

(2008) 08 BOM CK 0044

In the Bombay High Court

Case No : Public Interest Litigation No. 94 of 2008

Shri Francisco D. Luis

APPELLANT

Vs

The Director, Board of Secondary and Higher Secondary
Education and The State of Maharashtra

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (2008) 5 BomCR 569 : (2008) 110 BOMLR 2892

Hon'ble Judges : Swatanter Kumar, C.J;A.P. Deshpande, J

Bench : Division Bench

Advocate : P.M. Pradhan and Leena Patil and Mihir Desai, in Civil application No. 37 of 2008, Rajani Iyer, N.H. Seervai and Sharan Jagtiani, instructed by Desai and Diwanji, T.N. Subramaniam, Naushad Engineer, Hemant Shah and Neeta Jain, instructed by I.C. Legal, for the Appellant; Jyoti Pawar, Additional Government Pleader and M.P. Thakur, Assistant Government Pleader, for the State, for the Respondent

Judgement

Swatanter Kumar, C.J.—I have the advantage of perusing the judgment written by my esteemed colleague Justice A.P. Deshpande. With respect, I am unable to concur with the view expressed in the judgment and, therefore, would proceed to record my judgment expressing entirely a contra view.

2. It may not be necessary to refer to the factual matrix of the case in any greater detail as it has been noticed in the judgment authored by Deshpande, J., but certain facts which are of some importance and have a direct bearing on the issues involved in the present Writ Petition needs to be referred even at the cost of repetition.

3. Undisputed facts which emerge from the record before the Court are that on 12th June 2008 a meeting was called by the Minister for School Education and Sports to discuss the subject in regard to normalization of SCC, CBSE and ICSE examinations in which it was decided to inform all the Boards within the State of

this proposal obviously with the purpose of inviting their views. It was decided to take up this matter immediately. A proposal is claimed to have been sent to the Secretary, School Education Sports Department, Maharashtra Government on 20th June 2008. In this proposal it was stated that in all these Board examinations there are different type of syllabus, marks and priorities are given to those students who obtain more marks in the Board examinations. Students who get less marks are not considered eligible and to avoid this and to bring normalcy a percentile proposal of Ruparel College, Mumbai was enclosed with this proposal. A formula was prepared in a meeting held on 26th June 2008 by the Office of the Deputy Director of Education, Mumbai wherein it is stated that some Principals were present from different Junior Colleges which finally resulted in issuance of the Government Circular dated 27th June 2008. Government Resolution dated 27th June 2008 was prepared applying what is termed as 'a percentile formula' and this was circulated and given effect to vide letter dated 30th June 2008. The Circular issued by the authorities on 27th June 2008 makes an interesting reading. It will be useful to reproduce this Circular at this stage itself

C I R C U L A R

1. In the State, the examination of std. X is conducted by Maharashtra State Board of Secondary and Higher Secondary Education, Pune (S.S.C. Board), Central Board of Secondary Education, Delhi (C.B.S.C.), International Curriculum of Secondary Education, Delhi (I.C.S.E.) and other Examination Boards. The examination pattern, subject pattern, scheme of marking and student class of all Boards differs to the great extent. Therefore there is different in marks of X obtained by students from different examination Boards. Hence, the students from Boards other than S.S.C. Board securing higher marks, get preference in admission to Std. XI in reputed colleges as compared to those appearing through S.S.C. Board. It is observed that there is general feeling in the public that students appearing through S.S.C. Board do not get preference on students from other Boards while securing admission to Std. XI in reputed junior colleges. A formula for normalization of marks obtained by students appearing from different Boards in Std. X has been finalized in order to facilitate admission in XIth standard in detailed in Annexure 'A' hereto. Accordingly normalization of marks obtained by students appearing through different Boards in the State should be calculated by using the formula given in Annexure 'A'.

2. The information about the value of 'A' in the normalization formula given in Annexure 'A' on the basis of students passing Std. Xth examination of Maharashtra State Board of Secondary and Higher Secondary Education be provided by the Secretary of the respective Divisional Boards to the Regional Deputy Directors of Education under his signature within two days for this year and for every next year on the second day of declaration of result of secondary school certificate examination.

3. Regional Deputy Directors of Education should make available to the Junior

Colleges within two days and every year henceforth, the information as regards value of 'A' with respect students passing examination through Central Board of Secondary Education, Delhi (C.B.S.E.) and International Curriculum of Secondary Education, Delhi (I.C.S.E.).

4. As detailed above, the Junior Colleges should prepare a merit list on the basis of percentile rank obtained by students passing Std. X examination of different Boards that have applied for admission to that Junior college. Since the admission procedure is finalized at Junior College level, the percentile rank at Junior College level is recommended. In case of Centralised Admission System is implemented, the above procedure can be adopted considering average of first 5 or 10 students. A Representative Committee of Principals of Junior Colleges should be set up to finalise the modus operandi of the process.

5. This Government Circular is available on Government of Maharashtra website No. www.maharashtra.gov.in and its Computer Code No. is 20080627200337001.

The percentile formula which was annexed to this letter has already been referred in the judgment of Deshpande, J.

4. The results of the 10th standard examinations were admittedly declared in the State of Maharashtra on 26th June 2008. No action or no such thought of normalization of marks occurred to any person in the hierarchy of the Education Department of State Government for all this period. The Minister being fully aware that admission to Junior Colleges/Senior Schools would commence with effect from 26th June 2008, opted to venture the change in the policy for admission of students at variance to the policy and practice adopted by the Government in the past. Every policy of the Government is expected to be framed on prudent principles, should be free of arbitrariness and essentially be published in larger public interest while satisfying the criteria of Constitutional mandate of Article 14. The Government Resolution dated 27th June 2008 proceeds on the basis that the examination pattern, subject pattern, scheme of marking and class of student of all the Boards differ to a great extent. The students from Boards other than SSC Board securing higher marks get preference in admission to 11th standard in reputed Colleges and, therefore, the formula for normalization of marks obtained by the students appeared in the 10th class for admission to 11th class need to be introduced. This formula was stated in Annexure "A" to this Resolution. The Colleges were directed to prepare the merit list on the basis of this percentile rank and not on the marks obtained by the student in his qualifying examination i.e. 10th class.

