

(1990) 04 GUJ CK 0005

In the Gujarat High Court

Case No : Spl. Civil Application No's. 8694 of 1989 and 336, 410 and 573 of 1990

Prashant Pravinbhai Kanabar

APPELLANT

Vs

The Gujarat University and Others

RESPONDENT

Date of Decision : 11-04-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 115
Gujarat University Act, 1949 — Section 32

Citation : AIR 1991 Guj 23 : (1990) 2 GLR 350

Hon'ble Judges : J.U. Mehta, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : G.N. Desaid, P.G. Desai, Mohit S. Shah, S.B. Vakil and Bharat Jain, for the Appellant; M.D. Pandya, Govt. Pleader, S.N. Shelat and Y.N. Oza, for the Respondent

Judgement

G.T. Nanavati, J.—The petitioners in all these petitions are medical students. Some of them have passed Third M.B.B.S. examination; are at present undergoing Internship and they will be seeking admission to post-graduate degree/ diploma medical courses in the academic term this year beginning from March, 1990. They are challenging the Rules Governing Admissions to Post-Graduate Degree & Diploma Medical Courses other than M. C. H. & D. M., at the affiliated Medical Colleges, effective from 1-1-1989, as some of the Rules will certainly and some are likely to affect them adversely in determination of their merit for the purpose of admission to post-graduate medical courses.

2. Petitioners in Special Civil Application No. 336/90 are students, at present studying in First M.B.B.S. They are all outsiders, in the sense that they passed their Higher Secondary Certificate Examination or equivalent examination from other States and not from Gujarat. They got admission to First M.B.B.S. course in B. J. Medical College run by the Government of Gujarat on the basis of their performance at the Pre-Medical Entrance Test conducted by the Central Board of

School Education. They and some of the petitioners of Special Civil Application No, 8649 / 89 are not now seeking admission to post-graduate degree/diploma medical courses, but they have approached this Court as the new rules will affect them adversely and because validity of new rules is challenged by others and whatever is decided in their petitions will be applicable to them.

3. In the area of Gujarat University, there are two Medical Colleges - one is B. J. 24 Medical College at Ahmedabad run by the Government and the second is N.H.L. Municipal Medical College run by the Ahmedabad Municipal Corporation. Both these Institutions have the facility of imparting post graduate instructions. Both these institutions are approved by the University for that purpose. Though the said two Institutions are under the administrative control of the Government and the Ahmedabad Municipal Corporation, respectively, as far as academic aspect is concerned, they are under the control of the Gujarat University. Any admission to or registration in post-graduate courses can be given only by the University and not by the Government or the Municipal Corporation. However, right from the time the University was established, registration in post-graduate medical courses was governed by the rules made by the Government in exercise of its administrative powers. Some of those rules were challenged in 1982 in this Court, and while disposing of the said writ petition, this Court directed the University to frame rules for admission to post-graduate courses. Accordingly the Gujarat University, in exercise of its powers under the Gujarat University Act, 1949 and the Ordinances made there under, framed rules known as Rules for Preparation of Merit List for Admission to P. G. Medical Course, effective from the year 1985. Amendments to the rules were made from time to time. In October 1988, the University again amended the Rules in view

of the directive of the Supreme Court that 25% of the total available seats in academic year in various post-graduate degree/diploma courses in each subject should be filled up on the basis of All India Competitive Entrance Examination for admission to post graduate medical courses and the recommendations made by an Expert Committee appointed by the University to fix the criteria for judging merits of the students for admission to post-graduate courses. Those Rules were notified and published for the benefit of the students in October, 1988 and were made effective from January 1, 1989. Rules relevant for our purposes are quoted below:

"All India Open Seats:

1.0 As per the directive of Hon'ble Supreme Court of India 25% of the total available seats in Academic year in various post-graduate Degree and Diploma Courses in each subject will be filled up on the basis of "All India Competitive Entrance Examination for admission to Post-Graduate Medical Courses (MD/ MS/ Diploma).

1.1 Placement of these candidates under particular Post-Graduate Teacher shall be decided by the "Selection Committee" of this University.

1.2 In case the seats reserved in R. 1.0 remain vacant because of non-availability of candidates, the same will be treated as open and will be treated as open and will be filled up from the Merit List of eligible candidates under R. 2.

2.0 Remaining 75% (or more) of total seats after R. 1.0 in Post-Graduate Courses will be filled up by the "Selection Committee" of the University.

2.1 For this purpose selection will be done once each Academic Term.

Second Academic Term: 1st July to 31st December.

2.2 Seats allotted under R. 2.0 will be distributed in the ratio of 3 : 1, for first and Second Academic Terms respectively.

2.3 In case of unusual circumstances of admission dates due to reasons beyond control, rational adjustment will be made by the University.

3.0 Criteria of Eligibility for candidates other than those covered under R. 1.0

Selection of candidates for these seats will be done categorywise on the basis of merit laid down as hereinafter. The candidate must have completed the Internship (Compulsory Housemanship) before the date of Starting of the course as decided by University (1 January and 1 July).

xx xx xx 5.0 Determination of Merit Order

Separate Merit Lists for each category/ caste shall be prepared.

5.1 2.5% of total Marks shall be deducted for each failure or a drop at Third M.B.B.S. examination from the original marks obtained. For this purpose non-appearance in examination when due to appear will be treated at par and entail deduction of 2.5 marks.

5.2 Procedure.

5.2 (a) Total Marks obtained in Third M.B.B.S. Examination with deduction of 2.5% of total marks as shown in R. 5.1 will be considered the final marks for determination of Merit Order.

(b) In case the marks obtained by the candidate are equal in 5.2(a), candidate with higher marks at Second M.B.B.S. examination will be placed higher.

