

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19057 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 19059 of 2022**

R

=====

SAUMIL HETALKUMAR SHAH

Versus

STATE OF GUJARAT

=====

Appearance:

MR ASIM PANDYA, SENIOR ADVOCATE WITH MR SHYAM M
SHAH(11348) for the Petitioner(s) No. 1,2,3MS MANISHA LAVKUMAR, GOVERNMENT PLEADER for the
Respondent(s) No. 1MR. KM ANTANI(6547), AGP for the Respondent(s) No. 2

=====CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND
KUMAR

and

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 04/10/2022

COMMON CAV JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

1. Both these petitions are filed under Article 226 of the Constitution of India challenging the validity of eligibility criteria prescribed for admission to MD/MS/ Diploma/CPS and MDS courses for the academic year 2022 - 2023 uploaded on the Website on 15.09.2022 at 2.15 p.m.

2. Since the challenge laid in both these petitions are one and the same, by consent of learned advocates

appearing for both, these petitions have been taken up together for hearing by treating Special Civil Application No.19057 of 2022 as lead matter.

3. The precise prayers made in the petition are reproduced hereunder from the lead matter:-

“7.A. To pass appropriate direction, order or writ, declaring that Eligibility Criteria (no. 2) for admission in MD/MS/Diploma/CPS & MDS Courses for the Academic year 2022 - 2023, as uploaded on website (www.medadmgujarat.org) of Admission Committee for Professional Post Graduate Medical Course (ACPPGMEC) - respondent no.2 on 15.09.2022 at 2.15 p.m. (at Annexure P1/Pg.18) is ultra vires to the The Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and Rules framed thereunder;

(7AA). To pass appropriate direction, Order or Writ, declaring that the Rule 4(2) Gujarat Professional Post - Graduate Medical Educational Courses (Regulation of Admission) (Amendment) Rules, 2022 (At Annexure - P7) is unconstitutional and is ultra vires to the The Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, and the Constitution of India; (As per the order dated 26.09.2022)

B. To pass appropriate direction, order or writ quashing and setting aside Eligibility Criteria (no. 2) for admission in MD/MS/Diploma/CPS & MDS Courses for the Academic year 2022 - 2023, as uploaded on website (www.medadmgujarat.org) of Admission Committee for Professional Post Graduate Medical Course (ACPPGMEC) - respondent no.2 on 15.09.2022 at 2.15 p.m. (at Annexure P1/Pg.18).

(BB) To pass appropriate direction, order or writ quashing and setting aside the Rule 4(2) of the Gujarat Professional Post-Graduate Medical Education Courses (Regulation of Admission) (Amendment) Rules, 2022 (At Annexure P-7) (As per the order dated 26.09.2022)

C. Pending admission and final hearing of the present petition, be pleased to stay the Eligibility Criteria (no. 2) for admission in MD/MS/Diploma/CPS & MDS Courses for the Academic year 2022 - 2023, as uploaded on website (www.medadmgujarat.org) of Admission Committee for Professional Post Graduate Medical Course (ACPPGMEC) - respondent no.2 on 15.09.2022 at 2.15 p.m. (at Annexure P1/Pg.18).

(CC) Pending admission and final hearing of the present petition, be pleased to stay the effect and implementation of Rule 4 (2) of the of the Gujarat Professional Post-Graduate Medical Education Courses (Regulation of Admission) (Amendment) Rules, 2022 (At Annexure P-7) (As per the order dated 26.09.2022)

D. Pending admission and final hearing of the present petition, be pleased to restrain the respondent no.2 from considering the Registration Forms of the candidates who have passed their M.B.B.S. and B.D.S. courses from Universities other than those enacted under the laws of State of Gujarat and situated in Gujarat.

E. Be pleased to pass any such other and further order which this Hon'ble Court may deem fit and appropriate in the interest of justice and equity."

4. The brief background of the facts which has given rise to these petitions are :

Petitioners are the candidates seeking admission to Postgraduate Medical Course after qualifying in NEET PG Exam, 2022. The respondent No.2 issued an advertisement for online registration for admission in Postgraduate MD/MS/Diploma/CPS & MDS courses for academic year 2022-23. Online registration opened up on 15.09.2022 till 21.09.2022 and the document verification and submission of photocopies at the Help Center to be placed from 16.09.2022 till 22.09.2022. In response to this advertisement, petitioners are said to have logged

their candidature on 15.09.2022 into the website of respondent No.2 for the purpose of Pin for registration of admission and on the main registration page itself, petitioners were shocked and surprised to see an update regarding the impugned eligibility criteria with the date and time of uploading being 15.09.2022 at 2.15 p.m. as indicated on the web page.

5. It is the case of the petitioners that petitioners themselves also checked notifications on the website to verify as to whether any amendment had taken place or not, but from the notifications on the website, it appears that the last amendment to the Rules was reflecting as 08.03.2019 and found that prevalent Gujarat Professional Post-Graduate Medical Educational Course (Regulation of Admission) Rules, 2018 dated 13.03.2018 were also available on the notification page of said website. The respondent No.2, according to the petitioners, released a list of FAQs whereby the impugned eligibility criteria is explained at point No.3. It is on account of this sudden

change having been found on 19.09.2022, a collective body of students including the present petitioners made a representation to respondent No.2 seeking the circumstances regarding sudden change in the alleged eligibility criteria and sought an explanation as well. But despite this representation and knowing that medical admissions are to be undertaken in a time scheduled manner, no response was received from the authority in respect of representation, which has constrained the petitioners to present petition under Article 226 of the Constitution of India.

