

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 14 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 4
 - 5 Whether it is to be circulated to the civil judge ?
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SANSKAR EDAUCATION TRUST - Petitioner(s)

Versus

GUJART UNIVERSITY & 2 - Respondent(s)

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Appearance :

MR ND NANAVATI WITH MR MITUL K SHELAT for Petitioner(s) : 1,
MR DIPAK SHUKLA FOR MRS VD NANAVATI for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/05/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner - trust through its Administrative Officer running/establishing self-financed pharmacy college has prayed for an appropriate writ,

direction and/or order quashing and setting aside communication dated 15-12-2005 of the Gujarat University refusing to enroll the first year B.Pharm students admitted by the petitioner for the academic year 2005-06. The petitioner has also prayed for order commanding the respondent university to enroll the students granted admission in the petitioner's college.

2. The facts stated in the present Special Civil Application are as under:

The petitioner is a trust under the Bombay Public Charitable Trust Act, 1956. In the year 2000-01, it established the "Prashant & Mittal Kansara Pharmacy College" after obtaining due approval from the AICTE and affiliation from the Gujarat University. The Gujarat University did not continue the affiliation during the year 2003-04 and 2004-05 for various mal-practices and irregularities. The petitioner contested the said decision by filing writ petition before this court, which came to be dismissed. Letters Patent Appeal filed against the said decision also came to be rejected. The students pursuing their studies in the college were accommodated in other colleges. The petitioner thereafter rectified its deficiencies and applied to the University for

granting affiliation for the year 2005-06. After due verification, the Gujarat University granted affiliation to the petitioner college for the year 2003 to 2006 vide its communication dated 10-3-2005. The petitioner thereafter applied to the AICTE for approval for granting admissions against 60 seats for the year 2005-06 and the AICTE granted approval/recognition by order dated 28-10-2005. That the admissions in the Government Quota in the self financed colleges are granted by the respondent No.2 committee i.e. Joint Admission Committee for professional courses (technical) (hereinafter referred to as the "JAC-PC"). That immediately upon receipt of the communication from the AICTE dated 28-10-2005, the petitioner trust addressed a communication on the same date to the respondent No.2 committee i.e. JAC-PC informing it regarding the approval granted by the AICTE and requesting it to allot the students against the Government Quota seats. The petitioner made inquiry with other self financed affiliated colleges of the Gujarat University as well as other Universities regarding the admission procedure being permitted by the Committee and the petitioner was informed that the Committee had addressed a communication dated 19-10-2005 to them informing them to grant admission in the vacant seats by

inviting application by public advertisement and on the basis of *inter se* merits of the applicant students. The petitioner thereupon addressed another communication on 29-10-2005 again requesting the Committee to allot the students and the petitioner even undertook to grant the admissions on the basis of the list provided by the Committee i.e. JAC-PC. The petitioner further informed that if operating the merit list was not possible, it would undertake the admissions as permitted to other colleges and in accordance with the rules of the Government of Gujarat. The petitioner did not receive any response from the JAC-PC and the petitioner thereupon addressed another letter dated 31-10-2005 informing the Committee that in absence of any guidelines being issued by it, the petitioner would proceed to grant admissions in the manner permitted by the Committee to other Engineering and Pharmacy colleges. That thereafter, the petitioner received the communication dated 14-11-2005 addressed by the JAC-PC *inter alia* informing the petitioner that since the reshuffling procedure was over before the permission was received from the AICTE, no admissions were granted in the petitioner college. Petitioner was further informed that the letter dated 19-10-2005 was not applicable to the petitioner college and

any admission granted by the petitioner would be at its own risk and cost. The petitioner granted admissions to 60 students in accordance with the procedure prescribed by the Committee against the 60 seats in its college and the said students who were granted admissions, have commenced their education in the petitioner college. It is further submitted by the petitioner that it had obtained from the University affiliation for the year 2005-06 from the Gujarat University as well as approval from the AICTE for granting admissions in the year 2005-06. Accordingly, it submitted the list of the students along with the enrollment form and enrollment fees to the respondent University vide its letter dated 6-12-2005 and the petitioner management noticed the communication dated 15-12-2005 addressed by the respondent University *inter alia* conveying its decision not to grant enrollment to the students granted admission in the petitioner college since no admissions were granted by the JAC-PC. Being aggrieved by and dissatisfied with same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

