
(1996) 06 GUJ CK 0002
In the Gujarat High Court

Nirish Sureshkumar Shah

APPELLANT

Vs

Ahmedabad Municipal Corporation and Others

RESPONDENT

Date of Decision : 17-06-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (1996) 3 GLR 438

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

Bench : Single Bench

Judgement

S.D. Shah, J.—This petition under Article 226 of the Constitution of India raises an interesting question of interpretation of Rules 17 and 18 of the Rules for Admission which are framed by the respondent No. 3 for controlling and governing the admission to 1st Year M.B.B.S. Course which is run and conducted by Smt. N.H.L. Municipal College, Ahmedabad. There is one another Medical College being Government College which is also imparting education and running M.B.B.S. Course at B.J. Medical College, Ahmedabad. These colleges are affiliated to the 4th respondent-Gujarat University duly established and incorporated under the provisions of Gujarat University Act. The B.J. Medical College has also framed its Rules for Admission to 1st Year M.B.B.S. Course. Rule 5.2 of the said Rules is, though not in pari materia to Rule 18 of the Rules of respondent No. 3, it closely resembles to or is broadly comparable with the said Rule.

2. It is unfortunate, but is required to be noted at the outset that these Rules known as "Rules for Admission to M.B.B.S. Course", which are though not common but are closely parallel or broadly comparable are being applied to the aforesaid colleges by putting different interpretation thereon by both the colleges, and the Gujarat University to which said colleges are affiliated has adopted an attitude of non-interference which has given rise to non-uniform implementation of Rules and the resultant discrimination between meritorious students. It is, no doubt, true that two colleges are independent autonomous institutions and can have their own Rules for internal management. However,

admission to such specialized course where academically brilliant and meritorious students compete from all over the country, an affiliated college cannot be permitted to have its final say in the matter of interpretation of such Rules. It is no doubt true that achievement of higher standards and excellence in such highly specialized courses is and must be the goal of every such affiliated college, but, then the important and substantial question raised in this petition is as to whether an affiliated college to University by its own interpretation of its Rules, which may sound to be arbitrary and unreasonable be permitted to deny admission to very course to more meritorious student. This is more so when another affiliated college by interpretation of closely parallel rule would find the student to be entitled to admission on his own merits.

3. The interpretation of Rule 18 which commends to and which is found to be reasonable is consistent with the interpretation placed on Rule 5.2 by B.J. Medical College at Ahmedabad while the 3rd respondent has interpreted the very Rule 18 differently resulting into obvious disadvantage to meritorious students.

4. As a statutory and parent body to which the aforesaid two medical colleges are affiliated, the 4th respondent-University could have and must have directed to apply the Rule uniformly so as not to create situation which has arisen in the case before this Court. Accepting the desirability of such situation, it however, pleads its inability because it regards that Rules of Admission to M.B.B.S. Course by each affiliated college are Rules of autonomous bodies where University cannot interfere.

5. Few relevant facts giving rise to present petition may now be stated hereunder:

(i) The petitioner claims to be a brilliant and meritorious student who passed his S.S.C. examination conducted in March, 1992 by securing 84% marks and obtaining 10th rank in the Centre at Ahmedabad City. He, thereafter, joined C.N. Vidyalaya High School for further pursuing his studies and passed XIth Std. examination in 1993. Thereafter, from June, 1993 to March, 1994 he was expected to continue his further studies by joining Std. XIIth. However, as is the case with number of brilliant students, he went to U.S.A. for further studies and got enrolled in Hastings High School at New York for the examination which is highly competitive and prestigious in U.S.A. He performed excellently well at such examination and was issued certificate, number of prizes, awards and honours under National Merit Scholarship Programme. He has produced along with the petition certificates, prizes and awards of distinction conferred on him, by the said school at New York, but they being not relevant for the purpose of this petition are not referred to extensively.

(ii) However, in the year 1994, he came back to India as he desired to prosecute his studies in India and, once again, joined C.N. Vidyalaya to appear in Higher Secondary School Certificate examination to be held in March, 1995. He joined this school in 1994. The examination was conducted in March, 1995, and he

secured 88.8% of marks and secured 10th rank in the entire State of Gujarat as well as secured 10th rank in the Ahmedabad Centre. His photograph was also published along with other top rankers in all the newspapers of Ahmedabad and his interviews were also published in the press.

(iii) He, thereafter, applied for admission to 1st Year M.B.B.S. Course in Smt. N.H.L. Municipal Medical College by filling in the application form as is required under the Admission Rules. He was, however, at that time, informed that 30 marks will be deducted from the marks obtained by him, and though he was meritorious and stood 10th in the entire State of Gujarat, he may not get admission in the 1st Year M.B.B.S. Course in Smt. N.H.L. Municipal Medical College. For such reply, the 3rd respondent and its authority quoted Rule 18 and stated that they would deduct 30 marks on the ground that the petitioner has not appeared and passed Higher Secondary School Certificate Examination in March, 1994 and October, 1994 and he was not in India and that he has appeared and passed the examination only in March, 1995 and therefore, respondent Nos. 1 to 3 will consider that he has passed the examination after two drops from the date when he was due to appear in the Higher Secondary School Certificate Examination and therefore, they would deduct 15 marks for each attempt/drop. When the list of the candidates for admission to 1st Year M.B.B.S. Course in Smt. N.H.L. Municipal Medical College was published the name of the petitioner was not included while the name of the respondent No. 5 was included who has admittedly secured lesser marks than the petitioner. It is the case of the petitioner that he has all throughout a very brilliant academic career and he has stated that in VIIIth Std. examination he secured 731 marks out of 900, in IXth Std. examination he secured 720 marks out of 1,000. In Xth Std. examination which was conducted by the Gujarat Secondary Education Board he secured 585 marks out of 700 and got 10th rank in Ahmedabad Centre. In H.S.S.C.E., in qualifying subjects he secured 420 marks out of 450 marks. On the other hand, the respondent No. 5 secured 403 marks out of 450 at Higher Secondary School Certificate Examination conducted in March, 1995 and had thus lesser or no chance of getting admission in the 1st Year M.B.B.S. Course in Smt. N.H.L. Municipal Medical College. It was only on the interpretation placed on Rule 18 by respondent Nos. 1 to 3 which is not uniform with interpretation of identical Rule by B.J. Medical College that the petitioner is denied admission to 1st Year M.B.B.S. Course by deducting 30 marks from the marks obtained by him. By arbitrary, irrational and discriminatory interpretation placed by N.H.L. Municipal Medical College that the petitioner is denied admission to 1st M.B.B.S. Course in the 3rd respondent-College.

6. At this stage, it would be necessary to refer to Rules for admission for 1st Year M.B.B.S. Course which are being followed by Smt. N.H.L. Municipal Medical College-respondent No. 3 as well as by B.J. Medical College, both being medical colleges affiliated to 4th respondent-University. Rule 18 of the Admission Rules of 3rd respondent and Rule 5.2 of Admission Rules framed by B.J. Medical College, being closely parallel or broadly comparable are put into juxtaposition in a

tabular form being relevant for the purpose of this petition:

18. Fifteen marks shall be deducted 5.2. Fifteen marks shall be deducted [from the marks taken into consideration for each failure or drop at the qualifying for preparation of the merit list of the examination. For this purpose non applicants] for each failure or drop at the -appearance in the qualifying examination qualifying examination. For this purpose, when due or appearance at the qualifying non-appearance in the qualifying exam- examination in part will be treated at par ination, when due (i.e. at the interval of and entail deduction of 15 marks. two years of passing S.S.C.E.) or its equivalent examination or appearing at the qualifying examination in part will be treated at par and entail deduction of 15 marks.