6. The challenge in the petition is with regard to the following eligibility criteria (no.2) as indicated on notice put up on the website of respondent No.2. Same reads as under:

“On 19.09.2022, the Gujarat Professional Post – Graduate Medical Educational Course (Regulation of Admission) Rules, 2018 came to be amended vide amendment being Gujarat Professional Post – Graduate Medical Educational Courses (Regulation of Admission) (Amendment) Rules, 2022

whereby inter alia the Rule 4(2) OF THE SAID Rules was substituted by the Impugned Eligibility Criteria. A Copy of the amendment dated 19.09.2022 in the Gujarat Professional Post Graduate Medical Educational Course (Regulation of Admission) Rules, 2018 is annexed hereto and marked as Annexure - P7. (As per the order dated 26.09.2022)”

7. In view of aforesaid situation, apprehending petitioners are not likely to get any urgent respite or response from the authority, they have approached this court contending rights of the petitioners is at stake.

8. The petitioners have laid the challenge briefly on the ground that there is no intelligible differentia and rationale sought to be achieved by keeping both rules in force; the action of respondent No.2 in enacting impugned eligibility criteria is manifestly arbitrary and by pointing out the circumstances in the petition, the aforesaid reliefs are sought.

9. In respect of Special Civil Application No.19059 of 2022 also the very same challenge is made and grievance voiced in this petition is similar to the one urged in

Special Civil Application No.19057 of 2022. Hence, without burdening the present order with facts pleaded, this petition is also being dealt with by taking up the lead matter.

10. Looking to the urgency and importance of the challenge, we permitted the amendment which has been sought for by the learned senior counsel Mr. Asim Pandya appearing for the petitioners and issued notice calling upon the authorities to submit their reply, if any, in bringing the change in eligibility criteria and on account of extreme urgency being expressed by the learned senior counsel appearing for the petitioners that seat allotment stage has already commenced, we passed the following order on 27.09.2022 and it reads :

“We have heard the arguments of Mr. Asim Pandya, learned senior counsel appearing for the petitioners.

Learned AGP Seeks time on the ground that the learned Government Pleader would address the arguments. In view of the urgency expressed by the counsel for the petitioners and the seat allotment having

already commenced, we make it clear that any steps taken by the respondents would be subject to the result of the special civil application and this shall be notified to all the students who would be participating in the allotment process either individually or collectively, and an affidavit for having intimated or taken steps for having intimated shall be filed by the Secretary, Admission Committee by tomorrow.

Relist the matters tomorrow, i.e. on 28.09.2022 at 4.00 p.m.”

11. Later on, final hearing has taken place of the present petitions in which Mr.Asim Pandya, learned senior counsel has taken lead to submit on behalf of the petitioners; whereas on behalf of concerned respondent - authority Ms.Manisha Lavkumar, learned Government Pleader has advanced her arguments; with consent and request of both the learned advocates, we have taken up the petitions for final disposal.

12. Mr.Asim Pandya, learned Senior Advocate appearing for the petitioners has vehemently contended that process of admission to Post Graduate Course for the academic year 2022-23 has already begun by virtue of steps taken on 15.09.2022 and the Admission Committee

has published an advertisement for online registration to the Post Graduate course i.e. for Professional Post Graduate Medical Courses. By referring to the Rules prevailing as on 15.09.2022, Mr. Pandya, learned Senior Advocate has referred to eligibility criteria stipulated under Notification dated 13.03.2018 by virtue of which, Rules have been framed, known as "Gujarat Professional Post Graduate Medical Educational Courses (Regulation of Admission) Rules, 2018. A reference is made to the eligibility clause contained under Rule 4. By referring to sub-rule (2) of Rule 4, it has been brought to our notice that same prescribes that a candidate must have completed recognized MBBS or BDS course from the University established under any law of Government of Gujarat and situated in State of Gujarat and completed compulsory rotating internship on or before 31st March of academic year of admission and has contended this Rule as on date of publication of admission schedule on 15.09.2022 was prevailing and as such State quota deserves to be maintained accordingly.

13. Mr. Pandya, learned Senior Advocate has pointed out that during the midst of such admission process which had been commenced, a Notification came to be issued on 19.09.2022 (Annexure-P) surprisingly, whereby the effect of aforementioned Rule 4(2) has been diluted to the detriment of the students prosecuting their studies in the State of Gujarat and aspiring for admissions in Post Graduate Medical Courses. He would submit by this Notification dated 19.09.2022 sub-rule (2) of Rule 4 has been substituted and contending same adversely affect the students who are inclined to be considered under the State quota. Hence, he has prayed for quashing of same or alternatively to hold that same would be prospective in nature.

14. It has been pointed said change and substitution has taken place by virtue of Notification dated 19.09.2022 which came to be uploaded in the evening of 19.09.2022 and it has got adverse effect on the State quota and it would not only dilute the State quota, but curtail the

rights of petitioners to substantial extent.

15. Mr. Pandya, learned Senior Advocate has submitted that merit-list is to be prepared on the basis of this amended rule and to the reasonable knowledge of petitioners, approximately around 450 students will come in the State quota in view of this change which has been effected in the midst of the process of admission it would jeopardise their rights. Hence, in view of the law laid down by catena of decisions, such change cannot be given in the midst of admission process.

16. Learned Senior Advocate has raised a contention that settled position of law is that in the midst of recruitment process, no change can be effected in eligibility criteria and the Rules which are already prevailing as on date of the publication would be made applicable. Hence, Notification dated 19.09.2022 at the best can be applied for the next academic year.

17. Mr. Pandya, learned Senior Advocate has further contended that apart from this, a bare reading of the

Notification itself makes it clear that same shall come into force from the date of its publication in official gazette and to the reasonable knowledge of petitioners as on date, no such publication in the official gazette is made. Hence, Mr. Pandya has submitted that effect cannot be given to the present eligibility criteria which is tried to be altered in the midst of admission process. By referring to Section 20 of Parent Act, under which Rules are being framed namely, the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 (hereinafter referred to as "2007 Act"), he would contend that no doubt power is vested with the authority to frame Rules, but the mandate of statute will have to be followed by the Rule making authority before permitting any such change in the Rules. He has drawn the attention of the Court to sub-section (2) and (3) of Section 20 of 2007 Act to substantiate his contention and to contend that same has not been followed in the instant case.