5. In response to the notice, different affidavits have been filed on behalf of the State. During the pendency of the Public Interest Litigation, even the ICSE Board has intervened as well as Teachers Parent Association made application for intervention in the matter. These applications were allowed by the Bench and we heard them at some length. It will be useful to refer in short to the contents of the affidavit and/or contents of the applications which have been filed.

6. In the first affidavit filed on behalf of the State on 15th July 2008, it is stated:

I say and submit that it was observed by the authorities that there was a comparative disparity between students from different Boards in the State of Maharashtra from which students passed their 10th standard and apply for admission to 11th standard.

This affidavit further states that a joint meeting was held on 26th June 2008 of Deputy Secretary of Education, Deputy Director of Education, Greater Mumbai, all Education Inspectors as also the Principle of eminent Institutions, such as, Ruia College, Ruparel College, Mithibai College, etc. and a consensus was reached between all concern that a formula of percentile would be adopted while giving admission to 11th standard for the academic year 20082009. It is further stated:

I say and submit that the State Government Resolution was issued only with a view to accommodate all the students from various Boards on merit basis.

7. In the affidavit filed on 17th July 2008, besides reiterating the stand taken in the earlier affidavit, it is also averred that "percentile formula has been adopted with the intention to see that no injustice is done to any student seeking admission to 11th standard from any Board in the State". The percentile rank gives the position of a student in that group. The average of 10 toppers of each Board has been taken. Then the percentile is determined:

Actual marks obtained/average of 10 toppers of that Board multiplied by 100.

Still further, in the affidavit filed on 28th July 2008, additionally it is stated that:

I also say and submit that the Government Circular dated 27th June 2008 is based on the consensus reached in the meeting held on 26th June 2008. The minutes have elaborated the procedure for application of percentile rank for the entire State based on division wise results of SSC Board. Since Maharashtra State Board, as per the provision of Maharashtra State Board, Secondary and Higher Secondary Education Act, 1965, conducts examination at the divisional level and results are also declared at Divisional level, there is no State level consolidation of the results at State level....

It is also reaverred that adoption for standardization of marks is not favouring any particular Board but is for the purpose of giving proper justice to all students irrespective of their Boards.

8. Besides the Petitioner, an affidavit has been filed on behalf of the Council for the Indian School Certificate Examination, wherein it has been stated that their marking is not in any way liberal or unfair. It is stated that for 10th standard there are four compulsory subjects in Group I, two optional subjects to be selected from Group II and there is one optional subject to be selected from Group III. The marksheet issued by this Board give marks in all the seven subjects and merit of the candidate for the purposes of higher education as well

as admission to other Institution is determined on the basis of marks obtained in all the seven subjects, except for a limited purpose in their own Institutions, four major subjects are counted without affecting the merit of the student. It is stated as under:

I say that the ICSE Board updates and upgrades its syllabus from time to time to ensure that the high quality of education is given to the students. Hereto annexed and marked Exhibit "A" is comparative chart of subject marks of ICSE Board and SSC Board examinations. A mere perusal of said chart shows that the argument sought to be advanced by State is based on no reasoning at all or is based on biased reasoning with a view to benefit the SSC Board students without offering any opportunity or in fact making any logical comparison acceptable on reasonable lines. It is respectfully submitted that comparison acceptable can be made only if what is being compared can be equitably, appropriately and justifiably compared with each other. Unequals can not be compared at all and no decision for percentile system can be arrived at all on the basis of inequality of syllabus in ICSE and SSC Board....

9. It is stated that the percentile system is arbitrary, unscientific and discriminatory. It is in fact intended to give undue preference to the students who have passed their examinations from SSC Board and to frustrate the actual marks obtained by the students in different Boards in their 10th examination. It is stated that it was imperative for the authorities to call for the views of all the Boards and Councils. Despite the fact that the Minutes of 12th June 2008 had clearly passed a mandate in that regard, no views were invited and in fact they were never called for. In the alleged meeting of 26th June 2008, no notice was sent to any Board, Council and no representative of the Council was present, therefore, at that meeting. The result of SSC were declared on 26th June 2008 and on the very day a decision was taken, obviously without any proper study, data or rational behind the decision. The decision has been taken in undue haste without affording any opportunity to ICSE Board. The ICSE Board students would suffer great prejudice by application of percentile formula as they will not get admission despite the fact that they have obtained much higher merit in the examination than the students of other Boards. The students who have scored higher marks are being denied admissions in 11th class in the Colleges of their preference and students with lower merit are being given admission.

10. In another affidavit filed on behalf of the Association of ICSE School for the State of Maharashtra (AISM), a duly registered body, wherein it is stated that for any of the meetings i.e. 13th and 26th June, no intimation was sent to this Body for expressing their views. Mrs. Renu Duggal had attended the meeting in her personal capacity and she was never authorized by the Council to act on their behalf. The Association never gave its consent in any form or manner to the decision reached in the meeting. Mrs. Duggal also filed a separate affidavit dated 21st July 2008 stating that she did not attend the meeting on behalf or as a representative of the Association.

11. An affidavit dated 25th July 2008 was also filed by Xavier J. Luis on behalf of the Petitioner/Intervenors. How prejudice is caused and how rule of merit has been defeated has been demonstrated in the affidavit. It is shown that 388 students had applied for admission and he was at Sr. No. 181. The SSC student who has secured the same percentage of marks in his 10th standard examination is placed 69 places above the Petitioner including the fact that even the remaining 68 positions are filled by the students who have secured less marks than the Petitioner, son of Francisco D. Luis. Similarly, other affidavit has been filed to show that students of higher merit have not been able to get admission in the College/ School of their choice.

12. Having referred to the basic facts and pleadings of the parties, now I shall proceed to examine the merit and otherwise of the contentions raised during the prolonged arguments in this case.

13. As is clear from the affidavits filed on behalf of the State, they have proceeded on the assumption that the academic standard, syllabus, marking and courses of all the three Boards are different. An additional argument which was advanced with some vehemence on the basis of the affidavit filed by the State that there is liberal marking in the two other Boards CBSE and ICSE which is the basis for introduction of concept of normalization of marks. It was also argued that the students of these two Boards are privileged students and, therefore there is need for applying percentile formula. If this basis for the sake of argument is taken to be correct, then the State cannot adopt a policy of applying percentile formula uniformly to the students of three Boards.