7. From the aforesaid Rules, it becomes clear that merit order for admission to 1st Year M.B.B.S. Course is to be determined strictly on the basis of aggregate marks on external evaluation in various papers obtained in the Science subjects (Physics, Chemistry, Biology and Maths) at Higher Secondary School Examination or its equivalent examination recognized by the Gujarat University. This merit order for admission is stated to be subject to deduction of marks as provided in Rule 18 or Rule 5.2. It is this Rule 18 which is required to be interpreted. The first bracketed portion of Rule 18 is simply a parenthetical clause, a surplusage not adding any significant meaning to the Rule.

8. Mr. Girish Patel, learned Counsel appearing for the petitioner has on the question of interpretation of said Rule broadly submitted that it is not at all attracted in the case of the petitioner, and in fact, no marks, whatsoever, ought to have been deducted from the marks obtained by the petitioner. Such submission is based on interpretation of following words of Rule 18:

For this purpose, non-appearance in the qualifying examination when due.

In his submission, since the petitioner has not prosecuted and continued his studies after passing Examination of Std. XIth and has even not sought admission to Higher Secondary School Certificate Examination course which was due in March, 1994 as he has gone to U.S.A., it cannot be said that he was due for appearance in the qualifying examination. Much emphasis is laid by the learned Counsel on the words "when due", and based thereon, it is submitted that Rule 18 was not attracted in the case of the petitioner and no marks were liable to be deducted. In the alternative, it was submitted that even if the petitioner can be said to be due for appearing at the qualifying examination being Higher Secondary School Certificate Examination at the interval of two years after his passing Secondary School Certificate Examination, the petitioner can be said to be due for such examination in March, 1994, and even he having failed to appear at such examination, deduction of 15 marks, at the most, was permissible and for non-appearance in October, 1994 examination when the petitioner was not qualified and was not due for examination, deduction of other 15 marks was not permissible and such deduction was based on highly irrational,

arbitrary, discriminatory and capricious interpretation of Rule 18. In his submission, there cannot be successive non-appearance at the examination, when the candidate is not due for examination. There can be successive defaults or drops deliberately or unintentionally taken at the examination or there can be successive failure at the examination, but when the candidate was not due at all for qualifying examination and when he was actually enrolled and preparing himself for Higher Secondary School Certificate Examination to be conducted in the month of March, 1995, he cannot be said to be non-appearing at the successive examination which was conducted in the month of October, 1994. Secondly, even on literal interpretation of Rule 18, he submitted that there is power in the respondent No. 3 to deduct at the most 15 marks even for non-appearance at the qualifying examination when due. As the Rule provides that only 15 marks shall be deducted from the marks taken into consideration for preparation of merit list. He submitted that even while describing "non-appearance in the qualifying examination when due" the rule making authority has provided that the candidate would entail deduction of 15 marks. Therefore, in his submission, deduction of 30 marks is not only beyond the language of Rule, but beyond the power of the respondent Nos. 1 to 3. Thirdly, he submitted that the Rules in question are Admission Rules to highly competitive medical course where academic merit and brilliance of the student is to be taken into consideration. Such Rules, are, therefore, required to be read and interpreted reasonably and rationally, and no absolute or arbitrary power to interpret the Rules can be conceded to the authority on the ground that the said Rules are that of an autonomous body which must decide the standard of academic excellence. Though the Court of law may not interfere with the Rules of internal management of autonomous educational institutions, it cannot concede to or it cannot be a silent spectator to injustice being meted out or perpetrated to a meritorious student by interpretation of Rules which is highly irrational, arbitrary and unreasonable. Fourthly, he has submitted that Rule 18 of the Admission Rules of the third respondent is violative of Articles 14 and 21 of the Constitution of India as it operates excessively harsh, viz-a-viz, meritorious student and results into arbitrary and discriminatory exercise of power which would unduly and unjustly punish a brilliant student in his teens so much so that he might develop frustration and might even develop hatred for the system of education where merit is found to be at a discount.

9. As against the aforesaid four submissions of Mr. Girish Patel, Mr. M.R. Anand, learned G.P. appearing for respondent Nos. 1 to 3 very vehemently submitted that in fact in the matter of interpretation of Admission Rules of an affiliated college which is an autonomous body, the Court must adopt attitude of total non-interference or minimal interference as the Apex Court has, time and again, reiterated law that it is for the academic institution to secure higher standard of excellence or equivalence in highly competitive disciplines, such as, medicine or engineering and that in such matters expertise of the institution must prevail and the Court of law should not interfere. Secondly, he submitted that Rule 18 is

enacted with the sole objective of penalizing or punishing the students who have failed or who are repeaters and the students who have deliberately and intentionally taken drop at the qualifying examination when it was due. The intention of the rule making authority was that such students cannot be and should not be permitted to compete with the students of fresh batch and they should be put at a discount by deduction of 15 marks. The Rule, therefore, would operate as a deterrent or penal provision for such failures or repeaters or droppers at the examination and achievement of academic excellence in such higher specialized competitive course is the goal which the interpretation placed on the Rule by the rule making authority would achieve. In his submission it is for the academicians or authority of such institution of higher studies to decide the standard of excellence. N.H.L. Municipal Medical College is a premier Medical College in the State of Gujarat and it has achieved highest standard of excellence and therefore, more meritorious students prefer to get admission to this institution to any other institution. He, therefore, submitted that if such an institution adopts a higher standard by insisting for regularity, attendance and passing of qualifying examination at a time when it was due, the decision being just, fair and rational shall have to be accepted. He submitted that rationality of Rule 18 cannot be tested by comparing interpretation placed on identical Rule by another Government Medical College, i.e., B.J. Medical College. They may fix their own standard of excellence, they being autonomous, their interpretation should not be foisted upon respondent No. 3. In his submission, even if higher penalty is provided by N.H.L. Municipal Medical College, it being the premier institution, for non-appearance at the qualifying examination when due, it is pre-eminently just and rational because the Rule and its interpretation otherwise stand the test of rationality, reasonableness and wisdom drawn from experience. In his submission the rationality behind the Rule is to compel regularity in appearance at the qualifying examination and if there is failure, a major penalty is provided which is rationally connected with the degree of irregularity, i.e., one who is irregular for long or for two terms, pays the highest price or suffers the highest penalty. Thirdly, he submitted that in case of the present petitioner even recourse to Rule 18 was not required to be had because he having abandoned his studies in the year 1993 and having proceeded to U.S.A. for further studies and having passed the Examination from Hastings High School at New York he ought to have applied to the University under Rule 17 of the Admission Rules for seeking equivalence of his examination to Higher Secondary School Certificate Examination and after getting certificate of equivalence he could have, in the year 1994 itself, applied for admission, but he having failed to do so, he must suffer the punishment which flows from the language of Rule 18 of the said Rules. In substance, in his submission he should have applied for treating his degree of the aforesaid institution in U.S.A. as equivalent to the Higher Secondary School Certificate Examination, and on the University having granted equivalence he could have pursued his studies by applying for admission to M.B.B.S. Course. He having failed to do so, he cannot be permitted to invoke Rule 18 and even if Rule 18 is to be invoked in his case, on interpretation placed

on Rule 18 by the educational institution being reasonable, rational should not be interfered with by the High Court in its extraordinary jurisdiction.

