

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 9018 of 2013****With****SPECIAL CIVIL APPLICATION NO. 9062 of 2013****With****SPECIAL CIVIL APPLICATION NO. 9583 of 2013****With****SPECIAL CIVIL APPLICATION NO. 9639 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE C.L. SONI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

PRERAK P YADAV & 9**Versus****STATE OF GUJARAT & 13**

Appearance in SCA 9018 of 2013:

MR AV PRAJAPATI for the Petitioners

MR MG NANAVATI for Respondent No. 1

MR BHASKAR P TANNA, SR. ADVOCATE with MR SP MAJUMDAR for Respondent Nos.5 to 14.

Appearance in SCA 9062 of 2013:

MR DHAVAL C. DAVE, SR. ADVOCATE with MR JIGAR M PATEL for Petitioners

MR SN SHELAT, SR. ADVOCATE with MRS VD NANAVATI for Respondent No.1

MR MG NANAVATI for Respondent No.2

MR BHASKAR P TANNA, SR. ADVOCATE with MR SP MAJUMDAR for Respondent Nos.3 to 10

Appearance in SCA 9583 of 2013:

MR AMIT M PANCHAL for the Petitioner

MR MG NANAVATI for Respondent No. 1

MR SN SHELAT, SR. ADVOCATE with MRS VD NANAVATI for Respondent No.2

Appearance in SCA 9639 of 2013:

MR SI NANAVATI, SR. ADVOCATE with MRS ANUJA S NANAVATI for the Petitioners

MR MG NANAVATI for Respondent Nos. 1 and 2

MR MUTIL K SHELAT for Respondent No.3

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CORAM: **HONOURABLE MR.JUSTICE C.L. SONI**

Date : 28/06/2013

COMMON ORAL JUDGMENT

1. Learned advocates for the parties requested to hear these matters finally. Hence, **RULE**. Learned advocates for the respondents in the respective petitions waive service of Rule. By consent of the parties, the petitions are taken up for final hearing.

2. Common challenge in all the petitions was initially to the Circular dated 3.6.2013 and then to the Resolution dated 17.6.2013 issued by the State Government pending the petitions deciding to prepare State merit list based on the result of National Eligibility Entrance Test (NEET) and to form Central Admission Committee involving one representative from the concerned University for giving admission to the first year PG Medical course to the students from the said list.

3. The petitioners of Special Civil Application No.9018 of 2013 as also Special Civil Application No.9639 of 2013 want that admission in PG Medical Courses in the colleges affiliated with Maharaja Krishnakumarsinh Bhavnagar University and M.S. University should be on the basis of the existing forms prevailing before the NEET was implemented. The opposing group of the students relied on the MCI

Notification for preparation of the merit list on NEET result and contend that the prayer made by the petitioners of these two petitions run counter to not only the PG MCI Regulations but would also amount to compelling these two Universities to violate the PG MCI Regulations.

4. The petitioners of Special Civil Application No.9062 of 2013 and Special Civil Application No.9583 of 2013 though have no objection against preparing State merit list based on NEET but they want that the process of admission to PG Medical Course in the Gujarat University should be undertaken as per the rules of Gujarat University which provide for giving preference to its students. The students opposing the petitions want that admission to PG Medical Courses should be strictly on the basis of NEET. It is their case that PG MCI Regulations providing for Single Eligibility-cum Entrance Examination, having been implemented from current academic year, admission to medical courses in any University/ Institution, all over India, has to be only on the basis of NEET based merit list and any Rule providing for any preference for admission in such courses would stand repugnant to PG MCI Regulations and cannot be enforced for the purpose of admission to PG medical courses.

5. Clause 9 of the PG Medical Education (Amendment) Regulations 2010 reads as under:-

“3. Clause 9 under the heading ‘SELECTION OF POSTGRADUATE STUDENTS’ shall be substituted as under:-

“9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

- I. There shall be a single eligibility cum entrance examination namely ‘National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses’ in each academic year. The overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct ‘National Eligibility-cum-Entrance Test for

admission to Postgraduate courses’.

- II. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%.

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50%-before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college /institution as per the statutory time schedule for admissions.

- III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (Fifty Percent) marks in ‘National Eligibility-cum-Entrance Test for Postgraduate courses’ held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum percentage marks shall be 40% (Forty Percent) and in respect of candidates as provided in clause 9 (II) above with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (Forty Five Percent) in the National Eligibility-cum Entrance Test:

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

- IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/ Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate courses

from the said merit lists only.