14. The percentile formula as understood in the common parlance and in its appropriate and scientific approach as well presumes that the class to which this formula is being applied is that of all persons who are similarly, if not identically placed, in that group. It will be a misnomer and misapplication to apply percentile formula to candidates falling under different and distinct categories. It was vehemently argued by the learned Counsel appearing for the Petitioner/Intervenor that percentile rank of a score is the percentage of score in its frequency and distribution which are lower. Percentile ranks are normally distributed and bellshaped while normal curve equivalents are uniform and rectangular in shape. Wikipedia, an online encyclopedia, describes 'percentile rank' as under:

Percentile ranks are commonly used to clarify the interpretation of scores on standardized tests. For the test theory, the percentile rank of a raw score is interpreted as the percentages of examinees in the norm group who scored below the score of interest. The mathematical formula is $Cf_1 + .5(f_i) \times 100\% / N$ Where cf_1 is the cumulative frequency for all scores lower than the score of interest, f_i is the frequency of the score of interest, and N is the number of examinees in the sample. If the distribution is normally distributed, the percentile rank can be inferred from the standard score.

15. Pearson Educational Measurement Group website (w.w.w.Pearsonedmeasurement.com) describes 'percentile rank' as under:

Percentile rank identifies the percentage of a student's peer group (e.g., grade level) that a student's score surpassed. Percentile rank is useful in comparing an individual student's performance with those of other students within a defined group.

16. Applying these settled principles to the methodology of percentile formula, its application by the Respondent to the facts of the present case would apparently sound erroneous. Their affidavits of treating these three groups differently and distinctly make these three Boards as differently 'defined groups' and, therefore, the application of percentile system would hardly be permissible. Thus, there is apparent and basic contradiction in the approach, the application and results flowing from such acts of the State and its Departments.

17. Furthermore, there is contradiction in the affidavits filed on behalf of the State inasmuch as in one affidavit the stand is that SCC Board students are required to be given benefit as in the opinion of the State they were being deprived of admission to preferential colleges, while in the other affidavit, the stand taken is that policy is being implemented to ensure that no injustice is done to any student seeking admission to 11th standard from any Board in the State. This is a contradiction in terms of the statement calling the students from CBSE and ICSE as privileged students and that SSC Board students as not privileged or under privileged. In my humble opinion, this is hardly an appropriate expression to be used by the might of the State. It is a matter of common knowledge that number of students from the State Boards are obtaining much higher marks and pursue better academic courses than many of the students from other Boards. This is hardly in fact and in law a step for bringing uniformity between the students of different Boards. The arbitrariness and unfairness in framing and applying this percentile formula can even be illustratively demonstrated.

18. The Respondents along with their affidavit dated 28th July 2008 had filed a statement as Annexure "A" showing effect of this so called normalization or percentile method given to the students of the present case. For example, students against Seat No. E37809 and Seat No. E57989 have passed their examinations from SSC Board and have obtained 96.61% and 96.15% marks respectively. As a result of application of percentile rank, the student at Seat No. E37809 would get percentile rank of 100.21, 100.50 and 101.40, while the student at Seat No. E57989 would get percentile rank of 99.74, 100.03 and 100.92, when the average of the top ranking student is taken to be 5, 10 and 50. While another candidate who has passed his examination from ICSE Board with Seat No. T 4308/036 and had obtained 98.60% marks, his percentile rank would go to 100.53, 100.82 and 101.65, average topper rank number being 5, 10 and 50 respectively. Still further, a candidate who had passed his examination from CBSE Board with Seat No. 4176583 who has obtained 98% marks, would get

percentile rank of 100.16, 100.27 and 101.58.

19. In addition to this case put forth by the Respondents themselves, reference to the affidavit filed by the Intervenor and others is necessary where they have stated that students of much higher merit passing from the Boards other than SSC Board are unable to get admission to the Senior Schools/Junior Colleges of their choice. The students who are below the Petitioner's percentage marks by 2.61%, all have been placed above the Petitioner who is at Serial No. 181 in ICSE and even the students who have secured the same percentage of marks have been placed at rank No. 69 above the Petitioner besides the fact that 68 other candidates have been given admissions in better Institutions above the Petitioner.

20. This itself shows that the action of the Government in issuing and implementing this Government Resolution dated 27th/30th June 2008 is arbitrary and in fact defeats the very golden rule of merit cum preference.

In the present times, where the competition to academic courses is so high that even a fraction of one mark can make difference in order of merit by 50s if not by 100. It will be totally unfair to apply a method for altering the position of merit between different classes and even between the same class. The entire emphasis is on attaining higher merit and with the principle object of getting admission to a preferential Institution, School or College. If despite attaining such merit, the students have to be subjected to such competition for determining a rank which shall prejudicially affect the very basic concept of merit, such method would be to, say the least, unjust, unfair and even unconstitutional.

21. The Supreme Court in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, , has clearly given the status of basic right of a meritorious student to get admission to a better Institution as a fundamental right and held as under:

28. Right of a meritorious student to get admission in a postgraduate course is a fundamental and human right, which is required to be protected. Such a valuable right cannot be permitted to be whittled down at the instance of less meritorious students.

