent State has not committed any illegality. It is submitted that there is no discrimination as alleged by the petitioner and therefore, there is no violation of provision contained in Article 14 of the Constitution of India as alleged. Therefore, it is submitted that present petition be dismissed. 6.1. Learned Government Pleader has placed reliance on

following decision rendered by the Hon''ble Supreme Court. (1) State of M.P. and Ors. v. Gopal D. Tirthani and Ors. reported in AIR 2003 SC 2952 (2) Bhavya S. Desai v. State of Gujarat and Ors. reported in 2006 (3) GLH 122 7. Learned advocate Mr. G.M. Joshi appearing for respondent No.3 to 28 raised preliminary objection with regard to maintainability of petition on the ground that the petition is premature as the State Government has not published rules for the academic year 201718 and therefore, until new rules are published by the State Government providing for distribution of seats on prorata basis, no cause of action arises for the petitioner for filing this petition and therefore, this petition be dismissed only on this ground. 7.1. Learned advocate Mr. Joshi thereafter, submitted that the petition is filed on the basis of public statement given by the concerned Minister of the State that they will continue with prorata system for admission. Such statement is not legally enforceable and therefore, no right is accrued in favour of the petitioners to approach this Court by filing petition under Article 226 of the Constitution of India. Learned advocate thereafter, contended that now the Central Government through Union Minister of Health and Family Welfare has made declaration publicly that NEET is being implemented across the country and those from rural background will not be able to adjust to the NEET admission process and for students of State Board or those from rural background, the State Government will have full freedom to have their own reservation policy. Thus, stand of the State Government to provide admission in MBBS and BDS courses on prorata basis is as per statement given publicly by Union Minister. It is therefore, submitted that present petition is without any substance and therefore, same be dismissed. 8. Learned advocate Mr. Pujara appearing for respondent No.29 to 47 mainly contended that policy of prorata distribution of seats framed by the State Government is in existence in the State of Gujarat since more than 10 years. It was pointed out that earlier merit list was prepared on the basis of marks obtained at the qualifying examination i.e. Standard XII examination. Thereafter, GUJCET came to be introduced in the year 2006 and it was decided to prepare merit list by giving weightage of 60% to the marks obtained at qualifying examination of Standard XII and 40% weightage to the marks obtained at GUJCET. Thus, method of preparation of merit list came to be changed but the distribution of seats on prorata basis between the students of Gujarat Board and the students of other Board continued. 8.1. Mr. Pujara would further contend that now as per direction given by the Hon''ble Supreme Court, admission shall be granted on the basis of marks obtained in NEET. However, in the order dated 9.5.2016 passed by the Hon''ble Supreme in Writ Petition (C) No.293 of 2016 and allied matter, it was made clear that special provision for reservation of any category is not the subject matter of the NEET nor the rights of the States are in any manner affected by NEET and NEET only provides for conducting eligibility test for MBBS and BDS Courses. 8.2. Mr. Pujara, at this stage referred to guidelines of NEET examination which is produced along with reply filed by respondent No.29 to 47 and submitted that from the guidelines it is clear that reservation of seats in medical/dental colleges for respective categories shall be subject to applicable laws prevailing in the State/Union