- V. No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub Clause (II) above shall be admitted to any Postgraduate courses in the said academic year.
- VI. In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned medical colleges/institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

Dr. P. Prasannaraj, Addl. Secy.

[ADVT-III/4/100/10/Exty.]

Foot Note: The Principal Regulations namely, "Postgraduate medical Education Regulations, 2000" were published in Part – III, Section (4) of the Gazette of India on the 7th October, 2000, and amended vide MCI notification dated 03.03.2001, 06.10.2001, 16.03.2005, 23.03.2006, 20.10.2008, 25.03.2009, 21.07.2009, 17.11.2009, 09.12.2009 & 16.04.2010."

This PG Medical Education Regulation 2010 is implemented by amending Regulations of 2012 from the current academic year 2013-14.

6. I have heard learned advocates for the parties.

7. Learned senior advocate Mr. S.I. Nanavati appearing with Mrs. Anuja Nanavati for the petitioners in Special Civil Application No.9639 of 2013 submitted that before the Notification was issued for implementation of the provisions made in PG MCI Regulation 2010 for NEET exam, M.S. University as also Bhavnagar University had already started process of admission to PG Medical Courses and the petitioners had already filled in the forms wherefrom, they got legitimate expectation of getting admission in PG Medical Courses in the same University. Mr. Nanavati submitted that the State

Government has taken decision of preparing the State merit list based on NEET and of formation of the Central Admission committee at much belated stage and therefore, for the present academic year, the decision of the State Government may not be permitted to be implemented for admission to PG Medical Courses in M.S. University on the basis of NEET result. Mr. Nanavati submitted that the Hon'ble Supreme Court has now lifted the ban on declaration of the result of the examinations taken by various Universities/ Institutions, which is a strong indication to the Universities/ Institution to go ahead with old pattern of giving admission to PG Medical Courses, which existed before introduction and implementation of the NEET. Mr. Nanavati further submitted that the State Government has no power or authority to come out with formula of preparation of common merit list on the basis of NEET and to form Central Committee, especially when all throughout, the Universities/ Institutions have followed their existing norms for giving admissions to PG Medical Courses. Mr. Nanavati thus urged to allow the petition and direct the respondent State Government as also the Universities to give admissions to the petitioners on the basis of the existing norms of the Universities and without following the merit list based on NEET.

8. Learned advocate Mr. A.V. Prajapati appearing for the petitioners in Special Civil Application No.9018 of 2013 has adopted the arguments advanced by learned senior advocate Mr. S.I. Nanavati and urged to allow his petition also and to direct the University to follow the old norms and to give admission to the petitioners on the said basis without following the merit list based on NEET.

9. Learned advocate Mr. Amit Panchal appearing for the petitioners in Special Civil Application No.9583 of 2013 submitted that the decision of the State Government of formation of the Central Committee for the purpose of giving admission to PG Medical Courses violates the legislative mandate enshrined in statutory Rules of the

Gujarat University, which provide for giving preference to its own students for admission in PG Medical courses. Mr. Panchal submitted that the Rule 4.1 of the said Rules giving preference to its own students by Gujarat University for admission in PG Medical Courses is held to be the statutory and the University preference under the said Rule is held valid and not repugnant to the MCI Regulations by the Division Bench of this Court. Mr. Panchal submitted that so long as such Rules giving preference by Gujarat University to its own students are not challenged and held invalid, they hold good and therefore, the petitioners are entitled to get preference in admission to PG Medical Courses even if such admissions are to be given on the basis of NEET merit list. Mr. Panchal submitted that the University-wise preference is in fact recognized by the Hon'ble Supreme Court for admission to medical courses. Mr. Panchal submitted that the decision of the State Government of preparing State list and to give admissions based thereon, through the Central Admission Committee would wipe out the University preference without any amendment in the statutory Rules of the Gujarat University. Mr. Panchal submitted that even if the power of the State Government is recognized for the purpose of giving admission to the medical courses, it cannot be permitted to travel beyond the statutory Rules which are subordinate legislation. Mr. Panchal submitted that any decision of the State Government, be it administrative or by exercising the powers under Article 162 of the Constitution of India, if not in consonance with or in conformity with the statutory Rules in force, such decision of the State Government cannot stand scrutiny of law. Mr. Panchal submitted that the statutory Rules of the Gujarat University giving preference to its own students for admission in PG Medical Courses are not in derogation or repugnant to the MCI Regulations in any manner. Mr. Panchal submitted that the MCI Regulations of 2000 had already provided for determination of the academic merit of students by providing four different methods, for the purpose of admission to the PG Medical