(c) Even after application of R. 5.2(b), if the candidates have equal marks, candidate having higher marks at First M.B.B.S. examination will be placed higher in merit.

xx xx xx 9. University reserves the right to introduce any new rule or to make changes in any of the existing rules at any time to deal with diverse problems arising out of infinite variety of situations. "

4. Even when the Gujarat University notified and published the Rules, which were to become effective from 1- 1 - 1989, it had also notified and published, along

with the said Rules , 5.1 and 5.2, which were to replace original Rr. 5.1 and 5.2 with effect from 1-1-1990. So also R. 11, which was to become effective from 1-1-1990, was published simultaneously. The said Rules are reproduced below:

"5.1 The University shall prepare "Merit Lists" in respect of Rr. 2, 3 and 4 on the following basis:

(i) percentage upto 2 decimals of marks obtained by the candidate at Third M.B.B.S. Examination multiplied by 2.

(ii) Percentage upto 2 decimals of marks obtained by the candidate at Second M.B.B.S. Examination.

I(iii) Percentage upto 2 decimals of marks obtained by the candidate at First M.B.B.S. Examination.

(iv) Percentage upto 2 decimals of marks obtained by the candidate at H.S.C. Examination in the subject of Physics, Chemistry, Biology and Mathematics, all theory only.

(v) The percentage in above calculation should be modified by deduction of 2.5 for each unsuccessful trial in the concerned examination. "Unsuccessful trial" means the number of terms he has lost after he has become due, irrespective of his appearance.

5.2 Total of (i), (ii), (iii) and (iv) is modified by (v) shall be considered for the "Merit List

11. Eligibility: Barring reserved seats under R. 1, only those candidates who fulfill the following conditions shall be eligible for admission P.G. Medical Course:

(a) For candidates belonging to reservation under R. 4:

Those who have passed First M.B.B.S. Examination at Ist, 2nd or 3rd trial; Second M.B.B.S. Exam. at Ist or 2nd or 3rd trial and Third M.B.B.S. Exam. at Ist, 2nd, 3rd or 4th trial.

(b) For rest of the candidates:

Those who have passed Ist M.B.B.S. Examination at Ist or 2nd trial; Second M.B.B.S. Exam. at Ist or 2nd trial and third M.B.B.S. Exam. at Ist, 2nd or 3rd trial.

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 examinations.

This R. I I will be applicable for admissions. from 1-1-1990 onwards."

5. Under the old Rules made by the Gujarat University as well as by the Government, admissions to the post-graduate medical courses were to be given according to the merit lists prepared according to those Rules. Till 1990, merit

list was prepared according to the marks obtained by the students at the Final M.B.B.S. examination with a modification made therein by way of deduction of certain percentage of marks for each extra trial. According to new Rr. 5.1 and 5.2, which are now applicable, separate Merit List for each category of students shall have to be prepared on the basis of the marks obtained by the candidate not merely at the Third M.B.B.S. Examination but at the H.S.C. Examination, First M.B.B.S. Examination and Second M.B.B.S. Examination also. Marks obtained at the Third M.B.B.S. Examination will have to be multiplied by 2. Thus, higher weightage is given to the result of Third M.B.B.S. Examination. But even after such weightage is given, merit of the candidate will be judged by the total marks obtained by him at all those examinations of course, after they are suitably modified by deduction of 2.5% for each unsuccessful trial. These new Rules are challenged because they provide for taking into consideration of the marks obtained at

H.S.C. Examination, First M.B.B.S. Examination and Second M.B.B.S. Examination, and also because sub-rule (v) of R. 5.1 defines "Unsuccessful trial" to mean the number of terms a candidate has lost after he has become due, irrespective of his appearance. R. 11 lays down eligibility criteria for admission to post-graduate medical courses. The criterion fixed for candidates belonging to reserved category under R. 4 is slightly lenient than the criterion fixed for the rest of the candidates. Only those candidates, who have passed the First M.B.B.S. Examination at 1st or 2nd trial, Second M.B.B.S. Examination at 1st or 2nd trial and Third M.B.B.S. Examination at 1st, 2nd or 3rd trial, are now eligible for admission to postgraduate medical courses. It would mean that a candidate who has not passed the said examinations at the specified trials will not be

considered as eligible for admission. As this rule is likely to -make petitioner of Special Civil Application No. 410/90 ineligible, he has challenged the validity of this rule, particularly the note thereto, which provides that trial is deemed to take place when he is due to appear for the examination, irrespective of his actual appearance.

6. Petitioner in Special Civil Application No. 410 of 1990 passed SSC examination in March 1980, Higher Secondary Certificate Examination in April 1982 and joined the Medical Course (First M.B.B.S.) in June, 1982. It is his contention that even for admission to post-graduate medical courses, the Rules which were in force in June, 1982 or November 1983 and June, 1984, when he was required to take a drop in the First M.B.B.S. examination for reasons of health, must be held to be applicable to him. The contention raised in his petition is that if the new rules are applied to him, then that would cause serious prejudice to him inasmuch as he would now stand dis-qualified for postgraduate studies and, therefore, application of new Rules to him and students like him should be regarded as unreasonable.

7. In Special Civil Application No. 8694/ 89 the contention taken is that the petitioners and other similarly situated students all along relied upon the existing

practice and the rules, and they had prosecuted their studies and conducted themselves accordingly relying upon them. Therefore, on the principle of promissory estoppel, the new Rules should be held as non-applicable to them. However, during the hearing of these petitions, the learned Counsel went a step forward and even challenged the power of the Gujarat University to make new Rules applicable to all, including the petitioners, with effect from 1-1-1990. Though they conceded the power of the University to frame rules for admission to post-graduate medical courses, it was submitted by them that the University cannot take away the rights of the students which became available to them on their admission to First M.B.B.S. course. In other words, Gujarat University has no power to make rules for admission to post-graduate medical courses with retrospective operation. It was submitted that on admission to First Year M.B.B.S. course, the petitioners and others like them acquired a right to continue and complete their medical education, of course, subject to the requirements of the rules like minimum attendance, passing of examination with minimum percentage of marks etc. Such a right would imply not merely continuation of the medical study till the student acquires the M.B.B.S. degree, but would also imply a right to prosecute intensive study in those subjects at the post-graduate; level. According to the learned counsel, prosecuting post-graduate studies is really a continuation of the medical education which started with admission to First M.B.B.S. course and till the student completes his medical education, including post-graduate studies, the set of rules which were applicable to him when he joined his First M.B.B.S. course should continue to govern him till he completes his medical education.