3. Shri ND Nanavati, learned senior advocate appears

with Shri Mitul Shelat, learned advocate appearing on behalf of the petitioner has vehemently submitted that once the institution run by the petitioner trust has been granted affiliation for the year 2005-06 from the Gujarat University and that an approval from the AICTE for granting admission in the year 2005-06 and when various representations were made by the petitioner to the JAC-PC to allot the students and having failed to receive any communication from the JAC-PC and/or there being no response from the JAC-PC, the petitioner trust - institution granted admission to the students before 6-11-2005 as per the merits and therefore, it is not open for the respondents, more particularly, respondent No.1 not to enroll the said students only on the basis of the communication of the JAC-PC dated 14-11-2005, more particularly, there was no direction from the JAC-PC to the Gujarat University. It is also further submitted that the University has misread the letter dated 14-11-2005 addressed by the JAC-PC. It is also further submitted by him that for the purpose of granting enrollment, the relevant factors to be considered are (1) Whether the college is affiliated, (2) Whether the college possesses the approval of the AICTE and (3) Whether the students admitted possess the requisite eligibility. It is

submitted that as all the above requirements are duly satisfied, the action of the University in refusing to enroll the students is arbitrary and violative of Article 14 of the Constitution of India. It is further submitted that the students of other colleges, who were granted admission by the respective colleges after the reshuffling process was over have been enrolled by the University. It is also further submitted that even some students having approximately 36% of marks, are granted admission by the other colleges and/or by the JAC-PC and therefore, it is requested to allow the present Special Civil Application. It is asserted on behalf of the petitioner that the students admitted possess the requisite eligibility. It is further submitted that if the students admitted by the petitioner in the first year B.Pharm are not enrolled by the University, then those students are likely to lose their one year as they will not be permitted to appear in the ensuing examination to be commenced from 1st June, 2006 and therefore, looking to the interest of the students, it is requested to allow the present Special Civil Application and direct the respondent University to enroll those students and permit them to appear in the ensuing examination of the first year B.Pharm.

4. Shri Dipak Shukla, learned advocate for Ms VD Nanavati, learned advocate appears on behalf of the respondent University and an affidavit in reply is also filed on behalf of the respondent University. It is submitted that considering the communication dated 14-11-2005 of the JAC-PC by which the admission granted by the petitioner trust in the institution in the first year B.Pharm has not been approved by the JAC-PC, the University is justified in refusing to enroll those students. It is also further submitted that the decision has been taken by the University on receipt of a letter received by the University from the JAC-PC dated 14-11-2005, according to which the Committee had not granted any admission to the students admitted by the petitioner college nor had given the consent for admitting students directly by the petitioner college. It is further submitted that the entire process relating to admission to first year Engineering Degree and Diploma are carried out by the JAC-PC and the University follows the rules for admission to first year course of Engineering Degree and Pharmacy Degree and Diploma after 12th Science Stream 2005-06. It is also further submitted in the reply that the petitioner college has enrolled the students directly

without getting approval of JAC-PC and therefore, it is requested to dismiss the present Special Civil Application.