Courses. The University used to follow its own Rules and norms for giving admission to PG Medical Courses. Mr. Panchal submitted that introduction of Single Eligibility-cum-Entrance Examination by the PG MCI Regulation of 2010 and implementation thereof by subsequent Regulations in the year 2012 have changed only method of selection for determining the merits of the students for admissions to PG Medical Courses. Mr. Panchal submitted that such change in the selection for determining the academic merit would not take away the rights of the petitioners to have preferences for admission to the PG Medical Courses on the basis of the statutory Rules. Mr. Panchal submitted that PG MCI Regulations have never made any provision for admission to the medical courses and therefore, whatever provisions exist by way of statutory Rules for the purpose of admissions to PG Medical Courses in Gujarat University are to be followed. Mr. Panchal has also pointed out that the Rules of the Gujarat University giving preferences as also that of similar Rules of Saurashtra University have been challenged before the Hon'ble Supreme Court at the instance of some students who are against giving of University-wise preference. Mr. Panchal, therefore, submitted that so long as the challenge to the said Rules is accepted by the Hon'ble Supreme Court, the Rules are required to be followed and preferences envisaged by the said Rules are required to be given to the students of the Gujarat University. Mr. Panchal submitted that the Hon'ble Supreme Court has not granted any interim relief against implementation of the Rules nor even has passed any order so as to prevent the concerned University from giving preferences to its own students while operating the NEET based merit list. Mr. Panchal submitted that in the affidavit filed on behalf of the State Government in the said petition, the responsible Officer of the State Government has clearly stated that the admissions to PG Medical Courses in Gujarat University are presently governed by the Rules of the University. Mr. Panchal submitted that when the State Government knew that such statutory Rules

providing for preference for the students of the Gujarat University are in force, the State Government ought not to have taken the decision at the last moment so as to interfere with the admission process to be undertaken for PG Medical Courses by the Gujarat University on the basis of its own Rules. Mr. Panchal thus urged to allow the petitions, to set aside the decision taken by the State Government and to give admissions to the petitioners though on NEET based merit list but according to the statutory Rules framed by the Gujarat University for the purpose of admission to PG Medical Courses.

10. Learned senior advocate Mr. Dhaval Dave appearing with Mr. Jigar M. Patel for the petitioners in Special Civil Application No.9062 of 2013 submitted that the Gujarat University has already started admission process by inviting applications and the petitioners have filled in forms for admission into PG Medical Courses. Mr. Dave submitted that the Gujarat University is to give admissions to the medical courses on the basis of NEET merit list and therefore, the application forms require the students to give their placement number in the NEET merit list. Mr. Dave submitted that the Rules framed by the Gujarat University for admission to medical courses are not repugnant to the MCI Regulations and therefore, the State is not justified in interfering with the process of the admission to such courses to be undertaken by the Gujarat University on NEET based merit list. Mr. Dave submitted that earlier for selection of the students for the purpose of medical admission, competitive merits of the students were always kept in mind but at the same time, admissions of the students were on the basis of the statutory Rules of the Gujarat University and therefore, even if the criteria for selecting the students by comparative merit is changed, it has not taken away the rights of the students of the Gujarat University for consideration of their case for admissions on the basis of the Rules of the Gujarat University. Mr. Dave submitted that the State Government is authorized to take either administrative or executive decision in