8. On the other hand, it was submitted by the learned counsel appearing for the University that till a medical student is given admission to post-graduate medical course, he acquires no right and, therefore, the University, by framing rules which have become effective from I- 1- 1989 and I- I - 1990, cannot be said to have taken away any right of a medical student and thus the contention raised on behalf of the petitioners is really misconceived,

9. In order to appreciate these rival contentions, it would be necessary to examine the nature of the right which is claimed by the petitioners and disputed by the University. The Supreme Court in *Dr Muneeb-ul-rehman Haroon and Others Vs. Government of Jammu and Kashmir State and Others*, , did not accept the contention that such a right is a fundamental right under Art. 19 of the Constitution. The learned counsel, appearing for the petitioners, were unable to point out any provision of law under which the right claimed by them can be regarded as a legal right. Obviously, the "only right which the petitioners can claim is the one which is available to them under Art. 14 of the Constitution. This Court in *Kumari Jayshree v. State of Gujarat* (1979) 20 Guj LR 614, while, considering the rules for admission to First M.B.B.S. course, observed that, "till admissions are given, no rights are acquired". As pointed out in that case, the protection available to such candidates is under Art. 14 of the Constitution. As the petitioners cannot be said to have acquired any right as claimed on their

admission to First M.B.B.S. course, or when they passed the Final M.B.B.S. Examination, the question of taking away their right really does not arise and, therefore, the contention that new rules are violation of Art. 14 of the Constitution inasmuch as they are made retrospective in operation, as they are made applicable to candidates like the petitioners, with retrospective, operation must be rejected. This Court further pointed out in that case that rules with retrospective operation can be made unless the exercise of such power is found to be violative of Art. 14 of the Constitution. Though such a question had not directly arisen before the Supreme Court in *University of Mysore Vs. Gopal Gowda and Another*, , it observed, while interpreting the Regulations framed by the Academic Council, that the power conferred on it by the Mysore University Act to control and generally regulate teaching courses, of studies to be pursued and maintenance of the standards thereof, is extended not merely to prescribing minimum qualifications for admission, course of study and minimum attendance at an Institution, which may qualify a student for admission to examination, but also conferred an authority to refuse to grant a degree/ diploma certificate or other academic distinction to students who fail to satisfy the examiners at the final examination

and to direct that a student who is proved not to have the ability or the aptitude to complete the course within a reasonable time to discontinue the course. This decision of the Supreme Court in a way supports the view that even in respect of students, who can be said to be midstream in, a sense, rules can be made which can affect their chances or even make them ineligible for further higher studies.

10. For these reasons, the decision relied upon by Mr. Vakil in the case of *Bonning v. Dodsley* (1982) 1 All ER 612, cannot be of any help to him. The question, which had arisen in that case, was whether as a result of

the provisions of Matrimonial Proceedings and Property Act, 1970, a person who had remarried before 1st January, 1971, and had a right to apply for ancillary relief against his former spouse was deprived of the said right without having had the opportunity of choosing not to remarry in order to retain his rights to financial provisions against the former spouse. In that case, the right which was claimed and which was held not to have been taken away was a legal right. The question, which had fallen for consideration was also quite different. Really what has been held in that case is that a literal construction of the new rules, would have produced erroneous result which could not have been intended by the Parliament and, therefore, the construction which was consistent with the real intention of the Parliament deserved to be adopted.

11. Realising the difficulty in pitching their case so high, the learned counsel, in the alternative, submitted that on the principle of promissory estoppel the University is estopped from making such variation in the criteria for admission to post-graduate studies with respect to the petitioners and other similarly situated students who prosecuted their studies relying on the then existing practice and the rules. It was submitted that the petitioners and students similarly situated

relied upon the existing practice and the rules and had, therefore, either taken more drops at the First and Second M.B.B.S. Examinations with a view to prepare themselves in a better manner, or had not put in their best at the First and Second M.B.B.S. Examination. They had all the while proceeded on the basis that only the performance at the final M.B.B.S. Examination would be considered for the purpose of judging their eligibility and merit for the purpose of prosecuting postgraduate medical courses. If they had been told that the criterion for judging their competence and eligibility was likely to be changed, and that the performance even at H.S.C., First M.B.B.S. and Second M.B.B.S. Examinations was also likely to be taken into consideration, they would have put in their best at those examinations, and would not have taken more drops at the First or Second M.B.B.S. Examination and avoided the disqualification or ineligibility in prosecuting post-graduate studies. It was urged that when the petitioners appeared at the First and Second M.B.B.S. Examinations, they anticipated that only the marks obtained at the Final M.B.B.S Examination would be considered for the purpose of evaluating their merits for post-graduate medical studies. It was submitted that relying upon the rules, as they existed then, the petitioners and students similarly situated conducted themselves and pursued their studies in a particular manner and, therefore, qua them the University should not be permitted to change the rules and apply new rules to them.

12. In support of their contention, the learned counsel relied upon the decision of the Supreme Court in *Andhra Kesari Educational Society Vs. Director of School Education and Others*, . In that case, the students who were admitted on the strength of an interim order passed by the Supreme Court were permitted to appear at the examination. It was under these circumstances that the Supreme Court took the view that the students were perhaps led to believe that the Court had permitted the Institution to admit them and that as they had undergone the prescribed course with the necessary syllabi and other matters relating thereto, it was not proper "to drive them to the streets" and not to permit them to appear in the examination. This is not a case of that type and it does not in any manner support the contention raised on behalf of the petitioners.

13. It is difficult to appreciate how the principle of promissory estoppel can be applied to the facts of these cases. While the petitioner and similarly situated students were admitted to First M.B.B.S. course, no promise can be said to have been made by the University that the same rules which were then governing the admissions to postgraduate medical courses would continue to apply to them. It is also difficult to believe that the petitioners and others like them joined M.B.B.S. course because the rules governing admission to post-graduate medical courses provided that only the marks obtained at the final M.B.B.S. Examination would be taken into consideration for judging their merits, and that they would not have joined the medical course if those rules were going to be changed by the University. It is also not possible to accept that when they joined the medical course all of them had done so with a view to prosecute postgraduate medical

course also. No such case has been pleaded specifically, nor is it possible to accept the same. As pointed out above, the Gujarat University framed the Rules for the first time in 1985. Till then, the criterion which was fixed by the State Government from time to time was applied. The University framed the Rules in exercise of its statutory powers. For that reason also the principle of promissory estoppel cannot be applied. Suitable amendments were made therein from time to time.