22. Considering a stand taken by the State in the other affidavits that the students from SSC Board were to be given some special treatment for ensuring their admission to preferential Colleges, even in that event the method adopted is totally unjust and unfair. It is apparent from the record and the argument advanced before the Court that entire process, though stated to be in consultation with the authorities, was in fact without consultation and in fact is a farce to cover the arbitrary action of the State. In the decision taken on 12th June 2008, it was decided to get opinion and data from all the Boards. This was never done. In fact, one or two odd teachers who belonged to other Boards participated and a decision is alleged to have been taken unanimously. No notice

requiring the Boards to submit some information or data was served upon any of the Boards. The competent authorities in furtherance to the decision dated 12th June 2008 after holding the meeting of 26th June 2008 and preparation of the Government Resolution dated 27th June 2008 vide letter dated 30th June 2008, called upon the Boards to send their result sheets or marks of their meritorious candidates. As already noticed, the need and entire basis for taking out this exercise and arriving at the conclusion of applying percentile method is based upon preferential treatment to privileged students, liberal marking of Boards and intent to bring parity. Firstly, in fact there is nothing on record even before us to substantiate this allegation. Secondly, the concerned Boards vehemently denied any of these allegations. On the contrary, they stated that their syllabus is very comprehensive and these Boards take great pains in uplifting the academic standards and methods of teaching in the Schools under them and the students actually do well to achieve higher percentage. Even from the statistics placed on record, it is clear that even the meritorious students from SSC Board got very high percentage which easily is comparable and even is better in some cases from the students of CBSE and ICSE Boards. Thus, this entire exercise taken out by the Respondent State is without any data, cogent reasoning and even proper hearing, much less after appropriately consulting other two Boards whose meritorious candidates are bound to be affected prejudicially as a result of application of this arbitrary formula. This was a decision of great significance and far reaching consequence. It was expected of the State to take a vital decision with wide consultation on some basic data and with realisation of its consequences and after ensuring that such a policy decision was taken within the framework of law. It is a typical example where not only the decision making process is defective and erroneous, but even the decision suffers from the vice of arbitrariness, unreasonableness and is without proper application of mind.

23. Another aspect of this arbitrariness is reflected by the fact that on 12th June 2008, a mere proposal is mooted out and without collecting any data, on 20th June 2008 the basis of the formula is framed. Even the proposal stated that average percentage of 3 to 5 students who get maximum mark would determine the alphabet A i.e. Average marks, but while the Government Resolution was issued, the average of first ten students was taken which would further affect the merits adversely. Where average of large number of meritorious students is taken to determine the alphabet A for determining percentile rank, greater adverse would be its effect on the meritorious students from the other Boards. From the Chart given by the Respondents itself, a student of SSC Board who has secured 96.61 marks, if average of 5 is taken, his rank would be 100.21, but if 10 are taken, his rank would be 100.50 and at average of 50, it would be 100.40. On the contrary, the student from ISCE who has obtained 98.60%, would in a similar situation be shifted to rank Nos. 100.53, 100.82 and 101.65 respectively. In further contrast to this, a student of CBSE Board who has secured 98% marks, on similar channel of meritorious student would come to 100.16, 100.27 and 101.58 respectively. This clearly demonstrates that this

formula adversely affects not only the students from three different Boards but even students within the same Board. There is no answer in the affidavit as to how the average stated in the proposal of 3 to 5 was taken upto 10. This figure is thus totally arbitrary and without any basis. The orders issued by the higher authorities for consultation with Boards and even for following the proposal in its correct perspective, were not carried out. The compliance was only in breach.

24. Right from the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, , the Supreme Court clearly enunciated the principle that in administrative action discretion of framing of policy or issuing directions should be used in public interest, should be exercised objectively , rationally, intelligibly, fairly and non arbitrarily.

It should not be made in an undue haste, disregarding the procedure and in any case should not vitiate the spirit of Article 14 of the Constitution of India.

25. Even prior thereto, the Supreme Court had observed that the rule that the absence of arbitrary power is the first essence of the rule of law upon which our whole constitutional system is based and discretion when conferred upon executive authorities must be continued within clear defined limits. In fact, the powers should be so exercised that such decision in normal exercise of power should be predictable. These were stated to be antithesis of a decision taken in accordance with law. (Reference can be made to S.G. Jaisinghani Vs. Union of India (UOI) and Others,).

26. The Division Bench of this Court in the case of R.R. Tripathi and Anr. v. The Union of India and Ors. (Public Interest Litigation No. 93 of 2007) decided on 14th/15th February 2008, held as under:

27. The public interest is a term of wide magnitude and covers within its ambit efficiency, exigencies of service and interest of the public at large. These are some of the relevant considerations which the executive authorities are required to take into consideration before arriving at a final decision. Absence of any reasons or valid reasons would be a ground which would attract the scrutiny by Courts. In the case of Hochtief Gammon Vs. State of Orissa and Others, , the Supreme Court held as under.

The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The Courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by Courts by failing to give reasons. If they give reasons and they are not good reasons, the Court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of these reasons may not be open to judicial scrutiny. Even if the Executive considers it

inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.

31. The reason reflects the cause or the grounds during the decision making process which led to ultimate decision. The discretion must be exercised reasonably. Reasonable and/or unreasonable, both are the terms of general description and indicate how things may or may not be done or not. The court essentially is concerned to find out if the concerned authorities left out relevant factors or had taken into account irrelevant factors and whether the decision was within the four corners of law. Whether the administrative decision is patently irrational or suffers from the defect of procedural impropriety would have to be examined. The most important principle of law dealing with fairness in State action under the administrative law is regulated by the Wednesbury's principle essential in English Law principle which has now been consistently applied by Indian Courts with approval. In the case of Union of India and another Vs. G. Ganayutham (Dead) by LRs., , it is held thus

11. The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in CCSU v. Minister for Civil Services (1985) 1 AC 374 as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock" observed in that case as follows:

...Judicial review has I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by Judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development t on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality', which is recognised in the administrative law of several of our fellow members of the European Economic Community....

Lord Diplock explained 'irrationality' as follows:

By irrationality, I mean what can now be succinctly be referred to as 'Wednesbury unreasonableness'.... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards hat no sensible person who had applied his mind to the question to be decided could have arrived at.

32. Unreasonableness or arbitrariness in administrative action would be subject to judicial review. May be the respondents are not expected to give detailed reasons for their action but the decision making process should reflect application of mind and recording of some grounds which are valid and proper reasoning. In the case of Union of India and Ors. v. E.G. Nambudiri 1991(2) SLR 675 and Chabungbam Ibohal Singh Vs. Union of India (UOI) and Others, , the Supreme

Court stated that fairness in administrative action must not only be done but it must appear to have been done in consonance with the basic principle of law. Further, it enunciated and stressed the need for recording the reasons by administrative authorities while giving promotion to junior over his senior and if the process of selection is arbitrary and contrary to the criteria or suffers from element of bias, the same would liable to be set aside.