10. M/s. S.N. Shelat and N.V. Anjaria appearing for Gujarat University have taken up neutral stand and have stated that they would abide by the direction which may be issued by the Court. In their submission, the object behind Rule 18 or closely parallel Rule 5.2 of B.J. Medical College Rules is that the student is expected to undergo concentrated studies for a period of two years upto the date of qualifying examination. Orientation to studies must be without any break at any time and it is expected of a student that he must continue his studies and he cannot be permitted to complete his studies leisurely or at any time he likes. When the non-appearance of student at the qualifying examination when due, is conscious or deliberate or one which was not beyond his control he incurs the penalty of deduction of 15 marks. They, however, submitted that deduction of 30 marks by one institution and deduction of 15 marks by another institution which are affiliated to Gujarat University brings about absence of uniformity or disharmony in the operation and interpretation of Rules, but since the institutions are autonomous bodies, in the matter of admission of students to 1st Year M.B.B.S. Course, the University has no control. The University would, however, prefer application of uniform standard for admission to 1st Year M.B.B.S. Course so that meritorious students are not denied admission and sense of frustration may not develop in students of merit and excellence.

11. Lastly, Mr. Gautam Joshi, appearing for respondent No. 5 has submitted that Rule 18 is very clear and is not ambiguous. The words "when due" has specific meaning in the context of Rule because the rule making authority has clearly provided as to when a candidate can be said to be due and he has submitted that the words "when due" would mean "at the interval of two years after passing Secondary School Certificate Examination or its equivalent examination". In his submission, the Court was, therefore, not called upon to decide the meaning of words "when due" because the legislature itself has specifically defined the said words, and the respondent No. 3 has acted consistent with the said Rule. Such action cannot be said to be arbitrary, unreasonable or irrational. Secondly, he submitted that when the Rule is absolutely unambiguous and clear, an attempt to read ambiguity in such rule de hors the context, is not permissible. In the alternative, he submitted that even if two interpretations are possible, the High Court would be reluctant to accept that interpretation which has stood the test of time and which has been consistently so interpreted by the institution. Lastly, he submitted that even if the contention of the petitioner is to be accepted the respondent No. 5 who is already admitted and who has completed two terms, cannot be and should not be unseated from the course which he is so vigorously pursuing. The Court would not mould the relief in such a way as to oust the legally admitted students because in his submission somebody's gain should not result into loss to respondent No. 5 because the respondent No. 5 is neither a wrong-doer nor has he secured the admission by any unlawful means or by exercising any undue influence and he is one who has got his admission purely

on merit and he should not, therefore, be unseated.

Rule 17 and its Applicability:

12. Since Mr. Anand, learned G.P. for respondent Nos. 1 to 3 has very heavily relied upon Rule 17 for the purpose of refusing relief to the petitioner, it would be advisable to refer to Rule 17 at this stage:

Rule 17: The merit order for admission will be determined strictly on the basis of aggregate marks at external evaluation in theory papers obtained in the Science subjects (Physics, Chemistry, Biology and Mathematics) as specified in Rule 4 (except English) at the Higher Secondary Examination or its equivalent examination recognized by the Gujarat University for admission to 1st M.B.B.S. Course, subject to deduction as provided in Rule 18.

It is the submission of Mr. Anand that merit order for admission is to be determined strictly on the basis of aggregate marks at external evaluation in theory papers obtained in Physics, Chemistry, Biology and Mathematics at the Higher Secondary Examination or its equivalent examination. He submitted that if the petitioner has after completing studies of Std. XI prosecuted his higher studies at Hastings High School, New York and when he has cleared said examination with distinction, he ought to have applied to the University to treat his passing said examination as equivalent examination to Higher Secondary Examination and the University could have in accordance with the Rules recognized the said examination as equivalent examination. However, when the petitioner has not at all approached the University for treating his Higher Secondary Examination at Hastings High School, New York as equivalent to the Higher Secondary Examination, he cannot compete with fresh students because he has to be treated as one who has not appeared in the qualifying examination when due, i.e., in the month of March, 1994.

13. The aforesaid submission of Mr. Anand is thoroughly misconceived and shall have to be rejected. Firstly, Mr. Anjaria learned Counsel appearing for the University has categorically stated before the Court that the Higher Secondary Examination conducted by Hastings High School, New York is not treated as equivalent to Higher Secondary School Certificate Examination conducted by the Gujarat Board. Secondly, he submitted that subjects of Biology and Chemistry are not being taught at Hastings High School, New York, and therefore, also the said examination can never be treated as equivalent examination by the Gujarat University. In his submission, therefore, even if the petitioner would have applied for treating the said examination as equivalent, since list of equivalent examinations is already prepared by the Gujarat University, said examination would not have been treated as equivalent examination. On the aforesaid stand of the University itself, the submission made by Mr. Anand, based on interpretation of Rule 17 must fail. It is not open to respondent Nos. 1 to 3, therefore, to contend that the petitioner cannot file the present petition unless he calls upon the University to act under Rule 17 of the Admission Rules.

Judicial Reviewability of Actions/Interpretations by Higher Academic institutions, Its Scope, Width and Nature:

14. It is trite knowledge that in the matter of higher academic courses requiring specialized knowledge, expertise, ordinarily the wisdom, practical experience and expertise of academicians of such educational institutions must prevail, and the Court of law, not well equipped in the subject, having no sufficient expertise and skill over the particular discipline or branch of the subject will be loath to substitute its own decision to that of the educational institution. In the matter of determination of equivalence of examinations of other Universities by the University, in the case of Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, the Hon''ble Chief Justice P.N. Bhagwati, speaking for the Court held that it is for such University to decide the question of equivalence and it would not be right for the Court to sit in judgment, over the decision of the University because it is not a matter of which the Court possesses any expertise. The University is best fitted to decide whether any examination held by the University outside the State is equivalent to the examination held within the State having regard to the course, syllabus, the quality of teaching or instructions and the standard of examination. It is an academic question in which the Court should not test the decision taken by the University. Even prior thereto in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, the Supreme Court speaking through Hon''ble Justice P.N. Bhagwati (as His Lordship then was) observed as under:

The question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on recommendations of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence could not lightly disturb the decision of the Government. It is only where the decision of the Government is to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government.

Ordinarily, therefore, in the matter of interpretation and application of Rules framed by institutions of higher education, their expertise, experience and knowledge should be respected by the Court, subject, of course, to the rider that such interpretation or application of Rule should not be unreasonable, irrational or discriminatory or resulting into irrational classification which has no nexus with the object sought to be achieved.