14. This Court, while considering the challenge, though on different grounds, to the Registration Rules nor residency System For Post-Graduate Medical Students, rejected the contention of promissory estoppel and, observed in *Dr. Himanshu Purshottamdas v. State of Gujarat* 1983 (2) Guj LR 1414: (AIR 1984 NOC 65), that:

"In so far as the University enacted the Registration Rules in exercise of its statutory powers pursuant to the direction given by this Court in the writ issued in Special Civil Application No. 3704 of 1982, the University was, in effect and in substance, exercising legislative powers delegated to it by the Government and, therefore, there cannot be any estoppel against law."

In that case, it was contended that the petitioners of that case and similarly situated medical graduates had refused to avail of the admission to Residency Housemanship relying upon representation contained in those rules, and that they were seeking admission within a period of four years of the passing of the Third M.B.B.S. Examination. If relying on this representation, they had changed their position to their detriment on the basis that they would wait for a period of four years from the date of passing of the Third M.B.B.S. Examination so that they might be able to obtain residency in the subject of their choice, the University could not enact rules which had the effect of precluding them from seeking admission to subject of their choice, and consequently the residency in that subject. This Court observed that the University by framing such rules could not have made any representation which had induced the petitioners to change their position to their prejudice. A contention similar in nature based on anticipation or exception was raised by some medical students with respect to R. 3.1 of the Rules which became effective from I- I - 1989 which provided for preference to candidates graduating from the same college in Special Civil Application No. 3867 of 1989 before this Court. While rejecting that contention, this Court observed that the learned counsel for the respondents who had raised that contention, "did not and could not put the case to the higher level of promissory estoppel, realising fully that the promissory estoppel is not available against statute or the Constitution". It further held that, "since there is no promise that the rule would remain the same and since there is no action by these students to their detriment, the factual basis for raising an argument of promissory estoppel also does not arise."

15. The Supreme Court in *Punjab University Vs. Subash Chander and Another*, , while considering a regulation dealing with giving of grace marks, held that "no

promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alternation of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating thereto which were in force at the time of his admission would continue to be applied to him until he finished his whole course". In that case the medical student had joined M.B.B.S. course in 1956. He appeared at the final M.B.B.S. Examination in 1974. When he joined the M.B.B.S. course, the rules provided for granting certain grace marks. This rule was changed in the year 1970. A contention was raised that he should be governed by the rules which were prevailing in 1964 and not by the new rules of 1970 as that would amount to giving 1970 rules retrospective operation so far as that student was concerned. The Supreme Court rejected this contention and held that merely because the rules of 1970 were applied to that student, it cannot be said they were given retrospective operation. Therefore, the contention raised by the learned counsel for the petitioners based on principle of promissory estoppel cannot be accepted.

16. In the alternative, it was submitted that in order to be fair and just to the petitioners and similarly situated students, and in order to meet the demand of equality and justice for the purpose of admission to post-graduate medical courses, such students should be governed not by the new Rules but by the Rules which were applicable when they had joined the First M. B. B. S. course and, in any case, when they had passed the final M.B.B.S. Examination. In Special Civil Application No. 410 of 1990 such a contention has been raised in the affidavit-in-rejoinder by stating as follows: "...Even if the University has a right to vacillate on the criteria for eligibility for admission to Post graduate Medical Courses by altering the emphasis on want it calls "consistently good result" and "spurt of good performance", the University should not be permitted to do so in relation to the batches of students who went through the Medical Course at these examinations on the basis that admission to Post-graduate Medical Courses would be governed by the marks obtained at the Third M.B.B.S. Examination and not in all M.B.B.S. Examinations. Permitting the

University to vacillate on these standards would be to permit the University to change its norms for eligibility for admission to Post graduate Medical Courses so as to choose and pick students to be made eligible or ineligible for admission to Post-graduate Medical Courses in a most arbitrary and unreasonable manner"

17. In Special Civil Application No. 8694/ 89, also this contention has been raised, though not in the same terms in which it was raised at the time of hearing of these petitions. It was submitted that the petitioners reasonably anticipated that the same criterion for admission to post-graduate studies, which was prevailing till 1989, would be applied to them and they had, therefore, prosecuted their studies and appeared in the third M.B.B.S. Examination on that basis. In support of their contention, learned counsel relied upon the

observations made by the Supreme Court in paragraphs 8 and 9 in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, . They have particularly relied upon the following observation made in paragraph 9:

"9 . The admissions to the post-graduate courses in such cases take place after the completion of the house job. Now if the principle laid down by us in the judgment were to govern such admissions from the

academic year 1985-86, it would cause considerable hardship to the students who have selected house job in a particular speciality prior to the delivery of the judgment on 22nd June, 1984 on the basis of reasonable

anticipation that according to the old rules governing admissions which prevailed prior to the date of the judgment, they would be able to secure admission to the post graduate course in the speciality chosen by them but who may now, as pointed out in the paragraphs, be unable to secure such admissions under the principle governing admissions laid down in the judgment"

Relying upon this observation, it was urged that if the petitioners on the basis of reasonable anticipation conducted themselves in a particular manner, then, it would not be fair and just to deprive them of the benefit of the old rules and to apply new rules which put them in a dis-advantageous position. The observations made by the Supreme Court cannot be read out of context and de hors the facts of that case. In that case the petitioners had passed heir M.B.B.S. Examination in July, 1982. After completing Internship of one year, they took up their House job in July, 1982. At that time admissions to post-graduate courses were governed by the old rules which provided for reservation of 75% seats for students passing M.B.B.S. Examination. from the same Institution. The petitioners had reasonably anticipated that if they took a particular speciality, they would be able to secure admission to the post-graduate course in that speciality on the basis of institutional preference and basing themselves upon this anticipation they selected the speciality for the house job. It was, therefore, urged on their behalf that if the old Rules had continued to prevail in the academic year 1985-,86 and had not been set at naught by the judgment of the Supreme Court delivered on 22nd June, 1984, they would have been able to secure admission to the post-graduate course in the speciality chosen by them for the house job. It was in the context of these facts and the contention raised that the Supreme Court made the observations quoted above. It was in this context that it further observed that, "it would not therefore be fair and just to hold that in case of students who have taken up house job in a particular speciality prior to the delivery of the judgment dated 22nd June, 1986, their admissions to the two year postgraduate course during the academic year 1985-86 should be governed by the new principle laid down in the judgment."