territory. However, admission to MBBS/BDS courses within respective categories shall be based solely on the marks obtained in the NEET. Thus, it is contended that prorata distribution of seats for students of Gujarat board and for students of Central Board does not in any manner violate the said principle because merit list would be based solely on the marks obtained in the NEET. 8.3. Learned advocate Mr. Pujara thereafter, contended that there is vast difference between the students of Gujarat Board and students of Central Board. For example, CBSE conducts only one examination at the end of two years for the students of Standard XI and XII, whereas, the Gujarat Board is holding four examination for the four semester of Standard XI and XII. The syllabus of Central Board is based on NCERT, whereas, the syllabus of Gujarat Board is not fully based on NCERT and therefore, there is difference of about 25% to 30% in the syllabus of Central Board and in the syllabus of Gujarat Board. Further, NEET examination is to be conducted by CBSE and the CBSE students prepare for NEET examination since last two years, such benefit is not available to the Gujarat Board students. It is submitted that Gujarat Board provided supplementary booklet recently so as to cover that part of the syllabus of NEET which is studied by Central Board students but not studied by Gujarat Board students. It is therefore, submitted that decision taken by the respondent State to continue policy of giving admission on prorata basis cannot be said to be arbitrary as alleged by the petitioners. 8.4. Mr. Pujara, learned advocate thereafter placed reliance on decision rendered by the Division Bench of this Court in the case of Bhavya S. Desai v. State of Gujarat and others reported in 2006 (3) GLH 122 and contended that this Court has held that allocation of seats in the form of fixation of quota is not to be equated with usual form of communal reservation and the Government possess right and authority to decide from which source the admissions in educational institutions should be made and in what proportion. It is further held that methodology of separating students in different quotas depending on the source of their qualifying examination is not illegal because syllabus, preparation, approach, pattern of examination of papers and assessment style of the different boards would be vastly different. It is submitted that against said decision, Letters Patent Appeal No.1444 of 2006 came to be filed. However, the Division Bench of this Court dismissed the said appeal. 8.5. Mr. Pujara, learned advocate thereafter, placed reliance on decision rendered by Division Bench of this Court in Aman Piyush Khanna v. State of Gujarat and Ors. reported in 2009 (3) GLH 401 and submitted that Division Bench of this Court has held that decision of the Government to provide for two separate lists for students from Central Board and CISCE is more in tune with the requirement of fair and common yardstick for admission and that rules are valid. 8.6. Mr. Pujara, learned advocate has also placed reliance on decision rendered by the Division Bench of this Court in Special Civil Application No.11280 of 2016 decided on 27.07.2016 as well as Special Civil Application No.19918 of 2016 decided on 22.02.2017 in support of his submission. Mr. Pujara submitted that there is no discrimination between students of different board as alleged by the petitioners and therefore, the respondent State has not violated Article 14 of the

Constitution of India and therefore, present petition be dismissed. 9. Mr. Mrugen K. Purohit, learned advocate appearing for respondent No.48 has supported the submission canvassed by learned advocate Mr.Mitul Shelat appearing for the petitioners. Mr. Purohit has placed reliance on decision rendered by the Hon'ble Supreme Court in the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka reported in AIR 2003 SC 355 and in the case of Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors. reported in (2016) 7 SCC 353. Discussion and findings 10. We have heard learned advocates for the parties. We have gone through the material produced on record and the decisions upon which reliance is placed by learned advocates. 11. From the record, it has emerged that in the State of Gujarat, Secondary and Higher Secondary Education is imparted through various schools which are affiliated to either State Board or CBSE or ISCE or IB. On completion of XII Board Examination, successful students become eligible to secure admission in undergraduate degree courses offered by colleges and education institutions across the State. In the present petition, we are concerned with admission to professional medical courses, such as, MBBS and BDS. The respondent - State has enacted Act of 2007 and the Rules are framed thereunder for regulating the admission in professional medical course. It is not in dispute that respondent State has framed Rules governing admission in MBBS and BDS course for each academic year. For the year 2016-17, Rules of 2016 are framed. Rule 7 of the Rules, 2016 provides as under : "7. Distribution of government seats between candidates of Gujarat Board and other Boards : For the purpose of admission, the available government seats shall be distributed between candidates of the Gujarat Board and other Boards on prorata basis, taking into consideration the number of candidates passed from Gujarat Board, Central Board and the Council of Indian School Certificate Examinations, New Delhi in the concerned academic year: Provided that where any seat remains vacant in the category of Central Board or, as the case may be, the Council of Indian School Certificate Examinations, New Delhi, the same shall be filled in from the candidates of merit list of Gujarat Board." 11.1. Thus, for the purpose of admission, available Government seats are to be distributed between candidates of Gujarat Board and other Boards on prorata basis taking into consideration the number of candidates passed from Gujarat Board and other Boards. 12. Rule 11 of the Rules, 2016 provides for preparation of merit list for admission for government seats and management seats. It is provided that in case of candidates qualifying examination from Gujarat Board, 60% percent of total marks obtained in theory of the Physics, Biology and Chemistry subjects after converting it into 100, combined with 40% percent of total marks obtained from the Physics, Biology and Chemistry subjects in the Gujarat Common Entrance Test (GUJCET) after converting it into 100 from the total marks obtained, shall be considered as merit marks. At this stage, it is required to be noted that State Board is conducting XII Standard examination having different syllabus, whereas, other Boards are also taking examination of XII Standard on the basis of their syllabus. Syllabus was different for Gujarat Board and other Board students at the relevant time. It