5. The present petition is also opposed by respondent No.2 - JAC-PC (technical), Ahmedabad and an affidavit-in-reply is also filed on behalf of respondent No.2. It is submitted in the reply that the Gujarat University had not continued the affiliation of the petitioner institution during the year 2003-04 and 2004-05 and the said decision has confirmed upto LPA by this court looking to the large scale irregularities committed by the petitioner trust. It is further submitted that because of the irregularities habitually committed by the petitioner trust, the students studying in the petitioner college had to be transferred and accommodated in other colleges. It is further submitted that the respondent No.2 came to know about the communication dated 10-3-2005 addressed to the petitioner by the University granting the affiliation for the year 2003 to 2006 only when a copy thereof is annexed to this petition and the respondent No.2 has yet not received the said communication finally from the University till date. It is further submitted that normally the university's

affiliation is a subsequent event to AICTE. However, in the present case, the University's affiliation is prior to the approval by the AICTE for the year 2005-06. It is further submitted that as per the petitioner, they pursued its application with the University on 10-3-2005 and removed all the deficiencies that means they removed the deficiencies on the table and got affiliation of the university on the same date i.e. on 10-3-2005.

It is further submitted that the admission to the Government Quota in self financed colleges is granted by the Committee by virtue of the admission rules framed by the education department. On 28-10-2005, the petitioner addressed a letter enclosing therewith a copy of the Gujarat University affiliation and AICTE approval dated 28-10-2005 and asked the JAC-PC to grant admission to the Government Quota seats immediately. It is further submitted by respondent No.2 that it is worth noting that the petitioner approached AICTE on 28-10-2005 and got the approval from AICTE on 28-10-2005 itself and approached respondent No.2 also on 28-10-2005 itself. It is further submitted that even as per the condition of AICTE, some conditions are required to be followed which are (1) the institution must appoint faculty members as per AICTE norms with pay scales as prescribed by AICTE (2) all the

required Laboratories/ Machineries/Equipment as per the approved syllabi of the affiliating university must be operational before making admission and that the respondent Committee is not informed of the affiliation of the petitioner institute after the approval dated 28-10-2005 from AICTE by the University after completing the process as contemplated in the AICTE approval. It is further submitted that the petitioner sent various communications without giving any sufficient time and/or giving only one or two days time, and started granting admission on its own without waiting for any decision of respondent No.2 - JAC-PC. It is further submitted that admission process for the JAC-PC for the academic year 2005-06 came to an end on 18-10-2005 and on 19-10-2005, the JAC-PC had communicated all the colleges in which residual seats under the state Quota were remained vacant to fill the residual seats under the State Quota at their end by notifying the same in the newspapers and on the basis of the *inter se* merits of the application received by the institutions in response to said advertisement. It is further submitted that the JAC-PC has not sent the said communication to the petitioner institution, nor it was made applicable to the petitioner institution, as it was not in the admission list of colleges from

commencement to closure of admission process for the academic year 2005-06. It is further submitted that by communication dated 14-11-2005, the petitioner institution was informed not to grant any admission and if any admission is given, it will be at its own cost and risk. It is further submitted that the petitioner had given advertisement in the newspaper only for filling the management Quota seats and not seats of state Quota and filling of 75% state Quota by the institution is illegal and against the law. It is further submitted that even as per the rules and since the approval by AICTE was received on 28-10-2005 i.e. after 10 days of closure of admission process for the academic year, 2005-06, the petitioner institution could not be considered for granting admission under state Quota. It is further submitted that as per admission Rule 3, seats sanctioned by the respective Councils upto 3 days before the commencement of counseling including reshuffling was required to be considered, for granting admission. It is further submitted that the act of the petitioner in granting admission to the students is de hors the rules and regulations made by the Government and the proper procedure is also not followed by the petitioner i.e. not observed common merits even in management Quota.

Petitioner is not authorized to grant 100% admission and the petitioner and the petitioner has also not followed the eligibility criteria and some of the admissions are given by following the criteria of minimum 40% marks for degree Pharmacy Course and less meritorious students are admitted without observing any common merit list. It is further submitted that there is no transparency seems in the admission granted by the petitioner as are violative of Government Rules, Regulations and Guidelines issued from time to time and therefore, it is requested to dismiss the present Special Civil Application.