15. It cannot be gainsaid that the medical and engineering courses are highly specialized scientific courses to which brilliant and talented students were and/are today attracted. Therefore, attempt on the part of educational institutions

should be to invite, encourage and admit the most brilliant and talented candidates, subject, of course, to the reservation constitutionally guaranteed for the students of SC, ST and Educationally and Socially Backward Communities. In the admission to such course, as observed in the case of Rajendra Prasad Mathur (supra) selection has to be made considering the fact that there are large number of candidates than available seats. The process of selection based on merit and merit alone is and should be the desideratum. The object of selection can only be to secure best possible material (students) for admission to colleges. The object of selection must be to secure best possible talent from the available source. It cannot be denied that the object of selection is to secure best possible talent, that the country should have the best possible doctors and therefore, while framing and applying the Rules for admission to medical courses, paramount object should be to attract best talents, so that the country can get best doctors ultimately. If by any classification or interpretation of Rule, which would result into discouraging the talent or putting some meritorious students to discount, such interpretation should be eschewed as devoid of reasonable nexus which is required to be achieved while classifying the students into two categories. If the students are coming from same source their classification into those who have passed within permissible limits and those who have passed beyond permissible limits was a matter of consideration before this Court in the case of Jayesh A. Joshipura v. State of Gujarat reported in 1984(2) GLR 1. Following the decision of the Supreme Court His Lordship Mr. Justice S.B. Majmudar (as His Lordship then was) upheld the classification of students into two categories for admission purpose, namely, students passing qualifying examination with permissible limits and those who have passed beyond permissible limits. The Court found that such classification was reasonable, i.e., based on intelligible differentia and secondly that such classification has rational nexus to the object sought to be achieved by such classification. It is not necessary for this Court to make further detailed reference to said decision of the learned single Judge of this Court because it is precisely and exactly the question of classification between two groups which is under challenge before this Court. In the fact situation obtaining before this Court and more particularly in the light of Admission Rules being Rule 18 of N.H.L. Municipal Medical College and Rule 5.2 of B.J. Medical College Rules, the Court is called upon to decide the question as to how the said Rule could be interpreted and applied to the given fact situation and as to how two different interpretations placed by two affiliated colleges to the Gujarat University has resulted into non-uniform application of standards by two affiliated colleges in the matter of admission to 1st M.B.B.S. Course. The Gujarat University has in clear terms stated that there does exist a discrepancy resulting into unequal treatment because of different interpretations of practically identical Rule by two affiliated colleges, namely, N.H.L. Municipal Medical College and B.J. Medical College. For non-appearance at qualifying examination of Higher Secondary School Certificate Examination when it was due, i.e. within two years from the date of passing S.S.C. Exam., B.J. Medical College under Rules 5.2 of Admission Rules to 1st M.B.B.S. Course would deduct

15 marks in aggregate while N.H.L. Municipal Medical College would deduct 15 marks if the candidate has not passed the examination in the current year, i.e., in the month of March and thereafter a further 15 marks if he has not passed in the month of October of that very year. This is so irrespective of the fact that as to whether such student was eligible to appear at the examination either because he has not kept the terms of H.S.S.C.E. seeking admission in the school or he has not filled in the form for admission to Secondary School Certificate Examination. This diverse interpretation placed by two affiliated colleges under the same University has created heart-burning amongst the meritorious students and has brought about unequal or non-uniform application of the same Rule, vis-a-vis, meritorious students.

16. In the context of regulations prescribed by the Medical Council for selection for Post-graduate studies and practice of selection adopted by the University in the case of *Vikram K. Shah v. State of Gujarat* reported in 1983(1) GLR 554 the learned single Judge of this Court found that imparting of instructions and training for Postgraduate studies is the exclusive concern of the University. It is the vital function of the University to co-ordinate and manage the educational functions in respect of all braches of learning including medicine. It is for this purpose that registration of students is to be done by the University and not by any other authority. The registration for Post-graduate courses cannot be left to the good sense of the Dean of the college. The Court found that the only defence of the University was that it was the time-honoured practice following which the Dean of respective institutions were granting registration. It was in the context of those students, the Court found that it cannot mechanically and blindly adopt the merit list prepared by the Dean for the purpose of appointing Residents in a particular subject. If it is the function of the University to grant registration, that is to be done by the University alone and it may not assign this important administrative function to one of its functionaries, may be a highly placed person. The Court found that the University has been mechanically adopting the list prepared by the Dean and this blind mechanical adoption of the list is amply illustrated by the fact that two different centres imparting Post-graduate training in the University area are sending the so-called merit list of Resident doctors in various subjects on different criteria. The Court found that the criteria adopted by the Government owned medical college, namely, B.J. Medical College was different from the criteria adopted by the Dean of N.H.L. Municipal Medical College. The Court found that this practice of permitting different colleges under the same University to adopt different criteria for admitting Residents for Postgraduates studies was not permissible as it was ex-facie unreasonable. The legality, unconstitutionality or ultra vires character of an action of a public body cannot be validated by passage of time, and therefore, the Court found that the plea of time-honoured practice vigorously put forward cannot render any assistance to the case of the Dean of Colleges or of University.

17. The aforesaid principle may, by analogy of reasoning, be extended for admission to 1st Year M.B.B.S. Course. It may be, that the Rules for admission to

1st Year M.B.B.S. Course in different affiliated colleges may marginally differ in language. They being autonomous bodies, interpretation of such Rules, should be, as far as possible, consistent and uniform so as not to discourage the meritorious students. It is more so when a penal or deterrent provision framed by two different colleges for admission to 1st Year M.B.B.S. Course is being differently applied and interpreted so as to result into clear discrimination which would deny admission to meritorious student in institution of his choice. Harmonious and uniform interpretation of such Rule would save the educational institutions from the charges of irrationality or unreasonableness in granting admission to 1st Year M.B.B.S. Course. It is, no doubt, true that the University has clearly stated before the Court that interpretation of such penal provision should be uniform and harmonious. It has expressed its inability to impose any uniform interpretation of the Admission Rules on the educational institutions on the jejune ground of autonomy of the institution. When the Court is confronted with such situation, in the opinion of this Court, it becomes imperative for it to interject itself and to find out as to what is rational, reasonable interpretation of the Rule and as to how Rule can be harmoniously applied so as not to deny admission to educational institution at the whims and caprices of one institution. The spirit of "come what may, we shall interpret our own rule in the manner we find it reasonable and rational is not consistent with the underlying principle of Article 14 of the Constitution of India because it ultimately concedes to educational institutions not only the authority but also the status of autocracy which negates always the equality before law. The question, therefore, which is required to be answered is as to what interpretation can be placed on Rule 18 and Rule 5.2 of B.J. Medical College Admission Rules and to find out as to whether the interpretation placed by respondent Nos. 1 to 3 on Rule 18 is just, fair, reasonable and rational.