appears that respondent State has adopted policy of granting admission on prorata basis. Thus, at the relevant time, when decision of the State was challenged before this Court, the learned Single Judge in the case of Bhavya S. Desai (supra) held that allocation of seats in the form of fixation of quota is not to be equated with the usual form of communal reservation and Government possess the right and authority to decide from which source the admission in educational institutions should be made and in what proportion and that such scheme of prorata distribution of seats was based on the classification of the sources from which admissions are to be accorded. It was further held that methodology of separating students in different quotas depending on the source of their qualifying examination is not illegal because syllabus, preparation, approach, pattern of examination of papers and assessment style of the different Boards would be vastly different. Aforesaid decision of the learned Single Judge was confirmed by the Division Bench of this Court in Letters Patent Appeal No.1444 of 2006 and allied matters. 13. However, in the meantime, Medical Council of India while exercising powers conferred under Section 33 of the Medical Council Act, 1956, amended Regulations of 2010. Likewise, Notification dated 15.02.2012 came to be issued by the Medical Council of India, whereby, regulation of Graduate Medical Education, 1997 were amended. Said regulations are called "Regulations of Graduate Medical Education, 2012 (Part I) and under the said Regulation, the admission to undergraduate courses in the medicine is to be granted solely on the basis of NEET Examination. After amendment, said Regulation provide as under : "VI. To be eligible for admission to MBBS Course, a candidate must have passed in the subjects of Physics, Chemistry, Biology / Biotechnology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Biotechnology at the qualifying examination as mentioned in clause (2) of Regulation 4 and in addition must have come in the merit list of "National Eligibility-cum-Entrance Test" for admission to MBBS course. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the minimum marks obtained in Physics, Chemistry and Biology/Biotechnology taken together in qualifying examination shall be 40% instead of 50%. In respect of candidates with locomotory disability of lower limbs in terms of clause 4(3) above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Biotechnology taken together in qualifying examination shall be 45% instead of 50%. Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally permitted to take up the National Eligibility-cum-Entrance Test and in case of selection for admission to the MBBS course, he/she shall not be admitted to that course until he fulfills the eligibility criteria under Regulation 4. VII. The Central Board of Secondary Education shall be the organization to conduct National Eligibility Cum Entrance Test for admission to MBBS course." 13.1. Aforesaid regulation framed by the Medical Council of India was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 18.07.2013 quashed the said regulation in Christian Medical College, Vellore (supra). However, thereafter,

Review Petition No.2159 of 2013 and allied matters came to be filed for reviewing the earlier order dated 18.07.2013 passed in aforesaid case. Ultimately, the Hon"ble Supreme Court by order dated 11.04.2016 allowed the Review Petitions and thereby recalled the judgment dated 18.07.2013 with a direction that matters be heard afresh. Thereafter, Hon"ble Supreme Court in Writ Petition (C) No.293 of 2016 and allied matters, has observed as under : "Prima facie, we do not find any infirmity in the NEET regulation on the ground that it affects the rights of the States or the private institutions. Special provisions for reservation of any category are not subject matter of the NEET nor rights of minority are in any manner affected by NEET. NEET only provides for conducting entrance test for eligibility for admission to the MBBS/BDS course. It has been further observed that "In view of the above, it is also clarified that only NEET would enable students to get admission to MBBS or BDS studies." 14. Thereafter, Section 10(D) came to be introduced in Medical Council of India Act, 1956, which provides as under : " 10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner. Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016 - 17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination." 15. Thus from the aforesaid decision rendered by the Hon"ble Supreme Court and from regulations framed by Medical Council of India as well as Section 10(D) of Medical Council of India Act, it is clear that uniform entrance examination is required to be conducted for giving admission in medical courses like MBBS and BDS. It is required to be noted that provisio of Section 10(D) of the Medical Council of India Act provide that it is open for the State Government to conduct test for State Government seats and uniform entrance examination was exempted at undergraduate level for academic year 2016 17. Thus aforesaid proviso was for a particular period only. Now from the academic year 201718, admission in medical and dental colleges would be granted solely on the basis of NEET result. 16. From the affidavit in reply filed on behalf of the respondent State, it is clear that State Government has taken decision that for the current year i.e. 201718, admission to medical courses shall be given on the basis of prorata distribution of seats based on the percentage of students passing from various Boards. However, it has been clarified that State would continue said policy only for this year because of peculiar facts and circumstances of the case. For taking such decision, explanation given by the respondent State is that there is substantial difference in the examination pattern of CBSE and Gujarat Board. Under the Gujarat Board, there are four semesters during XI and XII Standard, whereas, for CBSE only one examination is to be taken under the academic year