6. In the reply, Shri Shelat, learned advocate appearing on behalf of the petitioner relying upon the additional affidavit-in-reply, has submitted that pursuant to the approval granted by AICTE, the advertisement was published inviting applications against the Management Quota seats and on the basis of the application received upto 3-11-2005, admissions were granted against the seats in the Management Quota on 4th and 5th November, 2005. It is further submitted that since no response was received from the Joint Admission Committee nor any students were allotted by it against the Government Quota seats and certain seats had remained

vacant in the management Quota on account of non-joining of the students concerned, another advertisement was published on 7-11-2005 inviting applications against the remaining seats and on the basis of the applications received, admissions were granted against the remaining seats on 11-11-2005 and 12-11-2005. It is further submitted that out of the aforesaid admissions, so granted, 8 students had cancelled their admission and have left the course and the said seats are lying vacant. It is further submitted that the students granted admissions have undergone the course in the first year and the students studied in Diwali vacation also and all the students are eligible for being enrolled by the University. It is further submitted by Shri Shelat that at least, those students, who have fulfilled all the eligibility criteria as per the admission rules may be permitted to appear in the ensuing examination and their case may be considered as they are all bona fide students.

7. Heard the learned advocates appearing for the parties.

8. It is required to be noted that the admissions to

first year Engineering Degree and Diploma Pharmacy are required to be granted as per the rules for admission after Standard 12th Science Stream. The relevant rules are as under:

Rule-2: ADMISSION WORK:

The entire work relating to admissions to above mentioned courses will be carried out by the Joint Admission Committee for Professional Courses (Technical) (hereinafter referred to as JAC-PC in these rules) re-constituted vide Resolution No.PVS-102003-639-S dated 2-5-2005 of the Education Department, Government of Gujarat.

Rule - 3: SEATS AVAILABLE FOR ADMISSION:

- (a) Admission to sanctioned seats in Government and Grant-in-Aid Institutes for Degree Engineering and Degree/Diploma Pharmacy, and
- (b) 75% State Quota seats in Self-Financed Institutes; in accordance with approved intakes for this academic year 2005-06 for the above courses, will be done by JAC-PC.
- (c) On 25% management Quota seats in Self-Financed Institutes, admission will be given as per the following rules:-
 - (1) Admission will be given to the students appearing in the merit list prepared by the JAC-PC.
 - (2) Fee fixed by the Fee Committee from time to time, will only be collected.
 - (3) Candidates of Gujarat origin but staying outside Gujarat State and Foreign Countries (NRG/NRI) and having eligibility for admission as per Rule-4 and Rule-5(1) will be given admission. Rule-3(1) will not be applicable to such students.

However, seats sanctioned by the respective Councils up-to 3 days before the commencement of counseling will also be considered for

granting admission.

Rule-4: ELIGIBILITY CRITERIA

- 4.1 Candidates should have passed Standard 12(10+2 pattern) Science Stream or equivalent examination (hereinafter referred to as qualifying examination) from a recognized school of below mentioned examination board with Mathematics, Physics, Chemistry and Biology/in absence of biology any of its optional subject:-
- (a) Gujarat Secondary and Higher Secondary Education Board Examination.
 - (b) Schools located in the State of Gujarat and recognized by the Central Board of Education, New Delhi.
 - (c) Schools located in the State of Gujarat and recognized by the Council of Indian School Certificate Examinations, New Delhi.
 - (d) The Children of Gujarat origin officers/ staff working in Central or other State Government, Military or other State/ Central Government run Board/Corporation, who have passed Standard - 12 examination from the Examination Board of respective State or passed the examinations from similar schools located in other states as per Rule-4:1 (b) and (c). Such candidates will be included in the first merit list shown at Rule-12.
- 4.2 Candidates who have passed the supplementary examination being conducted by Gujarat Secondary and Higher Secondary Education Board will not be eligible for admission in the same academic year of passing such examination, but it will be considered eligible in the next academic year.
- 4.3 The candidate should not have secured admission in any course in Gujarat State, in any year previously, through this Central Admission Committee.