Interpretation of Rule 18:

18. There is practically consensus of submission amongst the learned Counsels appearing for rival parties, excepting Mr. Gautam Joshi, learned Counsel appearing for respondent No. 5 that Rule 18 is enacted with the avowed purpose or objective of punishing or penalizing the failures or droppers at the examination or those students who are insincere, inactive, lethargic and irregular in pursuing their qualifying course so as not to complete the qualifying course when due. Mr. M.R. Anand, learned G.P. appearing for respondent Nos. 1 to 3 has very vehemently submitted before this Court that Rule 18 works as deterrent and brings about or compels regularity amongst students in completing their qualifying course when due. In his submission, the rationale behind Rule 18 is to impose a measured penalty commensurate with the lapse on the part of the student or commensurate with degree of his irregularity, i.e., one who is irregular for a longer period pays the highest price, namely, deduction of higher marks while one who is irregular for one term only pays penalty of deduction of lesser marks, i.e., only 15 marks. M/s. S.N. Shelat and N.V. Anjaria also agree that the objective of Rule prima facie appears to see that the student who is seeking

admission to such highly specialized course has been regular and vigilant enough to complete his qualifying course when due. The rationale behind such Rule is that the orientation to studies must be continuous and without any break at any time. A student cannot go leisurely or appear irregularly or prefer non-appearance when no reasons are forthcoming to show that nonappearance at the examination when due was beyond his control. They also, therefore, agree that such Rule has the objective of punishing or penalizing such students only by deduction of 15 marks. However, different interpretation placed on practically identical Rule by two affiliated colleges brings about disharmony and leads to heartburning and therefore, the Gujarat University would leave the matter to the discretion of the Court.

19. Mr. Gautam Joshi, learned Counsel appearing for respondent No. 5, on the other hand, would like the Court to read the Rule in question as one which is intended to prefer and encourage merit to anything else, and according to him, it has no penal element, whatsoever. It simply promotes meritocracy and discourages lethargy, irregularity and/or the desire of running away from qualifying examination when due.

20. When Rule 18 as quoted hereinabove is read in the light of the aforesaid objective, it undoubtedly deals with following situations:

(i) A candidate who was due and eligible to appear at the qualifying examination has appeared at such examination, and has failed (this refers to outright failure to pass the examination).

(ii) A candidate who keeps terms, fills in the form for examination, but, thereafter, do not appear at the examination or for no justifiable cause takes the drop (this deals with deliberate droppers at the examination).

(iii) A candidate who keeps the terms, but do not fill in the form for examination when due, i.e., at the interval of two years after passing S.S.C.E.

(iv) A candidate who keeps the terms and who fills in the form, but appears partially in some of the subjects at examination (this is as good as taking drop).

(v) A candidate who does not keep terms at all, and was, therefore, not eligible to fill in the form at the end of the academic year. Such candidate is one who is not prosecuting studies at all on diverse grounds, such as, his own ill-health, receiving serious injuries in accident incapacitating him for prosecuting studies for long time, death of elderly person being breadwinner in the family, adverse economic conditions etc.

21. Reading the aforesaid Rule 18 literally or even consistent with the intention of the rule making authority, it cannot be gainsaid that the authority wanted to deal with the aforesaid five fact-situations. In the submission of Mr. Girish Patel, learned Counsel appearing for the petitioner, the legislative purpose of enacting such Rule is required to be examined. The purpose is to attract best meritorious students. On the other hand, according to the rule making authority, the purpose

of Rule is to prefer fresh meritorious students to repetitors or droppers or those who have failed to appear at the qualifying examination when due. According to authorities, the deduction of 15 marks is provided in courses which are highly competitive and require high merit in the disciplines, such as, Medicine and Engineering and therefore, the intention is to place at discount the students who pass at second attempt and to prefer those who pass at first attempt when they were due for qualifying examination.

22. In my opinion, even if the aforesaid two objectives are treated to be the objectives behind enacting Rule 18, it cannot be gainsaid that the legislature wanted to put at a discount or to penalize those students who have either failed (repetitors) to pass the examination when due or who have taken drops at the examination when it was due or who have resorted to subterfuges for non-appearance at the examination. It is obvious that no brilliant or meritorious student would invite a failure at the examination or would intentionally take a drop solely with a view to securing more marks. If some student has resorted to such subterfuge of non-appearing at the examination, when due, the rule making authority thought that he cannot be compared with fresh candidates because when he has kept terms, filled in form for examination and has failed to appear at the examination when it was due, he must face the consequences of deduction of 15 marks only. It is in such type of cases that later part of the Rule 18 seeks to punish or disqualify the student by providing for deduction of 15 marks. The Rule being penal in nature, or is one which is enacted to operate as a deterrent should ordinarily be strictly construed, and it should not be literally interpreted so as to bring within the sweep those students who have not kept in terms, who have not filled in form for examination and who were even otherwise not eligible to appear at examination because of their failure to keep the terms. Such students are not intended to be included in the last part of the Rule. A student who has not prosecuted his studies at all by not keeping the terms of the school, and has thereby, rendered himself ineligible even to fill in the form for examination cannot be said to be one who was due to appear. Simple non-appearance at the examination at the end of two years cannot and should not attract the Rule if the student was not due at all to appear at the examination. There might be umpteen number of justifiable reasons for which the student may not prosecute his studies further, such as, ill or infirm health of the student himself, death of only breadwinner in the family, economic constraints preventing the student from continuance of or prosecuting his studies further by filling in term etc. List of such justifiable reasons is simply illustrative and cannot be exhaustive. In the opinion of this Court, when the student has not pursued his studies after Std. XIth examination by keeping terms for Std. XIIth and by filling in the examination form for appearance at H.S.S.C.E., cannot legitimately fall in the last part of the Rules as such student cannot be said to be one who was due for examination. Even if the words "when due" are interpreted to mean, only at the interval of two years after passing S.S.C.E., as submitted by Mr. Gautam Joshi, in the opinion of this Court, a student cannot be said to be due for

qualifying examination, if for justifiable reasons, he has not filled in the terms at all, and he has not filled in the examination form, being not eligible to fill in the examination form, having not kept the two terms. Such student, cannot by any stretch of imagination be said to be a student due for qualifying examination. The real question which is required to be asked is as to whether the petitioner was legally due to appear at the examination in the month of March, 1994. Admittedly having passed Std. XIth examination he has not filled in the term for Std. XIIth and has not filled in the form for qualifying examination in the month of March, 1994. In fact, because of his not keeping in the terms of Std. XIIth, he was not eligible to appear at the examination when due. The words "when due" mean, when a student could have legitimately appeared and has not appeared. A student who has not pursued or prosecuted his studies at all for Std. XII for the year 1993-94 cannot be said to be due for qualifying examination in March, 1994.

23. In this connection, attention of this Court was invited to the decision of the Apex Court in the case of *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*, . Before the Supreme Court, the appellant was a candidate who fell seriously ill and was hospitalized during the final term of IIIrd M.B.B.S. He was unable to attend classes and clinics. He, therefore, applied to the Dean to cancel his IIIrd final term and to permit him to attend classes and clinics regularly in the next batch. He even did not submit examination form for that year. His application to permit him to attend classes and clinics regularly with the next batch was allowed and he passed IIIrd M.B.B.S. with the next batch. He was, however, denied admission to M.S. course on the ground that he passed IIIrd M.B.B.S. examination in the second attempt, and therefore, 5% marks were liable to be deducted from the marks obtained by him. The college authorities relied upon Rule IV.5(e) of the Rules relating to Appointment of Residencies. The Apex Court found that the said Rule has no applicability to regulate admission to M.B.B.S. course. It, thereafter, observed in its para 3 as under:

In the second place, we do not think that even the Rule on which the respondents rely justifies the deduction of 5% marks. A note under Rule IV.5(e) of the Rules relating to Appointment of Residencies is to the following effect:

"For the purpose of reductions, non-appearance at any examination when due is deemed as an attempt at the said examination".