18. This Court in Special Civil Application No. 3867 of 1989, which decision has been referred to earlier, after considering the judgment of the Supreme Court in the case of Dr. Dinesh Kumar (supra), rejected a similar contention based upon

anticipation and expectation. While rejecting that contention, it was observed as under:

".....This concept of anticipation of the students is sought to be based on the knowledge of the existing rule and having their expectation and anticipation on the sameA much weaker or to say a non existing legal ground is sought to be made out by this concept of anticipation. It has no legal basis and it cannot stand the test of legality and constitutionality. The cases relied by these respondents are the cases where admissions were already given and academic term had expired and the students had taken up the course and their career for the particular speciality was in stake.

We agree with the view taken in that case and, therefore, this contention raised on behalf of the petitioners, based upon reasonable anticipation and expectation, must be rejected.

19. It was next urged that the new Rules would certainly prejudicially affect the petitioners and it could not have been the intention of the University to hurt them in that manner. For that reason also it should be held that batches of students like the petitioners for the purpose of admission to post-graduate medical courses, should be governed by the old Rules and not by the Rules which have become effective from I- I - 1990. In their reply affidavit, the University has specifically stated that it intended to apply the new Rules which had become effective from 1-1-1989 to all the students who sought admission to postgraduate medical studies in January and July, 1989 and the Rules which have become effective from 1-1-1990 to all the students, who would be seeking admission to the pos graduate medical courses in the year 1990. It is, therefore not possible to accept the contention that the University could not have intended and did not intend to apply the new Rules to the petitioners and similarly situated medical students. It was urged by Mr. Desai, learned Advocate appearing for the petitioners in Special Civil Application No. 8694/ 89 that the petitioners were required to appear in the Final M.B.B.S. examination in Jan. 1989 as the University did not hold the examination in time. It is for that reason that they are now required to seek admission in the term beginning from January, 1990. If the University had held the examination in time, then they would have been required to seek admission to the post-graduate medical course in July, 1989. Therefore, though the petitioners are now seeking admission in 1990, they should really be considered as a batch of students seeking admissions in July term of 1989 and for that reason the rules which were in force in July, 1989 should be applied to them. He further submitted that if 1990 Rules are applied to them, then that would cause undue hardships to the petitioners and surely that could not have been the intention of the University. In the first place, as pointed out by the University, the final M.B.B.S. examination, so far as the petitioners are concerned, could not be held earlier because such a situation was brought about by the students themselves and not because of any default on the part of the University. That examination could not be held in time because of an

agitation raised by the students. That apart the fact remains that the petitioners appeared in the final M.B.B.S. examination only in January, 1989 and had thus become eligible for Post-Graduate studies in January, 1990 only on completion of one year's Internship. Whether benefit of the old Rules should be extended to them or not is the University to decide by way of a Policy decision. It cannot be said that by not extending that benefit to the petitioners and others like them, the University acted in an unreasonable manner. It is difficult to appreciate how students joining post-graduate medical studies in January, 1989 should be regarded as students having joined the Post graduate Medical Course in July, 1989. That would amount to continuing an abnormal situation and if we accept such a contention, we would be disrupting the process of normalisation of admissions and holding of examination in time. If, in order to achieve equality via uniformity, the University has decided to apply these Rules to all candidates, seeking admissions to post-graduate studies from January, 1990 onwards, it cannot be said that in doing so it has acted arbitrarily either because it will be treating unequals as equals or effecting a change immediately when it was not absolutely necessary to do so. Even when unequals are treated as equals, a decision taken by a body like the University, should not be interfered with by the Court unless the object sought to be achieved thereby is found unreasonable and the inequality is substantial.

20. Relying upon the decisions of the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, and *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, , it was submitted by the learned counsel that there is scope for interpretation of these Rules and in order to avoid hardships to the petitioners, they can be so interpreted as to apply to the petitioners from July, 1990. We fail to appreciate how the Rules can be so interpreted. It was then urged that at any rate this Court should give a direction, as was done by the Supreme Court in *Dr. Dinesh Kumar's* case (*supra*), that the present Rules may be implemented with respect to the petitioners and similarly situated students from July, 1990. This the Court should do in order to be fair and just to the petitioners. Once we find that the University has changed the Rules by way of a policy decision and in order to achieve the object of securing admissions for the best talents and has done so bona fide in exercise of the powers available to it, it would be improper to direct the University not to apply those Rules to certain students or to direct them to apply such Rules batchwise and from a future date. As observed by the Supreme Court in *Krishna Priya Ganguly and Others Vs. University of Lucknow and Others*, . It is not for the Courts to rewrite or relax the Rules framed by academic bodies or to devise their own criteria and to introduce their notions in such academic matters and to give directions to such bodies. Therefore , this contention raised on behalf of the petitioners has to be rejected.

21. It was urged by the learned counsel appearing for the petitioners that if the Rules which have become effective from 1990 are held applicable to them, then this Court should strike down Rules 5.1, 5.2 and I I as they are violative of

Article 14 of the Constitution. Petitioner in Special Civil Application No. 4 10 of 1990 is really concerned with Rule I I only, but as Rule 5. 1(v) also provides that unsuccessful trial would mean the number of terms a candidate has lost after he has become due, irrespective of his appearance, he has challenged R.5. I (v) also. Petitioners in Special Civil Application No. 573/90 have challenged the validity of R. 11 only. The challenge raised by Mr. Shah, appearing for petitioners in Special Civil. Application No. 336/ 90 is confined to Rules 5.1 and 5.2 and that is because R. 5.1 provides for taking into consideration the marks obtained by a candidate at the HSC examination also while preparing the merit list. Petitioners in Special Civil Application No. 8694/ 89 have restricted their challenge to Rules 5.1 and 5.2.