33. Another facet of powers of judicial review relates to the principle of proportionality where the court is called upon to examine that the concerned authority has placed its priorities during the decision making process. If the decision making process infringes the fundamental right, protection or the statutory rules, the decision would be liable to be interfered with. Another class of cases could be where the decision making process is contrary to basic rule of law and the relevant rules resulting in an unsustainable decision.

34. In a writ petition titled as Major General B.D. Wadhwa, AVSM v. Union of India and Ors. W.P. (C) No. 10630/2006 decided on 19th October, 2006, a Bench of Delhi High Court stated the importance of Wednusbury's principles in exercise of discretion in service cases and held as under:

...This doctrine covers various facets of arbitrariness, the Courts more than often have aplied this principle to examine the merits or otherwise of such contentions. In the case titled as Dr. Sudha Suri v. Union of India and Ors. 2002 (1) SLR 665, a Bench of the Punjab and Haryana High Court had discussed at some length the applicability of this principle and had discussed various judgments of the Supreme Court and even the case of Wednesbury Corporation's (supra). The relevant conclusions of the Court can usefully be referred to at this stage:

42. Learned Counsel for both the parties heavily relied upon the Wednesbury's principle in support of their respective case. According to learned Counsel for the petitioner, the said principle is applicable as there has been patent unfairness in appointment of respondent No. 4 as the Dean while according to the learned Counsel for the respondents the principle has a very restricted application and scope. Once eligible persons have been considered and after looking into their service records, respondent No. 4 has been appointed, then such appointment cannot be subjected to judicial review on the strength of principles of Wednesbury.

43. In the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation 1947 (2) All ELR 680, enunciating the aspects of unreasonableness in executive action of the public authorities, it was stated that if the power is exercised so as to give impression or interference to the Court that there has been unreasonableness in such action, it is taken in bad faith extraneous circumstances have been taken into consideration, there has been disregard of public policy and relevant consideration have been ignored then authorities would be said to have acted unreasonable. Lord Greene, M.R., expressing the unanimous view observed as under:" He must exclude from his consideration

matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J. I think it was, gave the example of the redhaired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters.

27. Thus, the onus to show to the Court that the decision taken by the State wherein an existing practice is changed by some kind of a thought process is on the State by placing on record its database to show atleast that its decision is free of arbitrariness. It can hardly be justified that the State has decided to give preference or adopt some method to give advantage to the students who have passed their examination from different Boards in the State of Maharashtra itself. This will suffer patently from the vice of arbitrariness and discrimination. The adverse effects of this decision can be seen from an example that two students who are studying and residing in the same area but studying in two different Schools controlled by two different Boards within the city of Mumbai and obtain the same percentage of marks, one would be reduced in rank, while the other would be upgraded just by application of this invented formula by the State without any reasoning and without any justification. This, ex facie, is abuse of executive powers. The methodology adopted by the State thus suffers from the vice of arbitrariness and cannot sustain the essential test of rule of law.

28. In the case of State of Kerala Vs. Kumari T.P. Roshana and Another, , the Supreme Court dealt with admission given to MBBS course on a common merit prepared of the students who passed their examination from Calicut University and Kerala University where combined selection for admission was prepared. Challenge thereto on the ground of violation of Article 14 was rejected by the Supreme Court holding that the merit of such candidates combinedly can be prepared unless there was substantial difference in the predegree and degree courses. In the said case, the Court held as under:

15. We are not impressed much with the surmise which colours the reasoning of the Full Bench and the learned Single Judge that there is such substantial difference in the predegree courses and evaluations between the sister universities within the same State that the breach of Article 14 by equal treatment of the marks unequally secured by examinees in the two universities may be spelt out. It is trite law that every inconsequential differentiation between two things does not constitute the vice of discrimination, if law clubs them together ignoring venial variances. Article 14 is not a voodoo which visits with invalidation every executive or legislative fusion of things or categories where there are no pronounced inequalities. Mathematical equality is not the touchstone of constitutionality. This Court in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , cautioned:

Mini classification based on micro distinctions are false to our egalitarian faith

and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. In the same ruling there was a caveat entered by Chandrachud, J. (as he then was) against "a charter for making minute and microcosmic classifications.

What is more, a large latitude is allowed in this area to the State to classify or declassify based on diverse considerations of relevant pragmatism, and the judiciary should not "rush in" where the executive warily treads. The core question is whether there is such substantial differentiation between the two universities in regard to the predegree or degree courses and system of examinations as too glaring to imperil the equal protection clause. The presumption is in favour of the vires of legislative and executive action where Article 14 is the basis of challenge. We see no factual disparities disclosed in the Full Bench ruling to reach the result of substantial difference in the syllabi, in the pattern of examinations, in the marking systems or in the choice of the examiners so as to warrant invalidation on account of equal regard being accorded to the marks secured by the examinees from the two universities. We cannot forget that many colleges are run by the State or institutional managements where predegree or degree courses are undertaking. The teachers move from one university jurisdiction to the other, the teaching material is inevitably of a like nature; the subjects taught must ordinarily be alike. The examiners are usually drawn from within the State or neighbouring States. Even the composition of the academic bodies in the two universities may have common members. The University Acts themselves are substantially similar. To surmise discrimination from possibilities is alien to the forensic process in the absence of hard facts. We are aware that there are Universities and Universities, that gross divergences among them exist affecting the quality of the teaching and the marking, the anomalies of grading and the absurdity of equating the end products on the blind assumption that the same marks mean the same excellence. But not glib surmises but solid facts supply the sinews of discriminatory inequality or equality. Going by vague reports, some backward universities and colleges have degenerated into degreedealers bringing rapid discredit to Indian academic status.

29. In the present case as well, except a bald allegation by the State that they are different Boards, no material has been placed on record to establish markable distinction between courses, marking, syllabus and process of teaching even. Students from all the Boards study more or less the common subjects and languages, compulsory subjects are the same, the syllabus is more or less identical. In any case, this is not the ground of challenge raised by the Petitioner. Thus, I do not see any reason to discuss in greater detail, but the presumption raised by the Respondents that there was differentiation in marking system certainly is based on no material whatsoever.