We may, at once, say that the appellant was not "due" to appear at the examination as he has not put in the necessary attendance of the classes and clinics and not even submitted his application form for the examination. We are also of the view that if the Rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of 5% of marks when seeking admission to Post-Graduate course the Rule is indeed arbitrary.

24. The words employed in the Rule before the Supreme Court were identical to

the words employed in Rule 18, namely, "non-appearance at any examination when due" and the words "non-appearance in the qualifying examination when due". The Court found that the candidate before the Apex Court was not due to appear at the examination as he has not put in necessary attendance of classes and clinics and has not even submitted his form for the examination. The aforesaid reasoning of the Apex Court to the fact situation which is comparable with the fact situation obtaining in this case and the meaning placed on the words "when due" by the Apex Court directly apply to the fact situation obtaining in this case and in the opinion of this Court the petitioner having not kept the terms of Std. XIIth by putting in necessary attendance and having not submitted his application form for the examination was not due for qualifying examination in the month of March, 1994, and therefore, the respondent Nos. 1 to 3 were not justified in deducting 15 marks from the marks obtained by the petitioner. It will not be out of place to note at this stage that Rule 5.2 of the Govt. Medical Colleges Rules also provide for deduction of 15 marks for each failure or drop at the qualifying examination. It clarifies that for the purpose of deducting 15 marks, non-appearance at the qualifying examination when due would entail deduction of 15 marks. The language employed in this Rule is, therefore, closely parallel to the Admission Rules of respondent Nos. 1 to 3 as well as to the Rule which was under interpretation before the Apex Court in the case of Abhijit (supra).

25. Mr. M.R. Anand, learned G.P. appearing for respondent Nos. 1 to 3 submitted before this Court that the ratio decidendi of the decision of the Supreme Court in the case of Abhijit (supra) has no application because even if the Rule is treated as parallel or identical to the Rule in question, the fact situation obtaining before the Apex Court was different. He secondly submitted that the Division Bench of this Court in the case of Prashant Pravinbhai Kanabar Vs. The Gujarat University and Others, has distinguished the decision of the Apex Court in the case of Abhijit (supra) in paras 28 to 30 of the reported judgment. It may be noted that the Division Bench of this Court was concerned with preparation of merit list for admission of P.G. Medical Courses and not to 1st Year M.B.B.S. Course. In the facts of the case before the Division Bench, the practice followed thereto by the Gujarat University was that at the time of admitting students for P.G. Medical Courses their performance only at final M.B.B.S. examination was considered. Rules were subsequently changed and the criteria for admission was changed. Now, under the new Rule, separate merit list for each category of students was required to be prepared on the basis of mark obtained by the candidate not only in merit at the IIIrd M.B.B.S. examination, but at H.S.S.C.E., 1st M.B.B.S. and IInd M.B.B.S. examination also. The marks obtained at the IIIrd M.B.B.S. examination were to be multiplied by 2 and thus higher weightage was given to the result of IIIrd M.B.B.S. examination. At the foot of such Rules, the rule making authority enacted following note:

Note: First trial is deemed to take place when he is due to appear for the examination, irrespective of his actual appearance. Similarly, 2nd, 3rd etc. trials

relating to subsequent examination.

It was in the context of this Note, and altogether different pattern of marking, that the Division Bench of this Court interpreted Rule 11 of the said Rules and found that the said Rule or eligibility criteria adopted by the said Rule cannot be said to be irrational or arbitrary. The Division Bench held that it seeks to weed out students who have on the application of a reasonable and recognized test proved themselves to be unfit to continue training in medical course. When the Division Bench of this Court was confronted with the decision of the Apex Court in the case of *Abhijit (supra)* the Counsel for the University in fact stated before the Court that the Rule 11 of the said Rules be interpreted so as to be consistent with the interpretation placed on indential Rule by the Supreme Court in the case of *Abhijit (supra)*. In the fact situation that obtained before the Court, the Division Bench found that if non-appearance at the examination was because of reasons or circumstances beyond the control then non-appearance cannot be regarded as trial or as an unsuccessful attempt. The aforesaid decision of the Division Bench of this Court, in my opinion, does not run counter to the ratio of the decision of the Apex Court in the case of *Abhijit (supra)* nor does it dilute the said ratio. In the opinion of this Court, therefore, the decision of the Division Bench of this Court in the case of *P.P. Kanabar (supra)* has no application, whatsoever, to the fact situation obtaining before this Court. Secondly, the Division Bench of this Court by interpreting the Rule before it with a view to saving it from the vice of being ultra vires of Article 14 of the Constitution of India has interpreted the phrase "irrespective of his actual appearance" occurring in the said provision to mean "irrespective of his actual appearance, provided that non-appearance is not as a result of reasons beyond his control". The Division Bench fell that by adding such provision to the Rule or by reading down the provision the ends of justice will be met and the Rule was not required to be struck down. In fact, the aforesaid exercise is not required to be undertaken by this Court, more particularly, when the language employed in the Rules before this Court is parallel with and identical to the language employed in the Rules which came up for interpretation before the Apex Court in *Abhijit's* case (*supra*).

Deeming Fiction:

26. It was submitted by Mr. Girish Patel, learned Counsel appearing for the petitioner that in fact last part of Rule 18, i.e., phrase "non-appearance in the qualifying examination when due" is a deeming fiction enacted by the rule making authority. The Rule imposes the penalty of deduction of 15 marks on a candidate who has failed to pass the qualifying examination at the first trial or who has deliberately and for no justifiable reason, after keeping terms and filling in the admission form for appearing at the examination, taken drop or defaulted to appear. The rule making authority thereby wanted to attract best student on merit and to discourage or discount the failures or repetitors or droppers. However, the contingency of a student not appearing in the examination though he has kept the terms or has filled in the form of admission was intended to be

covered by creating deeming fiction that though such student has not appeared at the qualifying examination when due, it would be deemed that he has appeared and he has failed. When the Court is dealing with penal Rule or a Rule which seeks to disqualify student from admission to 1st M.B.B.S. Course by deducting 15 marks, it must be strictly construed and a deeming fiction enacted by the rule making authority cannot be permitted to apply to a case where the student was "not due for qualifying examination". By not keeping the terms for Std. XIIth examination and by filling in the form for admission for S.S.C.E. the petitioner has not rendered himself "due for qualifying examination". This was, exactly, the case before the Apex Court in Abhijit's case (supra). In such a situation, he submitted that firstly the Rule cannot have any application at all but even if the Rule is to be applied, only 15 marks could be deducted for non-appearance at the examination of March, 1994. The deeming fiction cannot be permitted to operate at the second examination also because admittedly in October, 1994 the petitioner has prosecuted his studies of Std. XIIth examination by keeping the terms and made himself qualified or eligible for appearing at the ensuing examination in the month of March, 1995. In his submission, this type of Rule interpreted subserve the purpose of Rule and not to supplant the purpose of attracting the meritorious and talented students to highly qualified courses. The petitioner being neither a failure nor a repetitor or dropper cannot, therefore, be subjected to penalty of deduction of 30 marks as by interpreting this very Rule another affiliated college to Gujarat University, namely, B.J. Medical College would deduct only 15 marks.