22. It was submitted by the learned counsel appearing for the petitioners that R. 5, in so far as it provides for taking into consideration the marks obtained by the candidates at the 2nd M.B.B.S. examination, Ist M.B.B.S. examination and HSC Examination for judging the merits of the candidates, they should be regarded as irrational and arbitrary and, therefore, violative of Art. 14 of the Constitution. It was submitted that what should be regarded as proper criterion for granting admission to post-graduate medical course is the ability and merit of the student to prosecute further studies. That can well be judged from his marks obtained at the 3rd M.B.B.S. examination. The subjects, which are prescribed for the HSC examination have really no relevance to the subjects which are taught at the post-graduate level. Even when a medical student is undergoing training during Ist M.B.B.S. and 2nd M.B.B.S. courses, he is taught subjects of Anatomy, Physiology, Bio-Chemistry, Pharmacology, Pathology, Micro-Biology and Forensic Medicine only generally. It is really during the 3rd M.B.B.S. course that he is taught Medicine, Surgery, Gynaec and Obstetrics and Preventive and Social Medicine. It is really at that stage that he is taught subjects intensively. Only those subjects which are taught at the 3rd M.B.B.S. course are really essential for practising as a doctor. Moreover, at the 3rd M.B.B.S. examination, a student is tested even with respect to subjects taught during the First and Second M.B.B.S. courses. Thus, the 3rd M.B.B.S. examination is the real comprehensive examination and only at that examination it can be said that the ability of the student to acquire M.B.B.S. Degree or to prosecute further studies is tested. It was, therefore, submitted that even while conceding the contention raised by the University that admissions to Post-Graduate Medical Courses should be secured to the best talents the method adopted by the University by framing new Rules cannot be said to have rational nexus with the object sought to be achieved.

23. In reply to this contention what has been pointed out by the University in its reply affidavit is that subjects which are taught at the Ist M.B.B.S. and 2nd M.B.B.S. examinations are basic subjects and any student who wants to prosecute post-graduate studies in Medicine must have sound knowledge of the same. It is further pointed out that the University had appointed a Committee consisting of eminent doctors, experienced teachers and academicians for suggesting the eligibility criteria for admission to the Postgraduate course. The

said Committee recommended that the eligibility of the student for that purpose should be considered on the basis of his merit judged from the performance all throughout his career. It was therefore recommended that the admission criteria for that purpose should be broad-based and for the purpose of giving training in M.D. and M.S. courses, a student, who has throughout his career held consistently good results, should be preferred to another having a spurt of good performance at times only. The Committee further suggested that though weightage may be given to the performance of a candidate at the final M.B.B.S. examination, it was desirable to see his performance at the Higher Secondary Certificate, Ist M.B.B.S. and 2nd M.B.B.S. examinations also. The University accepted the recommendations of the Committee and by way of policy decided to broad-base the admission criteria. Rules which have now become applicable from I- I - 1990 seek to achieve that object.

24. It has always been the approach of the Courts in such academic matters not to substitute their own opinion or views for the opinion or views expressed by expert bodies consisting of experienced teachers and academicians. While considering the challenge to the eligibility criteria fixed by Jawaharlal Nehru University for admission to the entrance examination for post-graduate courses, the Supreme Court in *J. N. U. Students Union v. Jawaharlal Nehru University* AIR 1986 SC 567, observed that it is not for the Court to venture to pronounce upon question so purely academic in nature. In *Krishna Priya Ganguly and Others Vs. University of Lucknow and Others*, , the Supreme Court observed that as the Academic Body had made the marks obtained at the M.B.B.S. examination as a criterion, admissions had to be given on such criterion and the High Court could not have introduced its own notions in such academic matter. It went on to observe that the High Court would not be competent to do so and had no jurisdiction to import its own ideology. Decisions taken by Academic Bodies in such matters are in the nature of policy decisions, and it would not be proper for the Courts to interfere with such policy decisions, unless they are found to be unreasonable or arbitrary. There can be two opinions with respect to such policy decisions, but the Court cannot strike down such decisions because the other view appears to it to be better or more desirable. Nor can such decisions be invalidated on the ground of arbitrariness or unreasonableness merely because they are likely to cause hardship to some individuals: As pointed out by this Court in *Dr. Vikram Shah v. State* 1983 (1) 24 Guj LR 554, "it is not safe to test the constitutionality of a rule on the touchstone of fortunes of individuals. No matter with what care, objectivity and foresight a rule is framed, some hardship, inconvenience or injustice is bound to result to some one".

Therefore, while judging the validity of rules 5.1, 5.2 and 11, what we will have to consider is whether the method adopted by the University for judging suitability of a candidate for post-graduate study is rational or not, and whether it has a reasonable nexus with the object sought to be achieved. The object sought to be achieved by the rules is obviously to secure admission to postgraduate courses to best talents. For judging merit of the student his

performance at the examination is generally regarded as a sound test. If for judging his merit the University decides to take into consideration his performance at all the examinations at undergraduate level, instead of considering his performance at the last examination, which would qualify him for post-graduate studies, it cannot be said that adoption of such an eligibility criterion is arbitrary or unreasonable. Whether eligibility criteria should be broad-based or not is really for the University to decide, and it would not be proper for the Court to substitute its own views for the criteria fixed by the University. Even if it is accepted, as contended by the learned counsel for the petitioners, that a student while undergoing Ist M.B.B.S. and 2nd M.B.B.S. courses is taught only general and basic aspects of the subjects of Anatomy, Physiology, Bio-chemistry, Pharmacology, Pathology, Micro-Biology and forensic Medicine, it cannot be said that those subjects are not basic and have no relevance to the postgraduate studies in Medicine. Merely because a student, while preparing for the 3rd M.B.B.S. examination, is taught subjects more intensively, it cannot be said that only that examination can provide a dependable test for judging the ability of that student for post-graduate studies. Obviously, when a student is being prepared for M.B.B.S. Degree course, he would be taught subjects which are necessary for making him a good doctor. It is, therefore, difficult to appreciate how the eligibility criteria requiring consideration of marks at all the M.B.B.S. examination be regarded as irrational or arbitrary. The object of the rules is to secure admission to post-graduate medical course to best talents and the broad-based standard which is now fixed by the University for judging the eligibility of a candidate has definitely a rational nexus with the object sought to be achieved. If performance of a student is consistently good at all the three M.B.B.S. examinations, then he can be said to be better than a student whose performance is good only at the 3rd or last M.B.B.S. examination.