of XII Standard. 17. The contention is raised on behalf of learned advocate for the private respondent that present petition is premature and is not maintainable as same is filed on the basis of news paper report. However, when the respondent State has filed affidavit in which it has been stated that State Government will follow practice of granting admission on prorata basis for academic year 201718, it cannot be said that the petition is premature. Public statement given by concerned Minister is confirmed by affidavit filed by the respondent - State. Though Rules of 2017 are not published, till today Rules of 2016 are in existence, wherein, Rule 7 provides for granting of admission on prorata basis. Therefore, we are not inclined to accept submission of learned advocate appearing for the private respondent. 18. Learned advocate appearing for the respondents contend that students of Gujarat Board have received supplementary booklet only in June, 2016 and therefore, there was no sufficient time for students of Gujarat Board to prepare for NEET. So far as syllabus is concerned, it was argued that 25 to 30% of syllabus of Gujarat Board is different from CBSE syllabus. However, we are of the opinion that aforesaid submission is misconceived. Even as per the case of the respondents, 25 to 30% of syllabus was different in Gujarat Board and CBSE Board. However, reasonable time of one year was with the students for preparation as supplementary booklet was already provided in June, 2016. Thus, students of all the Boards situated within the State of Gujarat have prepared for NEET. Thus, reasons given by the respondent State for continuing policy of giving admission on prorata basis in MBBS and BDS courses for academic year 201718 is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Students of different Board are now to appear in NEET and admission in MBBS and BDS courses is also required to be granted on the basis of result of NEET and therefore, it is not justified on the part of the respondent State to take decision to grant admission on prorata basis as per its past practice. 19. In the case of State of Andhra Pradesh and Ors. v. U.S.V.Balram etc. (supra), the Hon'ble Supreme Court has observed and held in paragraph No. 2, 3, 17 to 23, 27 and 28 as under : "2. The Government of Andhra Pradesh by G. O. No. 1648/Health dated July 23, 1970 announced Rules for the selection and admission of students to the Integrated M.B.B.S. Course in the Government Medical Colleges, in the Andhra area. The rules provided a pattern of allotment of seats by reference to certain qualifying examinations. The candidates eligible for admission to the Integrated M. B. B. S. Course, being largely taken from the students who had passed the qualifying examination for the Pre University Course and those who had passed the Higher Secondary Course (Multipurpose), the rules provided for a pattern of earmarking seats for the students according to the qualifying examination taken by them. It may be mentioned at this stage that the H. S. C. Course (Multipurpose) students are called Multipurpose candidates since they pass their examinations from Multipurpose Schools. 3. Rule 8 dealt with the pattern of allotment of seats in respect of qualifying examination, Rule 9 outlined the procedure for selection. Rule 10 provided that all the reservations would be subject to the order of merit of marks obtained in the entrance test by the students in the relevant category