18. By referring to the aforesaid statutory provision, Mr. Pandya, learned Senior Advocate has vehemently contended that no such procedure has been followed till date by the authority and straightway the process of admission has been commenced on the basis of this amended eligibility criteria. He would submit that present merit-list is prepared, but same has not been operative till date and he prays for protection being extended to the petitioners for ensuring that no irreversible situation would take place in the admission process which would affect the career of students.

19. Mr. Pandya, learned Senior Advocate has further submitted that requirement of laying down the Rules before the State Legislature is not an empty formality and it has to be done within the stipulated period as contemplated under the statutory provisions, namely within 30 days, and as such, before expiration of 30 days also, no effect can be given to such Rules by which the existing Rules are being amended and as such, he has contended when law requires a particular thing to be

done in a particular manner, it has to be done in the very same manner only. In support of this proposition, learned Senior Advocate Mr. Pandya has referred to and relied upon the following decisions:

- (1) In the case of **Neil Nunes v. Union of India** reported in **(2022) 4 SCC 1** (paragraph 56, 57, 58 and 59).
- (2) In the case of **Dipak Babaria & Ors. v. State of Gujarat** reported in **AIR 2017 SC 1792** (paragraph 53).
- (3) In the case of **Quarry Owners Association v. State of Bihar** reported in **AIR 2000 SC 2870** (paragraph 49).
- (4) In the case of **Union of India v. National Hydroelectric Power Corporation Ltd.**, rendered in **Appeal (Civil)No. 2885 of 2000** decided on 25.07.2001.

20. By referring to the aforesaid decisions, learned Senior Advocate Mr. Pandya has pointed out that in the midst of admission process, existing eligibility criteria could not have been altered to the detriment of large

number of students who have planned out their study and resources so as to opt for State quota as they belong to the State of Gujarat. By introducing this amendment, not only there will be adverse effect on students who were aspiring to secure seat in Post Graduate / Diploma course under State quota but also such quota will recede to background or would be diluted to a substantial extent and as such, this action is impermissible and same is not in consonance with the well sounded proposition of law and no effect can be given to the Notification dated 19.09.2022 insofar as it relates to eligibility criteria prescribed under 2018 Rules.

21. Mr. Pandya, learned Senior Advocate has further submitted that this action of introducing the amendment in the midst of admission process if permitted, then it would be a classic example of manifest arbitrariness and it would result in hostile discrimination and thereby students who have studied outside the State of Gujarat or even outside Country would be permitted to enter into admission process under the State quota by this process

and same would prejudice the entire structure of State quota. It has been further contended that these students if allowed to participate by virtue of this amendment then such students will have double benefit namely the benefit of participating in other State's quota as well as in the present admission process and as such, in the interest of justice, the State quota may not be diluted in any form. According to Mr. Pandya, learned Senior Advocate the intention of the Legislature all throughout has been to maintain the State quota and if amended rule is allowed to stand it would frustrate the same by virtue of introduction of change in the eligibility criteria and that too, in the midst of admission process once it has already begun and that too without following the procedure established by law and as such, the action of State is manifestly unjust, arbitrary, discriminatory and impermissible in view of the settled position of law and as such, petitioners are entitled to the relief as prayed for in the petition. Hence, he has prayed for petition being allowed.

22. Learned Government Pleader Ms.Manisha Lavkumar Shah appearing for respondent authority has vehemently opposed the petitions and has submitted the List of Dates & Events along with short affidavit-in-reply on behalf of respondent No.2 and would contend that undergoing process of admission is subject to outcome of these petitions. She would also contend that State Government received representations from students espousing their grievance that though they are born in Gujarat and/ or domicile of Gujarat, the existing rule disabled them from seeking admission to post-graduate studies from State of Gujarat, merely because they have undergone their under-graduate studies from institutions outside State of Gujarat/ India and as such with a view to bring meritorious students and talent in the field of medicine and who are from Gujarat, amendment has been brought about with a laudable object. It has been submitted that by virtue of amending the rule, State of Gujarat has ensured that candidates having talent should undergo post-graduate studies in M.D./ M.S/ Diploma/

CTS and MDS course and by virtue of this, State has ensured that 25% institutional quota prescribed under Rule 5A(2) has remained intact, whilst ensuring 313 seats out of 1367 seats is available under State quota and as such there may not be any prejudice to the students to secure admissions.

23. It has been submitted that rule has specifically put a cap to see that schools in which they have undergone studies are located in State of Gujarat; they must have born in Gujarat State/ be domicile of Gujarat State and as such with a view to see that students belonging to State of Gujarat can have fair chance to participate in the admission process, amendment has been brought about.

24. It has been vehemently contended that an impression is tried to be created as if without undergoing any process, amendment has been brought in. On the contrary, amendment has been reflected on the very first day of beginning of process of admission, as can be seen

from the notice published on the website on 15.09.2022, at 2.15 p.m. whereunder the eligibility criteria, as reflected in the amended rule, has been published to the notice of all aspiring candidates and no change has been brought in the midst of admission process. It has been further contended that State is quite conscious about the process which has to undergo while bringing such amendment and as such, every step has been taken to see that formality of bringing an amendment is complied with. It has been further submitted that from very first day of process of admission, all aspiring candidates were informed about eligibility criteria and in addition to it, on 19.9.2022 itself, request to publish in Extraordinary Government Gazette has been forwarded to the Government press for publication and also sending 50 copies to the concerned department and further it has been brought to our notice that inward entry which has been made with regard to such forwarding which indicates that process has commenced. Hence, it does not lie in the mouth of petitioners to contend that State has

not undertaken due process or rules of the game has been changed in the midst of process. On the contrary, every candidate was aware about this new eligibility criteria which is not changing the basic structure, but it is merely supplemental to the object sought to be achieved. As such, there is no irregularity of any nature which can be agitated by the petitioners. It has been further submitted that even petitioners are quite aware of the eligibility criteria which was published on the web portal and all the students have filled in their forms and all candidates have logged-in keeping in view the eligibility criteria fixed thereunder and as such they cannot now contend that behind their back, State has brought the amendment. Publication of notification process has already been set in motion, the moment notification dated 19.9.2022 was published and as such there is no irregularity of any nature and hence challenge must fail.