25. With respect to that part of R . 5.1 , which requires consideration of marks obtained at the HSC examination, it was seriously contended that performance of a student at that examination can hardly be regarded as relevant for the purpose of considering the merit of the student for prosecuting post-graduate medical courses. The learned counsel argued that there would be a gap of more than five years between the date of passing the said examination and the final M.B.B.S. examination. Performance of the student at an examination so remotely held cannot be regarded as a valid test for judging his suitability for the post-graduate studies. It was also submitted that subjects like Physics and Mathematics, which a student is required

to pass at the HSC examination, if he wants to join the Science Stream, could have no relevance at all for medical studies at the postgraduate level. It was also urged that as compared to M.B.B.S. examination, HSC examination must be regarded as a general examination and, therefore also it cannot provide a good basis for judging the suitability of a candidate for post-graduate studies. The learned counsel also pointed out that there can be students who have passed HSC examination without Physics or Mathematics as their subjects and it was,

therefore, submitted that the said rule will become unworkable qua them. It was also urged that no other University has thought it fit to make such a provision in the rules for admission to Postgraduate medical courses.

26. As stated above, with a view to secure admission to the best talents, the University has been framing R. 5. 1, decided to broad base the eligibility criteria. It is for that reason that instead of considering the result of a candidate at the final M.B.B.S. examination, his results of all the preceding examinations, including HSC examination are now to be taken into consideration. If for judging comparative, academic and competitive merit of a medical student, rule is made for taking into consideration the results of four or five preceding examinations, then such a provision cannot be regarded as unreasonable, unless it is shown that the result of a particular examination will have no relevance at all for the said purpose. Therefore, merely because of a time gap of about five years, performance of a medical student at the HSC examination cannot be regarded as irrelevant. As pointed out by the University in its reply, even for admission to medical course, almost all the Universities have insisted upon calculation of marks in respect of science subjects. Moreover, as pointed out above, HSC examination is an important public examination held on completion of secondary education. Its importance cannot be determined merely by reference to the subjects taught at that stage. Performance at the said examination would certainly reflect intellectual calibre of the student. Therefore, rule 5. 1 cannot be regarded as arbitrary or irrational on the ground that the study of the subjects at the HSC level is too general and that some of the subjects taught at that stage have no direct relevance with the post-graduate medical course. Merely because no other University has so far thought it fit to make such a provision, that can hardly be regarded as a good ground for invalidating that rule. The Gujarat University has done so with a view to achieve the object of securing admission to the post-graduate medical courses to the best talents and to improve the standard. It has done so after getting the whole question examined by an Expert Committee. Therefore, it is not possible to accept the contention that this part of R. 5.1 is either arbitrary or irrational. As regards the application of this rule to outside students, it is pointed out by the University in its reply affidavit that only those students, who have passed an examination which is regarded as an equivalent examination to HSC, are considered eligible for medical course in this State. In case of students who have passed Central Board Secondary Examination, the University has devised a method for equating their marks. Thus the rule as framed will not become unworkable in their cases nor will it result in discrimination between the students of Gujarat and the outside students.

27. For all these reasons, it is not possible to accept the contention that rules 5.1 and 5.2 in so far as they provide for totaling up of the marks obtained by a candidate at the HSC, Ist, 2nd and 3rd M.B.B.S. examinations for judging his merit is either irrational or arbitrary. However, in view of the fact that HSC examination cannot be put on par with the Ist or 2nd M.B.B.S. examinations, we are of the view that performance of the candidate at that examination cannot be

given the same weightage as is given to his performance at the I st and 2nd M.B.B.S. examinations. Even the University has thought it fit to give more weightage to the 3rd M.B.B.S. examination which is the last examination for a student intending to prosecuting post-graduate medical course. HSC examination is an examination before a student takes up the medical course. It would, therefore, be just and proper if performance of the candidate at that examination is given less weightage than the weightage which is given to his performance at the Ist and 2nd M. B. B. S. examinations. In our opinion, it would be just and proper if the University is directed to reduce the weightage of the marks obtained by the candidate at the HSC examination in the subjects of Physics, Chemistry, Biology and Mathematics (all theory only) by multiplying the same by half.

28. We will now consider the challenge to R. 11. Failure of a student in an examination is certainly a reasonable test of his inaptitude or inability to prosecute further studies. Therefore, in order to maintain high standard in the course of post-graduate medical studies if the University has made a rule that those who have passed I st M. B. B. S. examination at the 2nd trial; 2nd M.B.B.S. examination at the first or second trial and 3rd M.B.B.S. examination at the first, second or third trial only shall be eligible for admission to postgraduate medical course, it cannot be said that the eligibility criterion adopted by it is irrational or arbitrary. What R. I I seeks to achieve is to weed out students who have, on the application of a reasonable and recognised test, proved themselves to be unfit to continue training in medical courses. Such a rule must be held to have a rational nexus with the object sought to be achieved.

29. With respect to rule 11, it was further urged that it is discriminatory as between candidates for whom reservation has been made under R. 4 and the rest of the candidates. In case of candidates belonging to the reserved category the eligibility criterion is mere liberal than in the case of the rest of the candidates. In our opinion, there is no substance in the challenge to this rule based upon discrimination. The candidates belonging to reservation category constitute a separate class and considering the object for which such reservation is made, it must be held that it is based on intelligible differentia. Again, considering the object for which reservation is required to be made, it will have to be held that the classification which has been made by R. I I has a rational nexus with the object sought to be achieved by such classification.