of reservation, namely, P. U. C. and H. S. C. Rule 2 provided that the selections made under the Rules will be subject to any rules or orders that may be made in regard to the reservation of seats for Socially and Educationally Backward Classes of students, having regard to the recommendations made by the Andhra Pradesh Backward Classes Commission. But there was a condition that such Rules or orders should have been made by the Government before the finalisation and communication of the selection of candidates. 17. Rule 6 deals with the method of admission. It provides that based on the result of the Entrance Test, a separate Master List of eligible candidates will be prepared in order of merit and that the selection will be made keeping in view the various reservations mentioned therein. It may be mentioned at this stage that the reservations referred to therein are for Scheduled Castes and Scheduled Tribes, women candidates, children of Ex. Servicemen etc. There is no reservation referred to therein either of H.S.C. or P.U.C. candidates. 18. Rule 7 deals with the distribution of seats. The total number of seats available is stated to be 550. But the actual number of seats available to be filled up on the basis of merit at the Entrance Test is given as 532. The said rule also provides for the distribution of seats to certain reserved groups such as Scheduled Castes and Scheduled Tribes, women candidates etc. Here again there is no reservation for H. S. C. or P. U. C. candidates. 19. Rule 8 deals with the pattern of allotment of seats in respect of qualifying examination. The seats are distributed as follows: 40% each to Multipurpose and P.U.C. candidates; 5% to M.Sc. and B.Sc. candidates; 4% for N. C. C., President's Scouts and Guides and ExServicemen and 11% strictly in the order of merit in the Entrance Test from the general pool. 20. Rule 9 deals with the procedure for selection. Clause (D) dealing with the Multipurpose and P. U. C. candidates, refers to the fact that the total seats available are 545 and that "according to the pattern of distribution, 40% of the seats are reserved for Multipurpose and 40% for P.U.C. (including I.S.C.)". The said clause further provides that the rate of seats to be filled up by the candidates from the P.U.C./ Multipurpose and allied qualification holders should be done so as to keep the number of seats according to the ceiling, i.e., 40% as per the pattern of allotment for each group. It is this provision that was really stuck down by the High Court. 21. Rule 10 specifies that all reservations would be subject to the order of merit of marks obtained in the Entrance List. The other rules are not material. 22. From a perusal of the rules, referred to above, two aspects underlying the scheme of selection broadly emerge: (1) that there is to be an Entrance Test for all the applicants for the admission to the Ist Year Integrated M.B.B.S . Course; and (2) that the result of the Entrance Test is to form the basis for admission to the medical course. Under rule 3 (2) candidates possessing the minimum qualification of H.S.C. (M.P.), I.S.C., P.U.C. and AIHSC or equivalent qualification are eligible to appear in the Entrance Test. Therefore, it is clear that all the candidates possessing these qualifications are to be put on a par and are qualified to take the Entrance Test. 23. We have already referred to the fact that there is a proviso that the candidates excepting those belonging to the Scheduled Castes and Scheduled Tribes should have obtained in their qualifying examination

not less than 50% of marks in Physical and Biological Sciences put together in their qualifying examination. There is no distinction made between a P.U.C. or Multipurpose candidate. Both of them in order to become eligible to appear in the Entrance Test must have secured not less than 50% marks in their qualifying examinations in the two Physical and Biological Sciences put together. The only relaxation, or exception, if it may be so called, is regarding the candidates belonging to the Scheduled Castes and Scheduled Tribes. These candidates should have secured not less than 40% of the marks in those subject in their qualifying examination. 27. Mr. Tarkunde, learned counsel for the respondents, on the other hand, urged that whatever may have been the circumstances that originally existed when the High Court then upheld the division into separate groups of P.U.C. and H.S.C. students, when once the rules clearly specify that there is to be a common Entrance Test and that selections are to be made only on the basis of the results of such a test, the reservation of 40% in favour of the H.S.C. candidates is arbitrary, unjust and discriminatory and as such it violates Article 14 of the Constitution. 28. We are in agreement with the contention of Mr. Tarkunde regarding this aspect and, in our opinion, the High Court was justified in striking down the provision regarding reservation of 40% of seats to the H. S. C. candidates under rule 9. We have already indicated the scheme of the Rules as well as the basis for selection, as could be gathered from those rules." 20. In the case of Dr. Pradeep Jain v. Union of India and Ors. (supra), the Hon''ble Supreme Court has observed at page 685 as under : "It would be constitutionally permissible to provide, as an interim measure until we reach the stage when we can consistently with the broad mandate of the rule of equality in the larger sense, ensure admission to the MBBS course on the basis of national entrance examination - an ideal which we must increasingly strive to reach - for reservation of a certain percentage of seats in the medical colleges for students satisfying a prescribed residence requirement as also for students who have passed PUC or premedical examination or any other qualifying examination held by the university or the State and for this purpose it should make no difference whether the qualifying examination is conducted by the State Board or by the Central Board of Secondary Education, because no discrimination can be made between schools affiliated to the State Board and schools affiliated to the Central Board of Secondary Education." 21. In the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. (supra) the Hon''ble Supreme Court has held and observed in paragraph No. 58 as under : "58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided

institutions." 22. In the case of *Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.* (supra), the Hon'ble Supreme Court has held and observed in para 168 as under : "168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the Legislature in its wisdom has taken the view that merit based admissions can be ensured only through a common entrance test followed by centralised counselling either by the State or by an agency authorized by the State. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of Common Entrance Test (CET) to secure merit based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the "right to equality" of the students who aspire to take admissions in such educational institutions. Common Entrance Test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects: (I) fairness and transparency and (ii) merit apart from preventing maladministration. Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb malpractices, it would be permissible for the State to regulate admissions by providing a centralized and single window procedure. Holding such CET followed by centralized counselling or single window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a 'right of occupation' in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community." 23. In the case of *Minor P. Rajendran v. State of Madras and Ors.* reported in AIR 1968 SC 1012, the Hon'ble Supreme Court has observed and held in paragraph No. 12 and 13 as under : "12. Let us now look to the justification which has been put forward on behalf of the State of Madras in support of this district wise allocation. It is said that there are better educational facilities in Madras city as compared to other districts of the State and therefore if district wise selection is not made, candidates from Madras city would have an advantage and would secure many more seats than justified on the basis of proportion of the population of Madras city compared to the population of the State as a whole. This in our opinion is no justification for district wise allocation, which results in discrimination, even assuming that candidates from Madras city will get a larger number of seats in proportion to the population of the State. That would happen because a candidate from Madras city is better. If the object is to attract the best talent, from the two sources, district wise allocation in the circumstances would destroy that object. Further even if we were to accept this

contention that would only justify allocation of seats between the city of Madras on one side and the rest of the State on the other and not a district wise allocation throughout. But apart from this, we are of opinion that the object being what we have indicated, there is no reason why there should be discrimination which would go against the candidates from Madras city. We may add that candidates who pass from Madras city need not all be residents of the city for it is common knowledge that schools and colleges in the capital city attract students from all over the State because of better educational facilities.

13. Another justification that has been attempted is that candidates coming from various districts would settle down in those districts and thus medical help would be available in sufficient measure in all the districts. Now this was not stated in the affidavit on behalf of the State of Madras. Besides there are no facts and figures to suggest that candidates from a particular district would by and large settle down in that district. Further the various options in the matter of nativity certificate to which we have referred, show that candidates will have a number of districts to choose from depending upon where they think that their chances are best and therefore the argument that district wise allocation is justifiable on this ground is in our opinion of no merit. We are satisfied therefore that the State of Madras has made out no case for district wise allocation of seats in medical colleges. We are also satisfied that such allocation results in discrimination and there is no nexus between this territorial distribution and the object to be achieved, namely, admission of the best talent from the two sources already indicated. We are therefore of opinion that allocation of seats on district wise basis is violative of Article 14. We may add that we do not mean to say that territorial classification is always bad under all circumstances. But there is no doubt that district wise classification which is being justified on a territorial basis in these cases is violative of Article 14, for no justification worth the name in support of the classification has been made out. We therefore hold that R. 8 providing for district wise allocation is bad, as it violates Article 14 and we hereby strike it down."