30. The reason of "liberal marking" and "privileged students" relating to any Board other than SSC Board are arguments of frustration. There is no material

placed by the State before the Court to substantiate and/or justify such arguments. The importance of merit and preference has been discussed at some length in recently delivered Full Bench judgment of this Court in the case of Mahatma Gandhi Missions Institute v. The State of Maharashtra and Ors. Writ Petition No. 8847 of 2007 (and other connected matters) decided on 22nd August 2008, where the Court held as under:

1...Education is one such field where the Judge made law has shown greater impact by application of this principle in matters relating to admission to educational institution. The legislative law and more particularly the notifications issued in exercise of subordinate legislation have lacuna or open areas in the sphere of execution which fall short of clarity and exactitude. Without adherence to such judicial dictum, achievement of the real object behind such enactments or notification is not possible. Doctrine of merit and fairness is often trivialized by delayed administrative actions in regard to implementation of methodology specified for admission to various professional courses. In the present days, education is one of the most highly competitive field where fraction of one mark even can materially affect or alter the course of admissions on the one hand and future of the students on the other. As antique it is accepted in the principle that *Actus legitimi non recipiunt modum*. The purpose of law is to be in conformity with the constitutional mandate that the legislative or administrative action of the State should always been in conformity with the laws in force and should essentially be devoid of any arbitrariness or discrimination. They must have an essence of fairness in State action and they should not only be just *ex facie* but in substance should avoid wrong to the public at large. Whatever the laws in force, the notifications issued in furtherance to the provisions of the different Acts, the State Government policy as well as the judicial pronouncements including those of Supreme Court of India have without fail emphasised the need for adherence to the specified parameters in relation to various aspects of professional education in the country. Even the object of judicial intervention in educational matters is primarily aimed at scrupulously following these essential features for maintaining proper administration of admission to different fields in the education. The rudiments can veritably be stated as under:

(a) The admission to academic course moreso, to professional courses has to be strictly on merit. Meritorious students should be given their choice, thus, admission on merit coupled with institution preference should be the basis.

(b) All courses and more particularly, professional courses should essentially commence on the date fixed for commencement for such courses. In other words, the courses must start timely.

(c) Midstream/ midterm admissions should be avoided and more particularly, the students in the professional courses must go through the complete course of education which should not be reduced or narrowed for adjusting such admissions.

(d) The professional and technical councils and State bodies should take appropriate steps to maintain proper educational standards in examination and teaching courses in all its institutions.

(e) The State, Universities and Institutions have an obligation and duty to maintain requisite standard of professional excellence by giving admission on merit to eligible students by a fair and transparent admission process.

(f) Information and admission brochures should be timely issued by the respective authorities which would be binding upon the administration and the students equally. It is not expected of any of the authorities/institutions involved in the process of admission to alter the conditions or process of admission once the process has begun except in rare circumstances and that too in accordance with law.

2. These are precepts stated by judicial pronouncement for fair and timely admission to professional courses. The State issues notifications for admissions to various courses in discharge of its statutory obligation. Various judgments of the Supreme Court and various High Courts have deliberated upon these issues at great length and all uniformly have emphasised the principle of just, fair and transparent method of admission with adherence to the rule of merit. In fact, emphasising the need for adherence to merit in admissions, the Constitution Bench of Supreme Court in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, , not only equated but in fact, declared that right of meritorious student of his admission is a fundamental right. The court while examining different aspects including that of institutional reservation clearly stated as under:

28. Right of a meritorious student to get admission in a postgraduate course is a fundamental and human right, which is required to be protected. Such a valuable right cannot be permitted to be whittled down at the instance of less meritorious students.

3. One of the most important aspect of maintaining admissions on merit is adherence to time schedule and granting admission at the earliest in order of merit. Delayed display of merit list not only affects commencing courses on time but it also affects counseling and taking other institutional steps essential for admission to courses. It can have adverse effect on admission on merit which totally frustrate the process of admission of meritorious students to the institution of their preference.

34. Another important aspect of process of admission is merit coupled with preference of institution of the meritorious students. In Saurabh Chaudhary's case (supra), the Supreme Court noticed with some significance the importance of merits in such matters and even equated right of a meritorious candidate to get admission to "a fundamental right and human right" though in relation to a post graduate course. This principle will be equally applicable to other courses of education. This being the importance of merit, every effort is expected to be

made by all the organs involved in the process of admission to ensure that the criteria of merit is not permitted to be frustrated by adopting any direct or indirect method. A Division Bench of this Court in the case of *Shri Vile Parle Kelavani Mandal and Ors. v. State of Maharashtra and Ors.* decided on 13th March, 2008 clearly stated the principle that even while selecting and admitting the students to a special category including their community, interse merit of those students cannot be ignored and admission must be made strictly on the basis of merit. While referring to the case of *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, , the Bench further illustratively stated that every process of admission has to be fair, transparent and should not defeat the merit whether for admission of internal or external candidates. Still in the case of *Muskan Dogra and Ors. v. State of Punjab and Ors.* (2005) 9 SCC 186, the Supreme Court while directing adherence to rule of high merit, held:

We can appreciate the magnanimity but not when it is entirely at the cost of merit. We do not wish to send a message that merit can be blatantly compromised when, in fact, it comes to the stage of issuing directions.

Thus, the settled principle of law is that merit of the applicant is the primary criteria which would determine his rank as well as the college where he would be entitled to admission. This rule should not be frustrated as that will tantamount to entirely upsetting the object of admissions based on merit oriented method and would cast cloud on the fairness and transparency of the method of admission....

31. The judgments of the Supreme Court and the Full Bench aforereferred, clearly indicate that State should act well in time and not intermingle with the process of taking hurried decisions at the nick of the time. The results of the two Boards had already been declared and the result of the SSC Board was declared on 26th June 2008. The courses were about to start, when the Government has set into motion the proposal for issuing the Government Resolution dated 27th June 2008 vide letter dated 30th June 2008. It is not only without basis but is even in undue haste. If what is indicated in the affidavits is correct, though as already noticed, the stand is even in contradiction to its own affidavits, this aspect was known to the Government from the experience of the academic year 20072008 and it had a whole year for taking such policy decision which could remedy the alleged wrong, but such decision ought to be in accordance with law. I fully agree with the view of Deshpande, J. that the State should take such crucial decisions ahead of time and even this aspect the State has miserably failed to show as to what was the justification for taking this decision on eleventh hour without any proper study, data and without appropriate consultation with other Boards which were operating at the national level.

