

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 20773 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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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
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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CHIRAG LALITKUMAR MASHARU (MINOR)THRO.HIS FATHER -
Petitioner(s)

Versus

CHAIRMAN & 3 - Respondent(s)

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Appearance :

MR MAHENDRA K PATEL for Petitioner(s) : 1,
MS MANISHA L SHAH AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/09/2006

ORAL JUDGMENT

1. Leave to amend.

2. Rule. Learned AGP Ms. Shah wavier service of notice of Rule on behalf of respondents. Considering the urgency involved, this petition is taken up for final disposal forth with.

3. In brief, facts leading to the petition are as follows:

3.1. Petitioner appeared in Higher Secondary Board Examination in Science stream conducted by Gujarat Board in March, 2006. In Physics, Chemistry and Biology subjects, he secured over 95% marks. He also appeared in GUJCET-2006 examination conducted by the State. Out of 119 maximum possible marks, he received 106.50 marks. As per his merit, he deserved admission in M.B.B.S. course perhaps virtually in any college of his choice.

3.2. When the petitioner however applied

for admission to M.B.B.S. course, his application was not accepted on the ground that he would not complete 17 years of age by 31st December, 2006. This according to the Government was one of the requirements under the regulations framed by the Government to regulate admissions in medical and paramedical courses for the academic year 2006-2007.

3.3. Petitioner, therefore, approached this Court by filing Special Civil Application No.12580/06. Petitioner was permitted to pursue his representation with the authorities, requesting the authorities to dispose of the representation expeditiously. Eventually authorities conveyed to the petitioner by communication dated 19/8/2006 that being under age he cannot get admission in the current year and since GUJCET-2006 examination is valid for current academic year, result thereof cannot be made applicable for the next academic year.

4. The petitioner has therefore, approached this Court again. Request of the petitioner is two fold. He first requests for granting admission on the basis of his performance in the current year. His alternative prayer is that his case be considered for admission for the next academic year on the basis of his performance this year.

4.1. It is not in dispute that the petitioner would complete 17 years of age only in April, 2007.

5. Facts as noted above are glaring. The petitioner has a brilliant record and has secured heavily both in board examination as well as in GUJCET-2006 test. Ordinarily, therefore, he would have walked into any medical course of his choice. It is also not possible to dispute that on the basis of the performance of the petitioner in the said two examinations, he would have secured admission as a matter of right. Only objection against the petitioner in getting

such an admission is that as per the requirements of the rules, he would not be completing 17 years of age by 31st December, 2006. It is stated that such requirement is found in MCI regulations also.

6. Clause 10 of the rules for regulating admission to medical and paramedical course for the academic year 2006-2007 reads as follows:

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

7. On perusal of said rule it can be seen that the Government enjoys the power to introduce any new rule or make changes in the existing rules any time to deal with diverse problems arising out of infinite variety of situations. The intention of the Government, therefore, is to preserve full authority to provide for appropriate rule to deal with any situation

which cannot be easily foreseen. It is clearly stated that the Government reserve the right to make changes in the rules at any time to deal with diverse problems of infinite variety of situations. The language used in the said rule and the width it permits the Government to deal with different situations convinces me that the Government has preserved and enjoys the power to relax any of the rules in appropriate situation.

8. Situation in the present case is peculiar. A student who has worked tirelessly for endless number of hours, burning midnight oil for months together and has performed brilliantly in his examinations is at the verge of losing out his admission only because he is under age by four months. Desperate situations call for unconventional approach. In the present case it would be a travesty of justice if the petitioner is denied benefits of his labour. There can be nothing more tragic then to tell a student that his result is outstanding but he would not get

admission, since the rules require him to apply four months later. By next year the petitioner would be told that last year's result has lost its significance and he must apply and appear again. May be with the capacity of hard work and intelligence at his command, the petitioner may all over again secure similar result, nevertheless there is always an element of uncertainty and a degree of luck in performing to one's full potential.

9. Considering all these aspects of the matter, I find it a fit case where some bit of relaxation in the existing set of rules was called for by the Government. Once this issue was sent to the Government by this Court requesting the authorities to consider the representation of the petitioner expeditiously. Authorities however found inappropriate to relax the rules. Paucity of time does not permit this Court to send the issue back to the Government for reconsideration keeping in mind observations made herein above. Only choice available with

me is to provide for a formula which will not damage a brilliant academic carrier even before it properly takes of.

10.I cannot lose sight of the fact that however MCI regulations also provide for minimum age requirement.

11.Considering all these aspects of the matter, applying the power of the Government under Clause 10 to relax the requirements in special facts of this case, it is provided that the petitioner shall be granted admission by the respondents in M.B.B.S. course as per his merit without of course disturbing any of the admissions already granting in favour of other students. Considering the age requirement however, petitioner will not be permitted to attend academic term till he completes 17 years of age. This in my view would be the best formula that can be provided under the circumstances to balance the equities. It may be noted that GUJCET 2006 rules did not provide for

any minimum age requirement.

12. In the result, petition is allowed to the above extent. Rule is made absolute. No costs.

Direct service is permitted. Copy of this order may be made available to the learned AGP forth with.

(Akil Kureshi, J.)

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