24. In the case of *Suneel Jatley v. State of Haryana* reported in AIR 1984 SC 1534, the Hon"ble Supreme Court has observed in paragraph No. 12, 13 and 14 as under : "12. What was the object sought to be achieved by the classification? It was said that students taking education in common rural schools from Ist to 8th standard are at a comparative disadvantage to those taking education in urban schools in the same, standards. The comparison in our opinion is fallacious for the reason that the same Government prescribes standards of education, equipment, grants and facilities including the qualification of the staff for being employed in urban and rural schools imparting instruction from Ist to 8th Standard. However, as pointed out earlier, the knowledge acquired by the students while taking instruction in Classes I to VIII has hardly any relevance to his being equipped for taking the test for entrance to the medical college. The real challenge would come in Standards XI and XII. In this behalf all students those coming from common rural schools and urban schools are similarly placed and similarly situated and yet by a reference to a past event wholly unrelated to the objects sought to be

achieved, they are artificially divided. 13. It was however said that there was another discernible purpose in making the reservation. The urbanised students are disinclined to go to rural areas for practice or service and therefore, if the students coming from rural common schools are encouraged to seek admission they may return after obtaining qualification to their childhood habitat and thus help extend efficient medical service to rural areas at present wholly neglected. It was urged if a region is woefully deficient in medical services, there occurs serious educational and health service disparity for that human region which must be redressed by a Welfare State. It was submitted that the reservation was a step in this direction. This submission was sought to be supported by referring to *Jagdish Saran v. Union of India*, (1989) 2 SCR 831 : (AIR 1980 SC 820). This approach overlooks the fact that even students educated in common rural schools would be joining urban schools for four years before going to medical college and then spend about five years in medical college. There is no guarantee save a wishful thinking that they would return to rural areas. This is too flimsy a material to sustain classification. 14. We are therefore satisfied that the classification is not founded on intelligible differentia and at any rate it has no rational nexus to the object sought to be achieved. The classification is irrational and arbitrary. The reservation based on such classification is constitutionally invalid." 25. In the case of *State of M.P. and ors. v. Gopal D. Tirthani and Ors.* (supra), the Hon"ble Supreme Court has observed and held in paragraph No. 19(iv) as under : "(iv) that the mere use of the word "reservation" per se is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would be determinative of the meaning, content and purport of the expression. Where the scheme envisages not a mere reservation but is one of the classification of the sources from which admissions are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simplicitor." 26. Keeping in mind aforesaid decisions rendered by the Hon"ble Supreme Court as well as this Court, if the facts of the present case are examined, it can be said that it is open for the State to prescribe the sources from which the candidates are declared eligible for applying for admission to the Medical Colleges, once a common entrance test has been prescribed for all the candidates on the basis of which selection is to be made, the decision for granting admission on prorata basis for State Board and other Board students is arbitrary. At this stage, it is required to be noted that admission into any professional institution, merit must play an important role. While seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. 27. We are of the view that once there is common merit list prepared for the purpose of grant of admission on the basis of result of NEET, the only permissible reservation is in

favour of students who have studied in schools situated within the State of Gujarat and therefore, it is impermissible for distribution of seats on the basis of the school board and therefore, such segregation/distribution of seats on the basis of school board would amount to discriminating students solely on the basis of their school board. Such policy of the State would deprive the petitioners from being considered for admission to all available seats in various graduate courses offered by the colleges and educational institutions only on the ground that the petitioners did not pass Standard XII from a school affiliated to the State Board.

28. It is well settled that Article 14 of the Constitution of India does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved. The fact that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object sought to be achieved. Therefore, where the object to be achieved is to get the best talent for admission to professional colleges, the allocation of seats on prorata basis as per the policy of the respondent - State has no reasonable relation with the object to be achieved.

29. The contention of the learned advocate appearing for the private respondent that CBSE schools are in urban areas whereas, Gujarat board students come from rural background and because of substantial difference in the syllabus of the Gujarat Board and other boards, the policy impugned in the petition is required to be continued for this year. Such submission is not required to be accepted as the Hon''ble Supreme Court in the case of Suneel Jatley v. State of Haryana (Supra) has held that reservation of seats for rural candidates for admission to MBBS/BDS courses is invalid. Thus, aforesaid contention is also not required to be accepted.