32. The formation and implementation of the percentile formula is without basis and this aspect I have discussed in some elaboration. It was expected of the State Government to show that the decision taken was in consonance with the principles enunciated by the Supreme Court in the above cases and particularly

in the case of S.G. Jaisinghani (supra). Certainly the principle of law that the policy decision fall in the domain of the State and the judicial review of such policy decision falls within a narrow compass is well settled one. Equally well settled is the exception to such rule that such policy decision should not be arbitrary, perverse, opposed to public interest and must not interfere with the fundamental right or constitutional mandate. I am unable to agree with the view expressed by Deshpande, J., in regard to distinction between standard of education, marking and distinct education streams. Firstly, this view is patently in conflict with the judgment of the Supreme Court in the case of T.P. Roshana (supra) and, secondly, I am unable to find any material, much less a sufficient material on record, which would substantiate this plea. In fact, this whole gamut of arguments was more argued at the bar than with reference to any proper material on record. On the paper book, no syllabus, teaching programme, comparative statements or any document worth the reference except the question papers of English annexed to the affidavit filed by the Assistant Secretary of the Council For Indian School Certificate Examination, Mumbai, are placed. I am unable to agree with the view in the decision carved out by my learned Brother on facts emerging from the record of the case. On the contrary, it is known and the Courts even can take a judicial notice that all the school courses of 10th standard which relates to different Boards are finalised and approved by the NCERT. They are intended to provide similar standards of education with variance which are insignificant and more geographically or socially oriented. The policy decision of the State would always invite judicial chastisement and intervention by Courts wherever they are suffering from arbitrariness or unreasonableness. The Supreme Court in the case of Saurabh Chaudhary (supra) has equated the right of a meritorious candidate to that of a fundamental right. If this right of a meritorious candidate is defeated by adopting any methodology which even otherwise is arbitrary and unjustifiable, it will tantamount to infringement of his fundamental right and thus liable to be set aside.

33. In the case of M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, , the Supreme Court stated the principle that it is not within the province of judiciary to test the correctness of a policy decision only so far the policy is not tainted by mala fides, arbitrariness, irrationality, perversity, unfairness or unreasonableness. I have no hesitation in concurring with the view taken by my Brother Judge that there are no mala fides but all other four elements which would vitiate such a policy decision are present in the facts of the case in hand.

34. In the case of Kailash Chand Sharma Vs. State of Rajasthan and Others, , the Supreme Court while dealing with a Circular issued by the Government in furtherance to its policy decision clearly indicated the test that even such policy decisions are required to satisfy test of Article 14 of the Constitution of India. The policy decision which is based on certain factual presumption in any case could not form basis for proper exercise of policy decision making power. The Court held as under:

Undoubtedly the impugned circular is the product of the policy decision taken by the State Government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Articles 14 and 16 of the Constitution. It should be free from the vice of arbitrariness and conform to the wellsettled norms, both positive and negative, underlying Articles 14 and 16, which together with Article 15 form part of the constitutional code of quality. The plea of affirmative action proceeds on the supposition that the proportion of employment of rural residents is much less than that of the residents in the towns. The other assumption is based upon any data or concrete material. The argument built up on this plea falls more in the realm of platitudes rather than affording a solid basis for the classification.

35. In the case of Punjab Communications Ltd. Vs. Union of India and Others, , the Court applied this test even to change in policy and procedure affecting the legitimate expectation of the persons under the prevailing practice. The Court held that if change of policy is not irrational or perverse according to Wednesbury principle, it will not call for interference, but where it affects adversely, the right of the people and there is no rational and the change in policy suffered from the element of arbitrariness, the decision would certainly be liable to be set aside.

36. This so called policy decision of the State is hit by the Wednesbury principle which is the most accepted principle of administrative law and is a touch stone for testing validity of such policy decisions. In the present case, the State has taken into consideration no relevant material. It has failed to invite opinion of the concerned Boards on its presumption which was the very foundation of Respondent's case and it even did not apply its mind to the various facets and consequences likely to flow from such decision. On the one hand it has failed to take relevant matters into consideration, while on the other has taken irrelevant factors into consideration while arriving at such a decision. There was nothing on record before the concerned authorities to show that there was liberal, unfair marking by the other two Boards. The entire basis of the Respondents' case is taken away by the fact that it had written to the Boards for supply of marks and material only vide its letter dated 30th June 2008 while it had taken its decision on 27th June 2008. The matter does not rest here only. If the arguments addressed on behalf of the State are worthy of consideration i.e. `privileged students' and `liberal marking', then these are the facts which appear to have been presumed by the authorities as there was total lack of material before them. Even the record shown during the course of hearing do not support either of these contentions.

37. The law stated by the Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, , would have no application to the facts of the present case. In the past, which is obviously spread over a very considerable period, no such precedent was ever created. On the contrary, it was an accepted norm that combined merit list would apply for admissions to the Colleges. Thus, the rule of merit cum preference was applicable directly relatable

to the higher merit in the exams. I am not commenting whether the State could or could not have made some reservation for its students from SSC Board, but there is no doubt in my mind that the decision taken by the State as contained in the Government Resolution dated 27th June 2008 cannot stand the test of law and must be set aside.

38. In the case of Dr. Saurabh Choudhary and Others Vs. Union of India (UOI) and Others, , the Supreme Court stated the principle that reasonableness of the policy of the State in the matters of reservation of seats is always subject to judicial scrutiny. While in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, , the Supreme Court clearly enunciated another paramount principle of admission to academic courses stating that institutions have an obligation and duty to maintain requisite standards of professional excellence by giving admission based on merit and making it equally accessible to eligible students through a fair and transparent admission procedure based on reasonable principles.