Rule 5: MINIMUM MARKS FOR ADMISSION

5.1 The candidate should have secured minimum marks as under in theory papers of qualifying examination mentioned under Rule-4:

Sr.No.	Category of Students	Minimum Marks
1	Scheduled Castes, Scheduled Tribes and Socially & Educationally Backward Class	40.00%
2	Un-Reserved (Open) and Other Categories	45.00%

Rule-11: MERIT MARKS:

Merit marks of the students who have applied to the JAC-PC for admission, in the prescribed application form within the prescribed time limit, and are eligible for admission as per rules, will be decided as under:-

At first instant, out of 450 marks in theory of subjects as per rule 4.1 in case of students passed from Gujarat Board and out of 310 marks in theory subjects as per rule 4.1 in case of students passed from Central Board.

Rule-12: MERIT LIST:

12.1 Admission will be given to the candidates who have passed in all subjects (excluding grace {Condonation} marks) in Standard 12(Science Stream) examination, as per merit order. If seats remain vacant admission will be given to candidates who passed with grace {Condonation} marks, as per merit order.

12.2 Two separate merit list will be published by Joint Admission Committee for Professional Courses, out of which the first merit list will be prepared for the students of Gujarat Secondary and Higher Secondary Education Board and the second merit list will be prepared for the students of other Boards. Merit list of Reserved Category candidates of both the

Boards will also be prepared separately.

12.3 The following criteria in sequence, if and where required, will be applied for deciding merit order in case of students having equal merit marks:

- (1) Total marks in theory of Mathematics and Biology/other allied optional subject.
- (2) Marks in English subjects.
- (3) Total marks in all subjects (with practical).
- (4) Total marks of 10th Standard.

12.4 Merit lists with detailed admission program will be displayed at the office of the Joint Admission Committee for Professional Courses, and at the possible Colleges as mentioned in appendix-A. The same details will also be put on the web-site.

Thus, as per rule 2, the entire work relating to admissions to the first year Degree and Diploma Pharmacy was to be carried out by JAC-PC (technical). As per rule 3, admission to sanctioned seats in Government and Grant-in-Aid Institutes for Degree Engineering and Degree/Diploma Pharmacy and 75% State Quota seats in Self-Financed Institutes; in accordance with approved intakes for the academic year 2005-06, was to be done by JAC-PC and on 25% of management Quota seats in self financed institutes admissions were required to be given to the students appearing in the merit list prepared by the JAC-PC. As per rule 3, seats sanctioned by the respective Councils up-to 3 days before the commencement

of counseling, were required to be considered for granting admission. In the present case, the admission counseling for the academic year 2005-06 started on 6-7-2005 and was continued upto 4-8-2005. Thus, for the purpose of admission to the first year Degree and Diploma Pharmacy, only those seats sanctioned by the Council upto 3 days before 6-7-2005 i.e. upto 3 days before the commencement of counseling was required to be considered. Admittedly, there was no such approval by AICTE upto even 6-7-2005 i.e. the date on which the counseling commenced and the AICTE granted the approval only on 28-10-2005, therefore, as such the admissions to first year Degree and Diploma Pharmacy in the petitioner institution on the basis of the recognition/approval granted on 28-10-2005, was not required to be considered by respondent No.2 as per rule 3.

9. At this stage, it is also required to be noted that as per the affidavit-in-reply of respondent No.2 and which is not denied by the petitioner that the petitioner approached the AICTE for approval on 28-10-2005, the AICTE granted the conditional approval and/or extension of approval to the petitioner for the year 2005-06 on 28-10-2005 and on the very date, the petitioner approached

respondent No.2. It is also required to be noted that even the said approval is subject to fulfilling the certain conditions imposed at Annexure A to the communication dated 28-10-2005 latest by November end, 2005. The specific conditions attached to the said approval dated 28-10-2005 reads as under:

- 1.The Institution must appoint faculty members as per AICTE norms with pay scales as prescribed by AICTE.
- 2.All the required Laboratories/ Machineries/Equipment as per the approved syllabi of the affiliating university must be operational before making admission.