25. Learned Government Pleader has further submitted that rules of business require the process to be undergone for its publication in Official Gazette and there

is no delay on the part of State authority in undertaking such process, as has been indicated in the List of Dates and Events with Annexures and as such, simply because same has not been published on that very day in the Official Gazette, rules cannot be said to be invalid or inoperative. It is a settled position of law according to learned Government Pleader that eligibility should be considered as on the date when process began and 15.09.2022 is the date when all the prospective candidates have been intimated about the eligibility criteria and at the best, notification could have been in fact from 19.09.2022 and as such, it is contended that contention which has been raised that there has been change in the rules of the game in the midst of admission process is absolutely far from truth.

26. It has been further contended that by virtue of this amendment on the eligibility criteria impugned in the petition, State is not ousting any candidate from State quota. Nor State quota is given go-bye in any form. It is merely enlarging the scope of eligibility criteria of

meritorious students and as such, it merely supplements the main eligibility criteria fixed and it cannot be said that State has committed any illegality. In view of the settled position of law propounded by Hon'ble the Apex Court, the process of medical admission is to be concluded in a specific time schedule which is of great importance, she prays for rejection of these Special Civil Applications by contending interest of students from State of Gujarat is protected and students who belong to the State and are having eligibility would benefit by this amended rule as well.

27. Learned Government Pleader has further submitted that petitioners have raised a too technical issue or plea just to deprive the eligible students to participate in the admission process and have an aim to complicate and create hurdle in the process of admission. Learned Government Pleader has further submitted that in the immediate next admission assembly session, rules will be placed in view of Section 20 of the main Act, but simply because same has not been laid before the State

legislature, such amendment cannot be said to be invalid or illegal in any form.

28. Learned Government Pleader would substantiate her contentions and she would rely upon the decision delivered by Hon'ble Apex Court reported in the case of **Jan Mohammad Noor Mohammad Bagban Vs. State of Gujarat and Another**, reported in **1966 (1) SCR 505** and by drawing attention to paragraphs 5 and 18, a contention is raised that failure to place the rule before the House of Legislature does not affect validity of such rules and as such, she has submitted that no irregularity of any nature whatsoever has been committed and has informed the Court that said requirement would be observed scrupulously in the very next session of the assembly and she submits for placing all reasonable steps that have already been taken.

29. By referring to the expressions found in sub-rule (2) of Rule 4, a submission is made that solely with a view to protect the interest of students belonging to State of

Gujarat and more meritorious candidates can participate in the admission process this amendment is brought about and as such, when this is the benevolent object of the new rule which takes care of merit in medical admission, there is hardly any justifiable reason for petitioners to challenge the same. Said challenge is too technical and looking to supplemental effect of eligibility criteria, it is not justifiable on the part of the petitioners to assail the same.

30. It has been also contended that admission process has been scheduled and framed in such a manner that if delay were to occur, same will seriously prejudice large section of aspiring students who are inclined to prosecute their post-graduate studies. As a result of this, petitions may not be entertained and same be dismissed.

31. In reply, learned Senior Advocate Mr. Asim Pandya appearing for petitioners has submitted that there is no grievance of petitioners with regard to competition which is being faced by large number of students from amongst

eligible candidates, but it is only with a view to see that no illegality is perpetuated, challenge is laid to the Rules which has been introduced after admission process has commenced. Mr.Pandya has contended that even before publication of the Notification, an amendment has been brought in and process of admission has been begun on the basis of such amended rule, which has not seen the light of the day, meaning thereby that before publication in the Official Gazette, process has been begun in advance under such altered eligibility criteria. It has been further submitted that all students have been made to believe that process of admission will be as per the rules prevailing, i.e. Rule 4 of Rules of 2018. By referring to the advertisement which has been published by Admission Committee in the newspaper whereunder it has also been clearly indicated that *“candidates who are qualified in NIT PG 2022 and are eligible as per respective council and admission rules of Gujarat State can apply as per the following schedule”*, meaning thereby, even said advertisement which has been published does not

indicate that rules of 19.09.2022 are to be operated. In fact, not only State authority has not observed the mandate of Statute by observing and taking steps as contemplated under Section 20 of the parent Act but even effect of this amended rule is also self-explanatory since it has now been published in Extraordinary Gazette on 27.09.2022. He would contend that sub-rule (2) of Rule 1 of this notification dated 19.09.2022, published on 27.09.2022, clearly indicate that Rules of 2022 would come into force from the date of its publication in the Official Gazette and as such, when this is apparently made clear, the process of admission which is sought to be undertaken under amended rule is absolutely invalid, void, *non est* in the eye of law and as such, by no stretch of imagination, stand taken by authority can be justified. As such, learned senior advocate Mr. Pandya has reiterated his submission that effect of amended rule cannot be given effect to the admission process which has already been begun after the existing rules viz. unamended rules.

32. Learned senior advocate Mr. Asim Pandya has reiterated that students who have prosecuted their studies outside State of Gujarat will be benefited by virtue of this amendment and he would contend that a candidate from Jharkhand who is aspiring to opt for admission in the State of Gujarat, will have benefit of both States, namely in Gujarat State as well as in State of Jharkhand, and by referring to Rules of 2021 brought in on 11.01.2022, a contention is raised that double benefit would be made available to such kind of students which ultimately affect the rights of students from the State of Gujarat. Mr. Pandya has also drawn the attention of this Court to the decision of Hon'ble the Apex Court in the case of **Harla Vs. State of Rajasthan** reported in **1951 (0) AIJEL SC 10825** to contend that necessity of publication in the Official Gazette has its own effect and force and when law requires it to be published, same cannot be diluted in any form and in the instant case, not only the parent Act is prescribing a specific procedure to be followed, but even notification dated 19.09.2022 itself

is indicating that effect of this rule will be from the date of publication in the official gazette and undisputedly, gazette publication by competent authority has been made on 27.09.2022 and as such, on the disputed position itself, process which has been commenced from 15.09.2022 till 27.09.2022 is *non est*, illegal, void and cannot be sustained. Hence, the relief prayed for deserves to be granted in the interest of justice.