30. It was then urged by the learned counsel for the petitioners that even if R. I I is held to be valid, the note to that rule must be regarded as violative of Article 14 of the Constitution. According to the said note, first trial is deemed to take place when a candidate is due to appear for the examination, irrespective of his actual appearance. It was urged that if non-appearance at the examination, irrespective of any cases, is to be regarded as a trial, then it must be held to be arbitrary. Relying upon the decision of this Court in, Kirit Chhaganlal Gadhwi and Another Vs. The Gujarat University, Ahmedabad and Another, it was contended that only when there is either a real attempt or a deliberate absence that a

student can be said to have appeared at the examination and failed. Reliance was also placed upon the decision of the Supreme Court in *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*, . In that case, while interpreting the rule which read as follows: "For the purpose of the deductions, non-appearance at any examination when due, is deemed as an attempt at the said examination", the Supreme Court observed as under:

".....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 five per cent of marks when seeking admission to a post-graduate course the rule is indeed arbitrary."

In view of this decision of the Supreme Court, it was urged by the learned counsel for the petitioners that the said Note to rule I I and also R. 5.2(v), which also provides that unsuccessful trial would mean number of terms a candidate has lost after he has become due, irrespective of his appearance, should be held to be arbitrary and struck down on that ground, or they may be read so as to make them consistent with the decision of the Supreme Court in *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*, . The learned counsel for the University submitted that if in view of the decision of the Supreme Court in *Abhijit's* case (supra), R. 5.1 and Note to R. I I are so interpreted as to be consistent with that decision, the University can have no objection to the same. In our opinion, instead of declaring the said provisions ultra vires Art. 14, if the phrase "irrespective of his actual appearance" appearing in the said provisions is construed to mean, "irrespective of his actual appearance, provided that nonappearance is not as a result of reasons beyond his control", it would meet the ends of justice. Whether a candidate has not appeared at the examination as a result of reasons beyond his control or not, will have to be decided by the University in each case. If nonappearance at the examination was because of the reasons or circumstances beyond his control, then obviously that non-appearance cannot be regarded as a trial or an unsuccessful attempt. Therefore, challenge to R. 5. 1 (v) and Note to R. I I must fail because the said provision as construed by us is otherwise quite reasonable.

31. The contention raised on behalf of the petitioners that as a result of the new rules, the petitioners and students like them will either find themselves in a disadvantageous position or ineligible and thus they will be put to undue hardships, has also no merit as that can hardly be regarded as a good ground for holding the rules unreasonable. Because of experience gained over years and the recommendations made by the Expert Committee, the University has framed these rules and have made them effective from 1-1-1990 after giving sufficient advance notice to the students. The rules aim at improving the standard by broad-basing the eligibility criteria and adopting a recognised method of weeding out candidates having less aptitude or ability. In the process of reform and improving the standard, some students may be put to hardship, but if the criteria

laid down or the method adopted is on the whole reasonable, then it cannot be said that it is unreasonable because it is likely to cause hardships to some students, even when they are not at fault and even though such hardship could have been avoided by implementing the new Rules in a phased manner. The University cannot be directed to implement the rules batch-wise. Subject to the direction given with respect to the weightage to be given to the marks at the HSC examination and the construction put upon R. 5. 1 (v) and Note to R. 11, the new Rules are held not to be violative of Art. 14 of the Constitution.

32. It was lastly urged by Mr. Vakil , learned counsel appearing for the petitioner in Special Civil Application No. 410 of 1990 , relying upon rules 2.0, 2. 1 and 2.2. that the University and the Selection Committee add entire number of unused balance of 25% all India seat to 3/4th seats for which selection is to be done in the First Academic Term instead of distributing the said surplus seats between the First Academic Term and the Second Academic Term in the ratio of 3.1 under R. 2.2. In reply to this contention, it is pointed out by the University that according to the Supreme Court judgment such examinations are held in February and admissions are to be pronounced in the month of May and, therefore, if there are any vacant seats not filled in by All India candidates, they can be made available only to those students who are joining admissions from the academic term commencing from July. The vacancy arising in an academic term has to be utilised in the same academic term and it would be inconsistent with the rules of the Medical Council of India if the vacancies are to be carried forward for the next academic term. The determination of the vacancy is on the basis of the student-teacher ratio and it would upset the said ratio if the vacancies are carried forward for January students. In view of what is pointed out by the University, R. 2.0 cannot be interpreted as suggested by Mr. Vakil.

33. Mr. Desai, learned counsel appearing for the petitioners in Special Civil Application No. 8694/ 89 contended that as required by R. 2.2, 75% of the seats should be made available to candidates seeking admission in the First Term and, therefore, the University should be directed to follow that rule and make 75% of the seats available in the First Term of 1990. A similar contention was raised before this Court in Special Civil Appln. No. 1014 of 1989 but was not upheld and the petition was rejected summarily in view of the reply filed by the University wherein it was pointed out that because of peculiar situation, which had prevailed in the State of Gujarat, examinations were delayed and, therefore, the results were also delayed and the terms were required to be extended. Therefore regular students could not be admitted in the first academic term commencing from Jan. More number of students appear in Nov. batch as against the students appearing in April examination. In order to be just and fair, the ratio of allotment of seats was required to be changed so as to make 75 per cent of the seats available to regular students and 25 per cent seats to the repeaters batch. Though this practice followed by the University amounts to a departure from the rules, such adjustment had to be permitted as the university has the power to make even an adjustment in view of R. 2.3. For this reason, the university

cannot be directed to make 75 per seat of the seats available in the first term of the year 1990.

34. In the result all these petitions are partly allowed. It is held that all those candidates who seek admissions to post-graduate medical courses in the term beginning from January, 1990 will be governed by the Rules which have become effective from I- I - 1990. It is further held that the Rules are not violative of Art. 14 of the Constitution. However, while applying the said Rules, the University is directed to apply Rules 5.1(iv), 5.1(v) and note to R. I I in the manner indicated in this judgment. If as a result of pendency of these petitions, the University has not been able to finalise the admissions to be given in the term which was supposed to start from January, 1990, we make it clear that it will be open to the University to adjust it either by extending it or in any other manner which may be open to it. Rule is made absolute accordingly in each of these petitions with no order as to costs.

35. Petitions partly allowed.