Nothing is on record to even suggest that the said conditions are fulfilled. That the Gujarat University did not continue the affiliation during the year 2003-04 and 2004-05 for so many irregularities and deficiencies and the said decision was challenged by the petitioner before this court by way of Special Civil Application which came to be dismissed and against which the petitioner preferred Letters Patent Appeal, which also came to be dismissed and due to the intervention of this court and taking a liberal view, the students were accommodated in other colleges. It is required to be noted that the petitioner approached the Gujarat University for affiliation on 10-3-2005 and it is the case of the

petitioner that they have removed all the deficiencies and on that very day i.e. on 10-3-2005 itself, the Gujarat University granted the affiliation for the period between 15-3-2003 to 14-6-2006. It is required to be noted that when earlier the affiliation was withdrawn for the academic year 2003-04 and 2004-05 and the same was confirmed by the Division Bench of this court, how the Gujarat University could have granted the affiliation retrospectively by communication dated 10-3-2005 i.e. for the period 15th June, 2003 onwards and at least for the academic year 2003-04 and 2004-05, more particularly, the cancellation of the affiliation for the aforesaid was confirmed by this court upto Letters Patent.

10. It is the contention on behalf of the petitioner that they have requested respondent No.2 Committee to allot the students by various communications and they have failed to get any response from respondent No.2, therefore, they have started granting admission in the first year Degree and Diploma Pharmacy and according to the petitioner, the same is granted on merits and all the students are eligible for getting admission in the first year Degree and Diploma Pharmacy. Therefore, to appreciate the aforesaid submission, the chronology of

events is required to be considered. On 28-10-2005, AICTE granted conditional approval of 60 students. The petitioner approached the JAC-PC for allotment of students on 28-10-2005 itself and requested to allot the students of Government Quota seats. Without giving any sufficient time, again on 29-10-2005, the petitioner - trust communicated to the Chairman, JAC-PC and requested to allot the students and the petitioner informed the JAC-PC that if the students are not allotted and/or if the above process is not possible, they would grant admission as prescribed by the Joint Admission Committee addressed to other self financed colleges read with the rules prescribed by the Government of Gujarat. It is also required to be noted at this stage that the petitioner gave advertisement in local newspapers for filling Management Quota seats on 29-10-2005 and 31-10-2005 and lastly on 2-11-2005 and started granting admissions and on going through the relevant records with regard to admission, which is produced by the learned advocate appearing on behalf of the petitioner and on being asked by the court, it appears that the admissions are given between 5-11-2005 and 12-11-2005. How the admissions are given and to whom the admissions are given and whether they were eligible for admission in the first year

B.Pharm and/or whether they were meritorious or not, will be dealt with by this court hereinafter. Again on the next date i.e. on 31-10-2005, the petitioner informed the Chairman, JAC-PC that they will grant admission and thereafter on 14-11-2005, the JAC-PC informed the petitioner that the said institute has not been included in the admission programme for the academic year 2005-06 as the institute has received approval from the AICTE only on 28-10-2005 i.e. after completion of admission process including reshuffling by the Committee for the academic year 2005-06 and hence, the Committee has not granted any admissions to the students in the petitioner - institute nor has given the consent for admitting students directly by the institute. The petitioner also came to be informed that the Committee's letter dated 19-10-2005 addressed to other self financed colleges is not applicable to the petitioner institute as the same is addressed only to those institutes in which seats had remained vacant after granting admission by the Committee on State Quota. Thus, from the above, it appears that without giving any sufficient time to the JAC-PC to respond to the communication dated 29-10-2005 and 31-10-2005, the petitioner institute started granting admissions and it is required to be noted that as per the

rules for admission in the first year Degree/Diploma in Pharmacy, 75% seats in the self financed institutes were required to be filled in by JAC-PC by way of Government Quota seats and 25% only by the Management. Thus, at the most, 25% of the seats could have been filled in by the petitioner Management instead of that the petitioner started granting admission and in fact granted admission on 100% seats i.e. Government Quota seats as well as Management Quota seats. Therefore, even otherwise granting of admission to the students in Government Quota seats (75%) is contrary to the Rules for admission.