33. Two other decisions have also been brought to the notice, which are **(2006) 9 SCC 507** and **1986 Suppl. SCC 543** and by referring to the same, by both the sides, a request is made to take suitable decision so as to see that students may not be put to any situation whereby their career prospects may become uncertain and as such, it is requested to dispose of the petitions at the earliest looking to the time schedule which is to be maintained by the authorities in respect of this process of admission. No other submissions have been made.

FINDINGS AND CONCLUSION :

34. For admission to MD/MS/Diploma/CPS and MDS course for the Academic Year 2022-23 through Admission Committee for Professional Post Graduate Medical Courses - respondent No.2, a notification came to be published in the website on 15.09.2022 whereunder the eligibility criterion has been fixed. Contending, *inter alia*, that said notification contains the eligibility criteria contrary to what is prescribed under the Gujarat Professional Post Graduate Medical Educational Courses (Regulation of Admission) Rules, 2018 ('Rules 2018' for short) and subsequent amendment brought to the eligibility criteria fixed under Rules 2018 viz. Rule 4 cannot be made applicable to the admission of the Academic Year 2022-23 on the ground that rules are prospective in nature viz. it would come into force from the date of its publication in the official gazette, it has been questioned in the present Special Civil Application.

35. Section 20 of Act 2007 reads as under :

“20. Power of State Government to make rules.

(1) The State Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before the State legislature as soon as possible after they are made and shall be subject to the rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(3) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.”

36. By virtue of the power vested under sub-section (1) of Section 20, the State Government has made Rules, 2018 with effect from 13.03.2018. Same came to be

amended by issuance of impugned Notification dated 19.09.2022. On the same day, it was forwarded to the Manager, Government Press for its publication in the official Gazette and acknowledgment by the Government press (Annexure-4) placed on record by Government Pleader along with list of dates and events would evidence this fact. It was published on 27.09.2022 as could be seen from Annexure-5. The controversy in these applications revolves around Rule 4 which prescribes the eligibility criteria for admission to Post Graduate Medical course. The said rule as then existing under the 2018 Rules, and as amended with reference to the notice published on the website which has been the bone of contention requires to be noticed. In this background, we deem it proper and necessary to extract in the following tabular column the qualification as prescribed under notification published in the website / portal of respondent No.2, the qualification as prescribed under Rule 4 of Rules 2018 and the Amended Rules:



As per Notification	Existing Rules	Amended
<p>4. Eligibility for Admission:-</p> <p>1.</p> <p>2. The candidate must have completed the recognized MBBS or BDS course from University established under any law of Government of Gujarat and situated in State of Gujarat and completed compulsory rotating internship on or before 31st March of academic year of admission;</p> <p>3.</p>	<p>(1) The candidate must have completed the recognized MBBS or BDS course from university established under any law of Government of Gujarat and situated in State of Gujarat.</p> <p>(2) The candidate must have completed the recognized MBBS or BDS course from university established under any law of Government of India and situated in any State Union territory of India / Out of India subject to fulfilling the Eligibility criteria of NMC, New Delhi / Govt. of India and must have passed 12th qualifying examination with “B-group” or “AB-group” either from (a) Gujarat board OR (b) from central Board of Secondary Education / The Council of Indian School Certificate Examination Board / The International School Board (International Baccalaureate and Cambridge) / The National Institute of Open Schooling provided that school is located in the State of Gujarat and must be born in Gujarat State / be the Domicile of Gujarat State.</p> <p>(3) The candidate must have completed compulsory rotating internship on or before 31st July 2022.</p>	<p>2(a) The ca the recog from univ law of the</p> <p>(b) The ca the recog from unive the Parliar / Union completed outside of criteria of India, as have passe with “B-g from (a) Central Bo The Counc Examinati School Baccalaure National provided t State of G have born Domicile o</p>

37. A perusal of Rules 2018 would indicate that candidate seeking admission to Post Graduate Course must have completed his/her MBBS or BDS or equivalent course from university established under any law of Government of Gujarat and situated in State of Gujarat and completed compulsory rotating internship on or before 31st March of academic year of admission. In fact, the publication of the notice as web-hosted calling for applications from the candidates for Post Graduation and same would indicate that if such candidate has completed the recognized MBBS or BDS course from university established under any law of Government of India and situated in any State Union territory of India / Out of India subject to fulfilling the Eligibility criteria of NMC, New Delhi / Govt. of India and have passed 12th qualifying examination with 'B-group' or 'AB-group' either from (a) Gujarat board OR (b) from central Board of Secondary Education / The Council of Indian School Certificate Examination Board / The International School Board (International Baccalaureate and Cambridge) / The

National Institute of Open Schooling provided that school is located in the State of Gujarat and must be born in Gujarat State / be the Domicile of Gujarat State, such candidate would become eligible to be considered or eligible to apply for Post Graduate course. It is this condition prescribed in the notification which is sought to be incorporated in the rule which is being assailed as changing the rule of the game after game has begun. If the rule is sought to be applied by amending the same with retrospective effect, wherein no existing right of any person is taken away, said rule cannot be struck down.

38. The Hon'ble Apex Court in the case of **Marripati Nagaraja and others vs. Government of Andhra Pradesh and others [(2007) 11 SCC 522]**, has held to the following effect:

“14. It is now a well settled principle of law that the rules which would be applicable for selecting the candidates would be the one which were prevailing at the time of the notification. It is also equally well settled that the State may, subject to constitutional limitations, amend the rule with retrospective

effect. Rule 22-A which was applicable as on the date of the said notification reads as under:

“Rule 22-A. Notwithstanding anything contained in these Rules or Special or Ad hoc Rules, (1) In the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women : (G.O.Ms. No.472, G.A., Dt.11.10.85) Provided that such absolute preference to women shall not result in total exclusion of men in any category of posts.