Even the different language employed in Rule 18 for first two contingencies and the third contingency is very material. For the contingency of each failure at examination or each drop at the qualifying examination, 15 marks shall be deducted. However, in the case of non-appearance at the qualifying examination when due, the rule making authority has not used the words "for such non-appearance".

Ordinarily, in a penal or deterrent provisions of this nature, interpretation beneficial to the candidate is to be encouraged and secondly it would be unwise for the Court to read some additional words in the Rule which are purposely and deliberately not introduced in the Rule. B.J. Medical College has, by noting this very difference in the Rule itself, rightly construed the Rule while N.H.L. Municipal Medical College has put the interpretation on the Rule which in the opinion of this Court is irrational, unreasonable and arbitrary.

27. At this stage, one additional submission made by Mr. M.R. Anand, learned G.P. appearing for respondent Nos. 1 to 3 is required to be noted and considered. He has submitted that since the Rule is followed and applied by respondent Nos. 1 to 3 from its inception and since it has operated for a long time and has stood the test of time, the practice should not be lightly interfered with. In my opinion, the submission is thoroughly misconceived. The answer to the submission is to be found in the authority relied upon by Mr. M.R. Anand, i.e., in the case of

Jayesh A. Joshipura (supra) where identical contention was raised by the University. The learned single Judge of this Court negated the contention by holding that the illegality, unconstitutionality or ultra vires character of an action of a public body cannot be validated by passage of time or unreasonable or irrational interpretation of Rule resulting into discriminatory treatment to meritorious students cannot be protected solely on the ground that the interpretation has not been subjected to challenge. The plea of time-honoured practice vigorously put forward cannot render any assistance to the case of respondent Nos. 1 to 3, and therefore, the said submission is also rejected.

28. Incidentally, Mr. Girish Patel has also invited the attention of this Court to the stand taken by the Gujarat University in Special Civil Application No. 10777 of 1995 while interpreting Rule for admission to M.S. or M.D. Courses (P.G. courses) which provided for deduction of marks. The stand of the University before this Court in such affidavit in para 2.1 was as under:

I further submit that in computation of the merits of students, the Faculty was of the opinion that there should be deduction of 1.5% of the marks for each unsuccessful trial. Formerly, the deduction was limited to 1% marks. The Faculty was of the opinion that in order to maintain better academic standards for the Post-graduate studies it is desirable to have deduction of 1.5% marks for every unsuccessful trial. Every student is expected to pass out the examination at the first attempt. If he is not able to successfully complete his academic year, it is just and proper that while equating his merits, deduction of 1.5% marks should be provided for. I submit that there is no discrimination as alleged and that such deduction is not arbitrary. The deduction provided for is for all students who compete for admission to the Post-graduate course, and that no grievance can be made by the petitioners on that ground. If the petitioners are repetitors the same shall apply to all the students. Needless to state that a person who has passed the examination at the first attempt is a better student and more meritorious than a student who has passed with more attempts. It is denied that there is any hardship or injustice to the students, as alleged.

29. Based on the aforesaid stand of the University that construction of Rule which provided for deduction of marks for repetitors or failures at the examination, Mr. Patel submitted that even the University regarded that one who fails at the examination is one considered to be a repetitor and he is put at discount. If the student has not appeared at all at the examination as he was not due for examination he cannot incur disqualification or liability of deduction of marks. In my opinion, much reliance cannot be placed upon the aforesaid averments contained in the affidavit-in-reply filed by the Gujarat University firstly because they were made in the context of other Rules for admission for P.G. courses, and secondly, because the University intended to discourage repetitors or failures and it wanted to encourage better and more meritorious students. The objective was to maintain better academic standards for the P.G. studies and therefore, deduction of 1.5% marks for every unsuccessful trial was insisted

upon. By reason of analogy it can be said that in fact deduction of marks should be for every unsuccessful trial or for every unsuccessful attempt or for deliberate non-appearance at the examination when due. However, when the student is not due for examination at all to apply the Rule would be unreasonable, irrational and arbitrary. Such application, in fact, would lead to discourage the meritorious students from getting admission to M.B.B.S. Course. It would result into development of frustration or secondly this may also lead to not getting admission to a college of one's own choice or liking. In development countries and even in India also the urge to get admission in the institutions which are rated high or which are rated as institutions of national repute is known to everyone and a judicial note of such fact can be taken. If a student of extraordinarily brilliance aspires for admission to such a colleges based on his own merit it cannot be said that he is fighting for luxury or that matter of choice is only a matter of luxury choice. Mr. M.R. Anand, learned G.P. for respondents No. 1 to 3 has categorically admitted that the N.H.L. Municipal Medical College is a premier institution imparting medical education and there is always unusual rush of more meritorious students to get admission in this institution in preference to admission to Govt. Medical College. This is usual phenomenon. The desire to get better education from a best available institution of national or international repute is, therefore, a natural desire and the meritorious student cannot be denied his right of just, equal and reasonable treatment solely because he can be admitted in any other institution.

30. In the opinion of this Court, the learned Counsel appearing for the petitioner is right in contending that the last part of the Rule 18 only creates a deeming fiction as was the case before the Apex Court in the case of Abhijit (supra). It is to be noted that what is to be deemed is a matter of fact, that is "deeming fiction". It is also to be noted that when a fact is to be deemed, its consequences and incidents are also to be deemed, that is to say, what follows from the deemed fact is also to be deemed. Therefore, even if it is to be held that the petitioner was due to appear at the examination in the month of March, 1994 the logical consequences and incidents must follow, namely, he has not appeared in that examination, and has incurred liability of deduction of 15 marks. However, when the petitioner was not due at all for qualifying examination in the month of October, 1994, the fiction cannot be further extended to the examination of October, 1994 by permitting the legal fiction to operate for second time to the disadvantage of the student, and thereby, making him liable for deduction of 30 marks. This is not a permissible way of reading the legal fiction. The legislature can introduce a statutory fiction and the Courts have to proceed upon to assume that state of affairs existed on the relevant date. In the oft-quoted observation of Lord Asquith in *East End Dwellings Co. Ltd v. Finsbury Borough Council*, the law as to deeming fiction is very pithily put in following words:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably

have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

31. If the Rule is to be read so as to mean that student was due for qualifying examination on the completion of two years, after passing H.S.S.C.E., it would at the most, be a case of treating the student as having appeared and as having failed to pass the examination. In fact, the student has not appeared at the examination as he has not kept the terms and has not filled in the form for appearing at the examination and has not rendered himself due for examination. However, by legislative fiction even if such cases are to be taken within the sweep of the Rule, the Rule shall have to be read in such a way that it does not render itself unreasonable or irrational. The interpretation placed by B.J. Medical College on the identical Rule is rational, reasonable, just and equitable while the interpretation placed on this Rule by the respondent Nos. 1 to 3 is irrational, unreasonable, arbitrary, capricious, unjust and unequitable resulting into discounting or discouraging a meritorious student from getting admission to 1st M.B.B.S. Course. In any case, the language of Rule 18 on literal interpretation would permit deduction of 15 marks only. In the first part of Rule deduction of 15 marks is contemplated for each failure or each drop. Such is not the case for non-appearance in the qualifying examination when due. In such a situation, the student would entail deduction of 15 marks only and that interpretation has found favour with B.J. Medical College and other Medical Colleges and it appears to be rational, reasonable, just, proper and equitable.