11. It is the contention on behalf of the petitioner that university relied upon communication dated 14.11.2005 of the JAC-PC while denying the enrollment to the students of the petitioner institute and relying upon the affidavit-in-reply on behalf of JAC-PC, more particularly, para-13 of the reply that there was no direction by the Committee to the university for not enrolling any students and therefore, it is sought to be submitted that respondent no.1 University has misinterpreted the communication dated 14.11.2005. It is required to be noted that it is not the case of the University that, there was any direction by the JAC-PC to

the University not to enroll the students, what is sought to be submitted on behalf of respondent no.1 University is that in view of the communication dated 14.11.2005 by which the JAC-PC has not approved the admission granted by the petitioner institute and/or never granted the consent for admitting the students by the petitioner institute, the enrollment is denied. It is also required to be noted at this stage that the petitioner institute has never challenged the communication dated 14.11.2005. When the JAC-PC has communicated that they have not granted approval to the admissions granted by the petitioner institute and/or they have never given consent to the petitioner institute to grant admission and when a decision has been taken by the university not to enroll those students whose admissions are not approved by the JAC-PC, it cannot be said that there is any illegality committed by the university. Admittedly, the admissions granted by the petitioner institute has not been approved by JAC-PC, which is must as per the rules for admission.

12. Still with a view to verify and satisfy the conscious of this Court whether students who are admitted by the petitioner institute, were eligible for granting admission in the first year B.Pharm. and/or petitioner

institute has followed the requisite criteria for admission and/or the same were meritorious, this Court called upon the petitioner to produce relevant records with regard to admission i.e. admission forms inclusive of mark sheets of the respective students etc. It is required to be noted that along with the additional affidavit on behalf of the petitioner trust, the petitioner trust has produced the list of students admitted in academic year 2005-06 which is at Page-99, wherein names of 52 students are mentioned. It is also required to be noted at this stage that the petitioner had sent the list of 60 students to the Gujarat University for enrollment vide communication dated 06.12.2005 and the list of those students is at page-31 and on going through the same, some of the names did not tally with the names mentioned in the list produced by the petitioner of the students, admitted in the academic year 2005-06. On going through the relevant records and the admission forms submitted by the petitioner with regard to the respective students along with the mark-sheets of standard 12, it is observed that many of the students have passed standard 12 examination in 2nd or 3rd trial and that too with grace marks. As per rule-12 of the Rules for admission, admission was required to be

given to the candidates who have passed in all subjects (excluding grace {condonation} marks) in standard 12 (science stream) examination as per the merit order and, if seats remain vacant, then and then only the admissions were to be given to the candidates who have passed with grace {condonation} as per merit order. Nothing is on record that the admissions are given to those students who have passed with grace marks only after it was found that there were vacant seats and the candidates, who have passed in all subjects excluding grace marks were not available. In one case it is also found by this Court that a candidate named Marathe Mukesh D. is granted admission who has passed standard 12 examination from Maharashtra Board and as per the rules for admission only those students who have passed standard 12 examination from Gujarat Secondary Education Board and/or from the CBSC, were eligible for admission (See Rule-4). Thus, even the said student who is admitted, was not even eligible for admission in the first year B.Pharm. apart from the fact that many of the students have passed in 2nd or 3rd trial with grace marks, it is also found by this Court on verification of the mark-sheets that even most of them were having the marks less than minimum required. Following are the particulars and few examples of the

students to appreciate how and to whom the admissions are given by the petitioner - institute.