(2) In the matter of direct recruitment to posts for which women and men are equally suited, other things being equal, preference shall be given to women and they shall be selected to an extent of at least 30% of the posts in each category of O.C., B.C., S.C. and S.T. quota.

(3) In the matter of direct recruitment to posts which are reserved exclusively for being filled by women they shall be filled by women only (Vide G.O.Ms. 691, G.A. (Ser-D), Dt.22.11.1984, w.e.f. 2.1.1984)”

15. The women candidates, in terms thereof, were, therefore, only entitled to preference. By reason of the said notification merely, the percentage has been increased from 30% to 33 1/3%. It has been given a retrospective effect; as the existing sub-rule (2) of Rule 22-A was substituted. By reason of the said

Notification, no existing right of any person has been taken away. In fact, as the selection process was not over, the question of applicability of the said notification would have fallen for consideration only when a final selection list was to be made and not prior thereto.

16. The State, in exercise of its power conferred upon it under the proviso appended to Article 309 of the Constitution of India, is entitled to make rules with retrospective effect and retro-active operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensure. In such an event, the applicable rule would not be the rule which was existing but the one which had been validly brought on the statute book from an anterior date. The Tribunal and the High Court, therefore, in our opinion, committed an error in opining otherwise, particularly when the constitutionality of the said rule was not in question.”

39. Whether the rules have retrospective effect or not primarily depends upon the language of the rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express

provision or by necessary implication. It depends largely on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules. If there is right created to a candidate as per the advertisement and such right is taken away by the amended rule that too applied retrospective, then necessarily it has to be held that existing rules would prevail and the selection process ought to proceed accordingly. However, if the right of the candidate is not taken away and such candidate continues to be eligible and is otherwise qualified in accordance with the amended rule, then terms contained in the advertisement, would not vest any right to the candidate for being considered for selection only in accordance with the rules as they existed as on the date of advertisement. In the instant case, the qualification as prescribed in the advertisement is not in dispute.

40. There is yet another fact which cannot go unnoticed. Where the advertisement issued inviting applications expressly states that eligibility would be as

per the existing rules or government orders and it indicates the extent of reservation if any in favour of various categories, then selection in such cases would be in accordance with the existing rules and the government orders. Generally, the candidate has a right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallizes on the date of publication of advertisement. However, the candidate has no absolute right to be selected. If the rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the Amended Rules. Whether the rules have retrospective effect or not primarily depends upon the language of the rules and its construction. The legislative intent is ascertained either by express provision or by necessary implication. The Hon'ble Apex Court in the case of **Panchi Devi vs. State of Rajasthan and others [(2009) 2 SCC 589]** has held that a right or a liability which is created for the first time, cannot be given a retrospective effect. It has been further held:

“9. A delegated legislation, as is well known, is ordinarily prospective in nature. A right or a liability which was created for the first time, cannot be given a retrospective effect. Furthermore, the intention of the State in giving a prospective effect to that rule is clear and explicit; the amendment in Rule 22A was also to be effective from 1.9.1982 itself. No relief can be granted to the appellant herein on the basis of the decision in Prabhati Devi (supra). The said decision did not lay down the correct law. Article 14 of the Constitution of India has a positive concept. Equality, it is trite, cannot be claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant.”

41. It is a well settled law that an office memorandum or an executive order cannot have retrospective effect unless and until the intention of the authorities to make it as such, is revealed expressly or by necessary implication in the office memorandum or executive order as the case may be. For this proposition, the judgment of the Hon’ble Apex Court in **Sonia vs. Oriental Insurance Co. Ltd. and others [(2007) 10 SCC 627]** vide paragraph 11 can be looked up. An executive order which is clarificatory in nature could be given a retrospective operation. It may

not have force of law but same may come within the purview of the well-known principle of *contemporaneous exposito*. The Hon'ble Apex Court in the case of **Tamil Nadu Electricity Board and Another vs. Status Spinning Mills Limited and Another [(2008) 7 SCC 353]** has held that administrative instructions / orders can be given retrospective effect. It is also held:

“9. The clarification issued by the State during pendency of the appeals should have, therefore, been considered by the High Court in its proper perspective. If it is clarificatory in nature, it could be given a retrospective operation. Such a question, however, should have been posed and answered. Furthermore, the letter dated 1.08.1997 was issued as some confusion arose. When a subordinate legislation is made by the State Government, it must be done in terms of the constitutional provision. An executive order is also issued keeping in view the rules and executive business. It may not have the force of law but the same may come within the purview of the well-known principle of contemporaneous exposito. Rules of executive construction are also relevant.

42. Keeping these principles in mind when the facts on hand are examined, it would not detain for us too long to hold that under the Amended Rule, right of the

petitioners is in no way affected. They continue to possess the right to participate in the selection process. The State having received representations from students raising a grievance that though they are born in the State of Gujarat and/or being domicile of Gujarat are being disabled from pursuing their post graduate studies from the State of Gujarat merely because they would have undergone undergraduate studies from the institutions situated outside Gujarat / India. This situation prevailing in State of Gujarat has perforced the State to publish in the advertisement by web-hosting on the web portal of respondent No.2 prescribing conditions for permitting a candidate having completed recognized MBBS or BDS course from university not only under the law of the Government of Gujarat and situated in the State of Gujarat but also those candidates who have completed the recognized MBBS or BDS course from university established under any law of the Government of India and constituted in any State / Union Territory of India / Out of India and subject to such candidates fulfilling the

eligibility criteria of fulfilling the eligibility criteria of NMC, New Delhi / Government of India with 12th qualifying examination with 'B-group' or 'AB-group' either from (a) Gujarat board OR (b) from central Board of Secondary Education / The Council of Indian School Certificate Examination Board / The International School Board (International Baccalaureate and Cambridge) / The National Institute of Open Schooling provided that school is located in the State of Gujarat and must be born in Gujarat State / be the Domicile of Gujarat State. This would not only take care of petitioners' interest but also the larger interest of the candidates who were born in Gujarat State and who have continued to be domicile of Gujarat and who are having the status of domicile of Gujarat State and having passed 12th qualifying examination in the State of Gujarat as is indicated in the advertisement, as also the amended rule.