respect of any matter where either there is a vacuum or voidness but where there is provision made for such matter in statutory Rules, the State Government is devoid of any power. Mr. Dave submitted that by the impugned resolution, the State Government has interfered with the delegated legislative powers of the University, which cannot stand scrutiny of law. Mr. Dave submitted that Clause IV of the MCI Regulations of 2010, which is being implemented, clearly provide for reservation for seats in the medical courses and such reservation would also include Institutional preferences. Mr. Dave submitted that once the petitioners have no objection for operating NEET merit list, neither the State Government nor even the Gujarat University can prevent the petitioners from urging to act according to the statutory Rules of the University under which there is a mandate to give preference to the students of the Gujarat University. Mr. Dave submitted that the amended MCI Regulations 2012 providing for preparation of the merit list for the purpose of admission to PG Medical Courses only on the basis of NEET, is purely for ensuring that only those students who are in the merit list based on NEET could be considered for admission in PG Medical courses. Mr. Dave submitted that this does not mean that other Rules for admission of the University are to be given go-bye. Mr. Dave submitted that what is required by the MCI Regulations 2012 is to prepare merit list based on NEET and since the Gujarat University has decided to follow NEET based merit list, the rules of Gujarat University for the admissions in PG Medical course are required to be followed. Mr. Dave submitted that the purpose of introducing NEET by the MCI was to do away with multiple tests which were conducted by various Universities/Institutions and to have only eligibility test for all the students also as to save them from spending lot of moneys. Mr. Dave submitted that there should not be confusion between entrance test and process of admission to be undertaken by the concerned Universities. Mr. Dave submitted that except changing selection criteria for determining the merits of the

students, the MCI has not dealt with any subsequent steps as regards admissions of the students in medical courses. Mr. Dave submitted that the challenge pending before the Hon'ble Supreme Court is against providing for NEET by the MCI at the instance of various private institutions who want to follow their own procedure for determining the merit of the students and do not want admissions to be given in their institutions based on NEET. Mr. Dave submitted that in the group of petitions pending before the Hon'ble Supreme Court in respect of the above-said challenge, the Hon'ble Supreme Court has now lifted the ban imposed by it against declaration of the results by various Universities and Institutions and has now permitted the Universities and Institutions to proceed on the basis of the results of different examinations, including NEET, so as to enable the students to take benefit of such results for the current academic year. Mr. Dave thus submitted that since the Gujarat University is to follow the NEET based merit list, there cannot be now any prohibition against permitting the Gujarat University to start with admission process on the basis of its own statutory Rules. Mr. Dave submitted that if the Gujarat University Act provides for making of statutory Rules by the University for the purpose of admission to medical courses and if the Gujarat University has exercised its power under such subordinate legislation, impugned decision of the State Government is in derogation of the powers exercised by the Gujarat University under delegated legislation and cannot stand scrutiny of law. The State Government is thus not justified in taking decision for formation of the Central Admission Committee for the purpose of giving admission to the medical courses in Universities/ Institutions, especially in the Gujarat University where it has got its own statutory Rules. Mr. Dave further submitted that it is not that the Gujarat University alone has been following the practice of giving preferences to its students in the matter of giving admission to the medical courses but there are many States wherein the Universities/ Institutions have been following such practice of giving preferences

to their students for medical courses and such University-wise/ Institution-wise preferences are not held to be bad by the Hon'ble Supreme Court. Mr. Dave submitted that presently also, after the NEET result is declared, at least three Universities have started giving admissions into medical courses based upon their own Rules by giving the preferences to their students and therefore, there is no reason not to allow the Gujarat University to permit to give preference to its own students in the medical courses based on NEET merit list. Mr. Dave submitted that the emphasis in the Amended Regulations for preparation of merit list only on the basis of NEET is just for the purpose to ensure that no University or Institution gives admission to any student who has not found place in the NEET merit list. Mr. Dave submitted that the main object and purpose of introduction of NEET is to have uniform selection method. However, that does not mean that the petitioners who are otherwise entitled to have preferences on the basis of the statutory Rules and who have found their places in the NEET merit list, can be deprived of their legitimate right to get admission in medical courses in the Gujarat University. Mr. Dave thus urged that the State Government since has encroached upon the powers of the Gujarat University in the matter of giving preferences to its own students, the decision of the State Government in so far as it takes away the preferences to be given by the Gujarat University to its own students is required to be held bad in law. Mr. Dave thus urged to quash and set aside the decision of the State of Gujarat and to direct the respondent Gujarat University and if necessary, to direct the State Government to follow the Rules of the Gujarat University for the purpose of admission in PG Medical courses in Gujarat University by giving preferences to the petitioners while operating the State merit list based on NEET.

11. Learned senior advocate Mr. S.N. Shelat appearing with Mrs. V.D. Nanavati for the Gujarat University submitted that though there are statutory Rules in force but since the State Government has

taken decision to form Central Admission Committee, the University has decided to abide by the same. He, however, submitted that admission to PG Medical Courses in the Gujarat University will be strictly on the basis of NEET based merit list.