Sr. No.	Names	Particulars
I	Thakkar Mitesh Chandrakantbhai	Passed H.S.C. examination in 2 nd trial that too with grace marks upto 13 marks in the subjects of Chemistry, Physics and Biology.
II	Marathe Mukesh Dattubhai	Passed H.S.C. examination from Maharashtra Secondary Education Board.
III	Tiwari Rajnishkumar S.	Passed H.S.C. examination in 5 th trial and that too with less than 40% marks.
IV	Patel Sagar H.	Passed H.S.C. examination with grace marks upto 7 marks in all the subjects of Science Stream and that too with less than 40% marks excluding the grace marks. He has obtained only 32.77% marks.
V	Jani Dipakkumar H.	Passed H.S.C. examination with grace marks and that too with less than 50% marks. Actually, obtained 38.62% marks.
VI	Ram Sujeshkumar R.	Obtained 37.23% marks i.e. less than 40%.
VII	Patel Ankitkumar Manibhai	Passed H.S.C. examination with less than 40% marks.
VIII	Joshi Mihir Bhagwatkumar	Passed H.S.C. examination with 42.15% of marks. However, in the list supplied by the petitioner at page 99, it is mentioned that he has obtained 46.22% marks, which is factually incorrect.
IX	Brahmbhatt Hardik Jitendrakumar	Passed H.S.C. examination with 41.69% of marks that too with grace marks.

X	Patel Nehal M.	Passed H.S.C. examination with 41.38%.
XI	Patel Hardikkumar N.	Passed H.S.C. examination with 39.69% of marks. However, in the list provided by the petitioner, it is mentioned that he has passed H.Sc. examination with 48.44% marks, which is factually incorrect.

These are the few examples to show how and to whom the admissions are given by the petitioner - institute and that too in the first year B.Pharm. Therefore, the contention on behalf of the petitioner that all the students were eligible for getting the admissions in the first year B.Pharm is also factually incorrect. Even on going through the marks obtained by the respective students, it appears that they are less meritorious students, who have obtained the marks below 40 to 45%. It is required to be noted at this stage that so far as B.Pharm course is concerned, it is considered to be important branch next to Medical/Physiotherapy and the admissions are granted to the students who are absolutely less meritorious. It is required to be noted at this stage that even the wrong particulars are given with regard to percentage mentioned in the list of students admitted. Consider the case of a student named Ram Sujeshkumar Rajeshwarram who has obtained 181 marks out

of 450 marks and it is mentioned in the list supplied by the petitioner that he has secured to have got 43.33% of marks. Though two students viz. Joshi Mihir Bhagwatkumar and Joshi Jaykumar Bhupendrabhai have also got 181 and 197 marks respectively out of 450 marks, it is stated in the said list that they both have got 46.22%. Therefore, even the correct percentage are also not considered by the petitioner institute while granting admissions to the said students and the petitioner prays to consider the cases of those students who are absolutely less meritorious and their fulfilling of eligibility criteria itself are doubtful. The aforesaid are few examples to show how the admissions are granted by the petitioner institute and to whom. The aforesaid exercise was done by this Court only with a view to specify the conscious of this Court and to see that meritorious students may not have to suffer. Though as stated above, considering Rule-3, as the approval was granted only on 28.10.2005 i.e. after even completing all the admission process by the JAC-PC, those seats in the petitioner institute are not required to be considered. At this stage, Shri Shelat, learned advocate appearing on behalf of the petitioner has submitted that even the JAC-PC and/or other self financed institutes have given admissions to the students

even having 36% of marks. Assuming that some students are granted admissions wrongly and/or de hors the rules, as alleged, in that case also, this Court cannot grant relief in favour of the petitioner though it is illegal and/or contrary to the Rules. This Court cannot approve and/or grant the relief in favour of the petitioner to those students, who are not fulfilling the eligibility criteria and/or those students who are granted admissions de hors the rules and/or less meritorious. There cannot be any negative discrimination. Merely, because some students are wrongly given the benefit, the petitioner cannot be given the benefit of the said illegal order and/or action.

13. For the reasons as stated above, it cannot be said that the action of respondent no.1 in refusing to enroll the students of the first year B.Pharm admitted by the petitioner institute is in any way illegal, arbitrary and/or contrary to the rules. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is dismissed accordingly. Notice is discharged.

(M.R. SHAH, J.)

shekhar/-