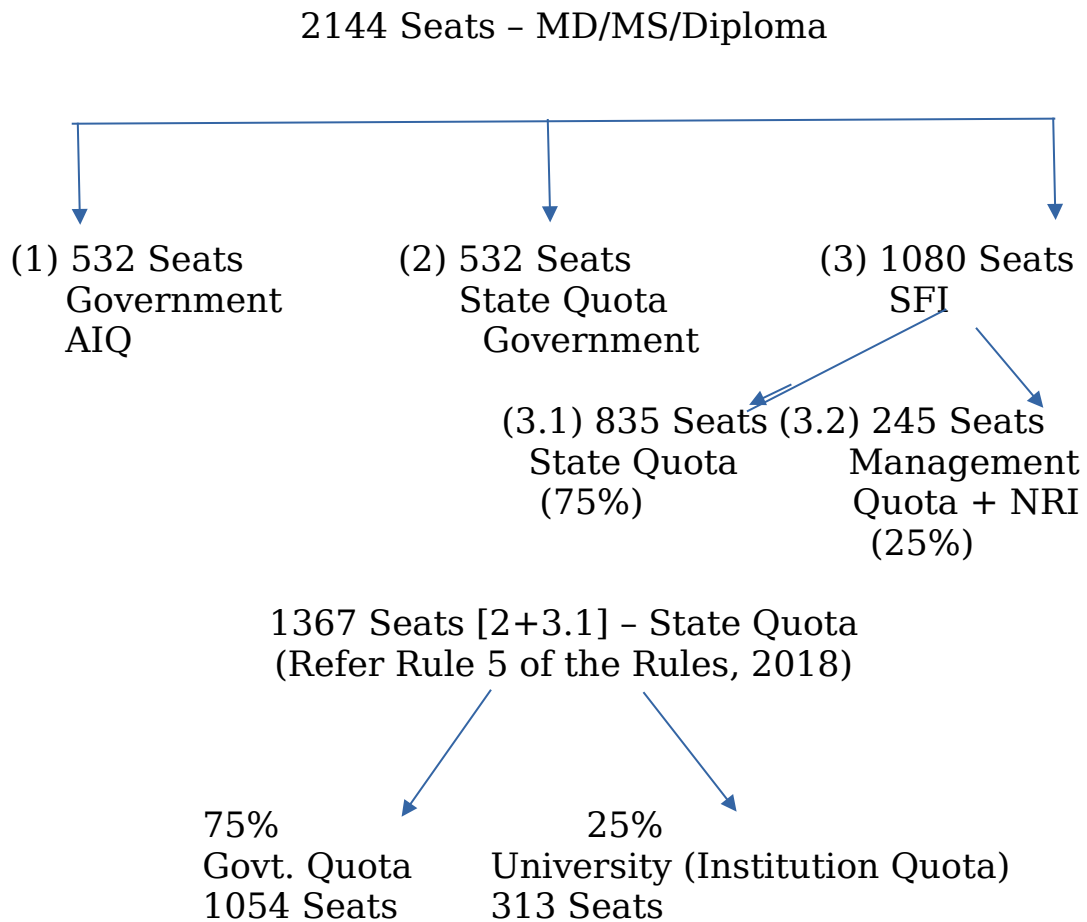
43. With a laudable object that candidates born in Gujarat or being domicile of Gujarat should also be extended the benefit of participating in the selection

process and exclusion of such candidates only on the ground of they having passed the undergraduate course from an institution outside State of Gujarat or India, though they are born in Gujarat or domicile of Gujarat would not only be too harsh but also would be unjustified. The State of Gujarat has ensured that to harness the talent of Gujarat in the field of medicine, the candidates fulfilling the criteria prescribed under the advertisement which is now amended or brought in tune with the advertisement would be able to bring in the talent of Gujarat in the field of medicine for undertaking post-graduate studies.

44. It is also noteworthy to mention that quota prescribed under Rule 5A(2) has remained intact whilst assuring 313 seats of the total 1367 seats available in State quota in the seat matrix. It would also be noteworthy to mention that seat matrix for MD/MS/ Diploma course by applying either conditions prescribed under the advertisement or the Amended Rules as under :

Seat matrix for MD/MS/Diploma

[See Rule 2(i) & 5 of Rules, 2018 read with Amendment Rules, 2022]



* Approximate 250 CPS Diploma Seats in addition to 1367 Seats of State Quota

45. In view of aforesaid analysis, we are of the considered opinion that amendment of the Rules with regard to eligibility criteria is brought with a view to ensure more meritorious candidates and to secure best talent in the field of medicine who are born in State of

Gujarat and are domicile of Gujarat.

46. For a short period, a student might have gone out of State or out of country but has returned back to the State of Gujarat to pursue higher studies. The amended Rule takes care of such candidate's interest also. Hence, in our opinion petitioner's participation in the admission process is not thwarted or taken away in any way. On the contrary, the larger participation will have to be faced by the petitioner or similarly placed person and this would not be a ground to challenge the validity of change in the eligibility criteria. The basic structure of eligibility criteria has not damaged the State quota or altered the position to the deterrent of the petitioner or similarly placed candidates. On the contrary, with a view to give more number of students a chance to participate who belong to the State of Gujarat it is intended under amended Rule to include such candidates also and as such, questioning of validity of Rule is ill-founded in our opinion.