30. As observed hereinabove, decision rendered by the learned Single Judge in the case of Bhavya S. Desai (Supra) which has been confirmed by the Division Bench of this Court would not be applicable in the present fact situation as from this academic year, admission would be granted in medical courses on the basis of result of NEET and the merit list prepared on the basis of such result. We have already discussed hereinabove that now syllabus of Gujarat Board and other Boards is same for appearing in NEET. No doubt, initially 25 to 30% of syllabus was different, but supplementary booklet was supplied to the students of Gujarat Board in June, 2016 and therefore, sufficient time was given to the students of Gujarat Board for preparation of NEET. In view of above, the decision rendered by this Court in the case of Bhavya S. Desai (Supra) would not be applicable.

31. Other decisions on which the learned Government Pleader has placed reliance would not render any assistance to her as from this academic year, admission is to be given on the basis of result of NEET.

32. Reliance placed by learned advocate for the respondent on the decision rendered by the Division Bench of this Court in Special Civil Application No.19918 of 2016 is also misconceived. In the said case, question was with regard to granting institutional preference in Postgraduate Medical Courses. Division Bench of this Court in paragraph No.18 and 19 observed and held as under : "[18]. Though institutional preference is approved in the judgments referred herein above, vires of impugned Rules is attacked mainly on the ground that after introduction of NEET,

it is not open to make institutional preference. It is contention on behalf of the petitioner that the very object of introduction of NEET is to prefer candidates for post graduate medical course on merit alone and as such, if institutional preference is allowed, it will defeat the very object of holding such test i.e. NEET. Institutional preference/universities are not reservation within the meaning of Article 15(4) of the Constitution of India. Prior to introduction of NEET, every University was conducting separate test for the purpose of grant of admissions to post graduate courses. In view of amendment by inserting provision under Section 10D in the Medical Council Act, 1956 and consequential amendment to the Post Graduate Education Regulations, 2000, admission to Post Graduate Courses are made solely on the basis of score secured by the candidates seeking admission based on Centralized examination i.e. NEET. Even after introduction of NEET, admissions to the extent of 50% seats go to All India Quota, in which, the candidates including the petitioners can compete for securing admission, in such quota. Only remaining seats are to be filled by the Government or Government agency, universities and institutions by using NEET - PG score. The only obligation by virtue of introduction of NEET is that, once centralized admission test is conducted, the State, its agencies, universities and institutions cannot hold any separate test for the purpose of admission to Post Graduate and PG and Diploma Courses. Such seats are to be filled up by the State agencies, universities/institutions for preparing merit list as per the score obtained by the applicants in NEET examination. Such obligation cast upon the State and its instrumentalities by virtue of conducting of NEET, will not have any bearing on the institutional preference, prescribed in the rules of admission of university. [19] In view of series of judgments of the Hon''ble Supreme Court which are referred to, the Hon''ble Supreme Court has disapproved admissions based on residence/domicile criteria, but at the same time approved institutional preference by citing various reasons. The very same reasons which are considered for approving quota/preference, will continue to operate even after introduction of NEET. In that view of the matter, we do not find any merit in the contention of learned counsel for the petitioner that if institutional preference is allowed, then it will defeat the object of holding NEET examination. Although it is pleaded that in view of changed circumstances, it requires reconsideration, but in view of binding judgments of the Hon''ble Supreme Court on the subject, we are compelled to reject such contention and reject the petition by following judgments already referred to. We also do not find any merit in the contention of the learned counsel for the petitioner that the impugned rules which are framed by 3rd respondent are arbitrary and/or breach of rights guaranteed under Article 14 of the Constitution of India so as to declare said rules as illegal." Aforesaid decision would not render any assistance to the learned advocate for the respondents. Conclusion 33. In view of aforesaid discussion, we are of the view that respondent State is not justified in taking decision to continue its policy to grant admission on prorata distribution of seats on the basis of school boards in MBBS and BDS courses in medical institutions after introduction of NEET. Thus, we hereby declare that for admission to MBBS and BDS courses in colleges within

the State of Gujarat, there can be no distribution of seats between candidates of Gujarat Board and other Boards either under the Government Resolutions, rules governing admission to professional medical course after introduction of NEET and therefore, all the students qualifying in the XII Board Examination from schools within the State of Gujarat are entitled to be considered against all available seats in MBBS and BDS courses offered in Colleges and Education Institutions within the State of Gujarat. The petition is allowed. Rule is made absolute. Petition Dismissed.