32. The result of aforesaid discussion is that in the opinion of this Court Rule 18 of the aforesaid Rules cannot have application to the case of the petitioner because as in the case of Abhijit (supra) the petitioner has not kept the terms of Std. XIIth and has not filled in the form of admission to examination and he was, therefore, not due for examination. In fact, he has not prosecuted his studies at all. He cannot, therefore, be said to be a student who was due for qualifying examination in the month of March, 1994. To regard such student as due for examination would tantamount to rendering interpretation of such Rule, by respondent Nos. 1 to 3 irrational, unreasonable and arbitrary. By rational and reasonable interpretation of said Rule, the Rule can be saved from the vice of arbitrariness and unreasonableness and that is exactly the endeavour done by the B.J. Medical College by interpreting the Rule reasonably and rationally. In the alternative, this Court holds that even if the last part of the said Rule is held to be applicable, as it creates a deeming fiction it cannot be permitted to operate beyond its scope so as to render the petitioner due for examination in the month of October, 1994 also and so as to entail liability of deduction of 30 marks. This is avoided by the B.J. Medical College while interpreting the Rule. The interpretation placed on the Rule by B.J. Medical College sounds reasonable, rational, just, proper and equitable.

Moulding the Relief:

33. On the aforesaid conclusions reached by this Court, the petition of the petitioner deserves to be allowed. In the relief clause of the petition, the petitioner has inter alia prayed for following reliefs:

- (i) suspending the operation of Rule 18 of the Rules at Annexure "A";
- (ii) restraining the respondents from enforcing, implementing or taking any action on the basis of the impugned Rule and accordingly from deducting 30 marks from the marks of the petitioner for the purposes of granting admission to the 1st M.B.B.S. Course in the respondent-college;
- (iii) directing the respondents to interpret Rule 18 in a reasonable and just manner and in accordance with the Fundamental Rights under the Constitution and not to deduct 30 marks from the petitioner's marks and to consider him for admission to the 1st M.B.B.S. Course on the basis of merit and marks without being influenced by Rule 18.

34. On the wrong interpretation of Rule 18 adopted by respondent Nos. 1 to 3 the respondents have applied the Rule 18 to the case of the petitioner. Firstly, the said Rule has no application to the case of the petitioner consistent with the ratio decidendi in the case of Abhijit (supra). Secondly, even if said Rule is held to be applicable to the case of the petitioner, on clear language employed in the Rule, a candidate would entail deduction of 15 marks only for non-appearance at the qualifying examination. If 15 marks only are deducted from the marks to be taken into consideration in the case of the petitioner, he would have definitely got the admission in the respondent No. 3's institution. It is this wrong, irrational, unreasonable and ultra vires interpretation which led to denying the petitioner admission to 1st year M.B.B.S. Course in Smt. N.H.L. Municipal Medical College, and he, therefore, is entitled to relief of getting admission in 1st year M.B.B.S. Course in Smt. N.H.L. Municipal Medical College. However, in the present case, because of grant of admission to 5th respondent in 1st year M.B.B.S. Course, who was admittedly being less meritorious and because of refusal of interim relief in favour of petitioner by the learned single Judge of this Court has continued his studies in 1st year M.B.B.S. Course for two terms, granting relief to the petitioner at this stage, therefore, would amount to unseating the 5th respondent from the 1st year M.B.B.S. Course, which he has vigorously followed at Smt. N.H.L. Municipal Medical College. Mr. Gautam Joshi, learned Advocate appearing for 5th respondent has in this connection invited the attention of this Court to the decision of the Apex Court in the case of Rajendra Prasad Mathur v. Karnataka University reported in AIR 1986 SC 1448. In the case before the Supreme Court students from Rajasthan though ineligible for admission to B.E. degree course of Karnataka University were admitted to certain Engineering College. Such students pursued their course for about four years under the order of the High Court and the Supreme Court. Supreme Court held that since the college giving admission to such students was responsible for wrongful

admission, such students should not suffer and they should be allowed to continue their studies. Similarly, in subsequent case of A. Sudha v. University of Mysore reported in AIR 1987 SC 2305 the Apex Court found that the student who sought admission after passing B.Sc. to Medical Course was not eligible under the Rules, but got admission. However, the Court found that the candidate had completed his 1st year M.B.B.S. Course and was innocent and had relied on representation of college authorities. The Court, therefore, directed not to cancel his admission. In the case before this Court, the 5th respondent cannot be said to be at fault. He has already got admission as per the merit list published by respondent No. 3 and he has also continued his studies for two terms. It would not, therefore, be just and proper to unseat him by directing cancellation of his admission.

35. Mr. Gautam Joshi, learned Advocate appearing for the respondent No. 5 has also submitted before this Court that in fact there was one vacancy in the 1st M.B.B.S. Course in Smt. N.H.L. Municipal Medical College. One student who was admitted against the quota of other States has failed to fill in two terms and has absented from classes continuously. He is even otherwise not eligible to appear in the examination. He has also submitted that there is yet another vacancy in the 1st M.B.B.S. Course where the petitioner could be accommodated. Mr. M.R. Anand, learned G.P. has after enquiry submitted before this Court that one student has attended first term but has failed to appear constantly without any cause for the entire second term. However, his admission cannot be cancelled by respondent Nos. 1 to 3 and, therefore, his seat cannot be treated as vacant. Be that as it may, in the opinion of this Court, the petitioner is entitled to admission to 1st M.B.B.S. Course and in the third term commencing from June 15, 1996 he is required to be admitted, and in this regard if any permission of the University is required, the University is directed to grant such permission. In the alternative, it is directed that in any case, if transfer from one college to another college during the course of 1st M.B.B.S. is not permissible under the Rules of the University, the respondent Nos. 1 to 3 are directed to give admission to the petitioner in 2nd M.B.B.S. Course in Smt. N.H.L. Municipal Medical College and for such purpose if the student is required to apply to the University for transfer from one college to another, he is directed to apply and the University is directed to grant such application and respondent Nos. 1 to 3 are directed to admit the petitioner in 2nd M.B.B.S. Course accordingly.

36. In the result, petition succeeds. Rule is made absolute accordingly. No costs. At this stage, Mr. M.R. Anand learned G.P. requested the Court to stay the operation of the judgment and order of this Court to enable the respondent Nos. 1 to 3 to take appropriate decision or to have further recourse to law. Request is granted and stay is granted upto July 1, 1996.