47. In view of aforesaid circumstances, which are prevailing on record, we have noticed that steps which have been taken by the authority for the purpose of undertaking a process for bringing the eligibility criteria under the impugned rules is in consonance with settled principles of law. On perusal of the stand of the authority and relevant records, we find that eligibility criteria has been brought in, with an object to consider more number of meritorious students studying in the field of medicine belonging to State of Gujarat would be able to participate in selection process along with petitioners and similarly placed persons. This eligibility criteria has not altered the substratum or the object of existing rules and the interest of students of State of Gujarat has been taken care of. Perusal of the impugned notification dated 19.09.2022 would indicate to enlarge the scope of consideration of large section of students who have studied outside the State for some time, as indicated in the sub-rule itself said amendment is brought about. But while bringing this, the basic object of giving due benefit to the local

students, that is the students of State of Gujarat, is not jeopardized. Substituted rule 4(2)(b) clearly indicates that such candidate must have passed 12th qualifying examination from a school located in the State of Gujarat and such candidate must have been born in the State of Gujarat or should be the domicile of Gujarat State. These words or expression found in the substituted sub-rule (2) would indicate that State quota is not removed nor diluted but maintained with little enlargement and the resultant effect is that more numbers of candidates who are from State of Gujarat will be in a position to seek for admission to Post Graduate / Diploma course in the academic year 2022-2023 itself. If these words - expressions were not to be found in sub-rule (2) of Rule 4, we would have viewed the matter from different angle. But when the State authority have taken care of the interest of students from State of Gujarat, we hardly see any reason for the petitioners to agitate and merely because a student will have to face larger competition, would not be a justifiable ground to assail any change of

eligibility criteria. It is trite law that hardship is no ground to question the validity of a provision. Hence, we are of the view that challenge laid in these petitions is not justified.

48. Apart from that much grievance of rule having not been notified was raised at the initial stage by the petitioners which persuaded us to issue notice. However, it is brought to our notice that such change has already been gazetted and immediately upon bringing the same 50 copies were sent to the Manager, Government Press, Gandhinagar with a request to publish in the extraordinary Government gazette and even the inward register of Government Press disclose the receipt of such request from Government having been received and with no time being wasted, publication also having been effected, said contention has to fall. At this juncture, we also take note of the fact, that from the beginning petitioners were aware about the eligibility criteria which is questioned in the petition and on the web portal itself

the eligibility criteria was published and petitioners have also logged-in seeking admission to Post Graduate/Diploma course pursuant to same whereunder eligibility criteria now impugned in the petition is reflected. As such it is not the case of the petitioners that after substantial process having been completed of admission, change in the eligibility criteria has been brought about. In fact, this change has been made known to all the aspiring students from the beginning of the process and as such undisputedly it is not a case that rules of the game has been changed, either in the midst of admission process or at a belated stage. The main grievance which was voiced out, at a relevant point of time, was that it was not published in the official gazette. In a similar situation the Hon'ble Apex Court in the case of ***Jan Mohammad Noor Mohammad Bagban versus State of Gujarat and another*** reported in ***(1966) 1 SCR 505*** wherein also a grievance was raised that rules at relevant point of time were not placed before the House and thereby it had become invalid, came to be considered and held by the

Hon'ble Apex Court, when there was no legislature in session at the relevant point of time and on account of exigencies as indicated therein it was notified and later said rules were placed in the Assembly in the second session and as such, it came to be held that Rules cannot be invalidated on said ground. It has been further held by the Hon'ble Apex Court as under :

“18. Finally, the validity of the rules framed under the Bombay Act 22 of 1939 was canvassed. By s. 26(1) of the Bombay Act the State Government was authorized to make rules for the purpose of carrying out the provisions of the Act. It was provided by sub-s. (5) that the rules made under s. 26 shall be laid before each of the Houses of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Houses concur and such rules shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly. It was urged by the petitioner that the rules framed under the Bombay Act 22 of 1939 were not placed before the Legislative Assembly or the legislative Council at the first session and therefore they had no legal validity. The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no Legislature in session, the Legislature having been suspended during the emergency arising out of World War II. The session of the Bombay Legislative Assembly

was convened for the first time after 1941 on May 20, 1946 and that session was prorogued on May 24, 1946. The second session of the Bombay Legislative Assembly was convened on July 15, 1946 and that of the Bombay Legislative Council on September 3, 1946 and the rules were placed on the Assembly Table in the second session before the Legislative Assembly on September 2, 1946 and before the Legislative Council on September 3, 1946. Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under S. 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-s. (5) of s. 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-s. (5) of S. 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of s. 64 of the Gujarat Act 20 of 1964 they continue to remain in operation."

49. Keeping the aforesaid proposition in mind we find in the instant case that when the eligibility criteria was prescribed, as indicated on the Website on 15.09.2022

and notification to that effect has also been published/notified and as submitted by learned Government Pleader, the Assembly not being in session, has assured the Court that same will be laid before the Assembly session as and when it is convened and as such, keeping the said position in mind, we are of the view that on account of said factual situation, the eligibility criteria fixed under the amended rules cannot be set at naught. As noticed earlier, had there been a case to change in the rules of the game, either in the middle or at the end of the admission process, in all probability we would have accepted the grievance of petitioners. However, in the instant case we notice that all aspirants were put to notice from the very first day about the conditions or eligibility criteria. That apart, students of State of Gujarat have not been deprived of being within the zone of consideration for admission under the amended rule, we are of the view, applying the principle of convenient interpretation the challenge made in the petition deserves no consideration. The State on the contrary has made an

attempt to protect the interest of students of State of Gujarat to a larger extent by retaining the latter part of substituted rule. Hence, we see no reason to entertain the challenge made by the petitioners. Hence, based upon overall consideration of material on record *vis-a-vis* the principles laid down by the Hon'ble Apex Court in the decision which have been brought to our notice, we are of the considered opinion that petitioners have not made out strong case to accept their contentions. Petitions being meritless, we deem it proper to dismiss the same.

50. Hence, we proceed to pass the following

ORDER

- (i) Both the Special Civil Applications are dismissed. Notice stands discharged.

- (ii) There shall be no order as to costs.

(ARAVIND KUMAR, CJ)

(ASHUTOSH J. SHASTRI, J)

GAURAV/PH/OM/BH/DHM