39. Even if it is assumed that some kind of reservation could be carved out (without commenting upon the same in either ways), the State has made no such attempt much less a policy in accordance with law. The formula adopted is patently arbitrary, without any rational and in fact causes perverse results. The attempt on the part of the State is primarily to give preference to the students of the SSC Board as opposed to the students who have passed their Board examination from other Boards in the same State without any reasonable basis, classification, much less justification. Preferential treatment without any rational basis is impermissible in law. Even in the case of Anju Garg v. Kurukshetra University and Anr. Civil W.P. No. 11951 of 1997, where weightage of 5 marks was given to the students who passed their examination from Kurukshetra University, the Court set aside the said preferential treatment on ground of such weightage and held as under:

As per subparagraph (iii) candidates passing out of Kurukshetra University are entitled to have a weightage of 5 marks. This preference on the basis of the University in which the candidate took the qualifying examination is stated by the petitioner to be unreasonable and arbitrary. Identical question came up for consideration before the Apex Court in State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, and Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh and another, . In the first case, for admission to Post Graduate Course in Medicines, weightage based on institutional preference and weightage on the basis of study in University were provided in the prospectus. Their sustainability came up for consideration. Virtually, weightage or preference on the basis of University was not seriously in dispute before the court. Institutional preference which was extended to the students was struck down by the Apex Court as unreasonable and arbitrary as it will result in denial of equality. From this decision it can safely be taken that preference on the basis of the University from which a candidate took the qualifying examination is

permissible while preference on the basis of institution from which a candidate qualified cannot be sustained....

40. Still in another case of Mandeep Kaur and Anr. v. Sri GuruRam Das Institute and Ors. (2002) 2 SCT160, while declining to accept preferential treatment, reservation of seats for sons/daughters of teachers for medical/dental courses of the Institute run by the Respondent was set aside. The Court while arriving at such decision relied upon the judgment of the Supreme Court in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das and Ors. 1993 (4) RSJ 261, Thapar Institute of Engineering and Technology v. State of Punjab and Anr. 1998 (1) Recent Services Judgment 533, and judgment of that Court in the case of Manjot Kaur (Minor) D/o Sohinder Pal Singh Kapur and Ors. v. State of Punjab and Ors. Civil Writ Petition No. 10194 of 1997 decided on 24th September 1997 and Parveen Hans v. The Registrar, Punjab University, Chandigarh and Anr. 1990 (1) RSJ 405, where reservation for wards of employees in LL.B. Course under general category was held to be bad and improper.

41. All these judgments clearly indicate that arbitrariness of any kind regarding such reservation without any basis, justification or within the permissible mandate of the constitutional exception of Article 14 are subject to judicial intervention and if they are found to be arbitrary, would be liable to be quashed.

42. The decision of the Government even if treated to be a policy decision, because of its lacuna and deficiencies would squarely fall within the settled ambit of judicial review. Irrationality, arbitrariness in the decision making process without even consulting the statutory bodies, nonapplication of mind and undue hurry and haste, taking into consideration irrelevant factors, basing its decision on assumptions and ignoring relevant materials are the features which are patently demonstrated in the present case. To add to all this, the percentile formula violates the fundamental right of meritcumpreference which the State is obliged to follow without default.

43. There is no reason before the Court for not interfering in this policy decision and set aside the same as being illegal, arbitrary and contrary to the basic rule of law. The only consideration that weighs with the Court at this juncture is that large number of students have already been given admission in different Colleges and if the entire process of admission is directed to be reconducted relating to admission of lakhs and lakhs of students, it would result in delay of academic course, avoidable public expense, inconvenience to the students" caused due to midstream change.

44. It will be appropriate for the Court to strike a balance and work out a formula which would cause least disturbance in all these fields as well as to the students who are admitted or are going to be admitted. It was brought to the notice of the Court that still some seats are lying vacant in different Institutions and also that the Government has taken an administrative decision to increase 10% seats in

the Institutions wherever it is required and particularly the preferential Senior Schools/Junior Colleges. This decision of the Government was brought to the notice of the Court by the learned Counsel appearing for the State during the course of the arguments. In these circumstances, I feel that it will be appropriate not to disturb the admission which have already been made when most of them are done even prior to the institution of the present Writ Petition. The Full Bench of the Punjab and Haryana High Court in the case of Swaranjit Singh and Anr. v. State of Punjab and Ors. 1997 (3) PLR 691, adopted such an approach and said as under:

...We, therefore, in the circumstances of the case, direct the respondents to grant admission to the two petitioners who were entitled to the same even if it means creating extra seats. A similar course was adopted by the Full Bench in Amardeep Singh Sahota's case (supra) and also by the learned Judges of the Supreme Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, . In Anil Kumar Gupta etc. v. State of Uttar Pradesh and Ors. 1995(5) S.L.R. 203 their Lordships of the Apex Court while dealing with the admissions to the medical courses found that the admission of the students was faulty but did not interfere with the admission already finalised and instead directed the authorities to create 34 additional seats to accommodate the students who were otherwise entitled to admission.

45. While passing some directions, I would decline to interfere in the admissions already granted in furtherance to this irrational and illegal formula of percentile rank.

46. In the light of the above discussion, I order as follows:

a) The Government Resolution dated 27th June 2008 as circulated by letter dated 30th June 2008 is hereby set aside and quashed. The Government is restrained from acting upon the said Resolution henceforth.

(b) The admissions already given to the students based on the impugned percentile formula are not disturbed. They shall continue in the respective Schools/Colleges where the admission has been granted.

(c) However, for the remaining vacant seats and/or additional 10% seats sanctioned and allowed by the State particularly in the preferential Colleges, shall not be filled up on the basis of the percentile formula. The admissions there would strictly be made in accordance with the golden rule of meritcumchoice with reference to the percentage of marks obtained by the student in their qualifying examinations i.e. the Board examination.

(d) Till the judgment is pronounced by the learned third Judge, the State is enjoined from making any further admissions except in terms of Clause (c) above.

47. Public Interest Litigation disposed of accordingly. No order as to costs.

48. In view of the divergent views expressed, it is directed that the matter may be placed for judgment/opinion before the Hon''ble third Judge, which we further request that may be posted for hearing immediately and be disposed of at the earliest so as to avoid any further prejudice to the students.