12. Learned advocate Mr. Mitul Shelat appearing for respondent M.S. University in Special Civil Application No.9639 of 2013 submitted that the University, like other Universities and Institutions, is bound to follow the MCI Regulations and therefore, any admission in medical courses in M.S. University will be strictly based on NEET merit list. Mr. Shelat submitted that grant of relief in the petition filed against M.S. University would amount to directing the M.S. University to violate the mandate of MCI to adhere to merit list for admission in medical courses based on NEET exam results. Mr. Shelat further submitted that the University had given Public Notice before declaration of the result of NEET for the purpose of admission on the basis of existing norms, just by way of abundant caution, making it very clear to everybody concerned with the admission that the said Public Notice was subject to the decision as regards NEET merit list. Mr. Shelat, therefore, submitted that there was no question of deriving of any legitimate expectation by the petitioners on the basis of the above such Public Notice given by way of abundant caution and now since the University is bound to follow the amended MCI Regulations of 2012, M.S. University cannot give admission in the medical courses on the basis of the existing norms. Mr. Shelat submitted that now by virtue of the Amended Regulations of 2012, any norms existed prior thereto, for the purpose of giving admission to medical courses based on any other selection method, would stand repugnant and would be in derogation of the mandate of the MCI Regulations, which is a law as declared by the Hon'ble Supreme Court and therefore, M.S. University has decided to follow NEET based merit list and the petitioners cannot claim as a matter of right that they should be given admission on the basis of the norms

existing prior to Amended Regulations of 2012. Mr. Shelat thus urged to dismiss the petition filed against M.S. University.

13. Learned senior advocate Mr. B.P. Tanna appearing with learned advocate Mr. S.P. Majmudar for the students opposing to follow the University-wise preference and also opposing to give admission to the medical courses on the basis of the norms earlier existed, submitted that the Rules of Gujarat University could be said to have held the field till introduction of Amended MCI Regulation of 2012, providing for preparation of the NEET based merit list. Mr. Tanna submitted that MCI Regulations of 2012 providing for selection of the candidates for the purpose of admission to the medical courses since based on Central Law, governing the field in the matter of admission to the medical courses, Rules of the Gujarat University for the purpose of giving admission to the medical courses, fell into insignificance and cannot be acted upon. Mr. Tanna submitted that the decision rendered by the Division Bench of this Court holding that the Rules of Gujarat University to be the statutory Rules and not repugnant to MCI Regulations, was in the context of then prevailing MCI Regulations of 2000, which had permitted the concerned Universities/ Institutions to prepare their own merit list based on different methods but thereafter, because of subsequent developments as regards introduction of the common eligibility test by MCI, no reliance could be placed on the decision of the Division Bench of this Court by the petitioners. Mr. Tanna submitted that the Rule of the Gujarat University providing for giving preferences to its own students for admission in the medical courses now in the teeth of Amended MCI Regulations, clearly violates the equality clause enshrined under Article 14 of the Constitution of India and therefore, even if the University preferences were recognized earlier by the Hon'ble Supreme Court, giving of such preferences to the students by the Universities now cannot stand scrutiny of law especially when every student is to be treated equally and the merit being the sole

component for the purpose of giving admission to the medical courses. Mr. Tanna submitted that when the Amended Regulations of 2012, especially Clause-IV thereof provides for preparation of NEET based merit list and giving admission to the medical courses based on such NEET merit list only, the intent and purpose of making such provision is very clear so as to see that a student stands higher in the merit list is to be first preferred and not a student belonging to any particular University though having Rules for giving preference by such University to its own students. Mr. Tanna submitted that once the very base of giving option to the University for determining merit of students is taken out by the amended MCI Regulations, University-wise preference automatically got vanished and even if any Rule subsists as on today for giving such preference by any University to its own students, the same cannot be enforced against the mandate of MCI Regulations. Mr. Tanna submitted that the Government has got full control over all educational institutions and is empowered to take decision in the larger public interest to see that admissions to PG Medical Courses are available to only more meritorious students. Mr. Tanna submitted that the issue pending before the Hon'ble Supreme Court is though against preparation of the NEET based merit list for the purpose of giving admission to the medical courses, however, so long as the Regulations providing for NEET are in force, every University/Institution is bound to follow the MCI Regulations and therefore, all Universities/ Institutions are bound to give admissions to medical courses only on the basis of the NEET based merit list. Mr. Tanna submitted that once such Universities/ Institutions are obliged under the law to follow NEET based merit list, no University, including the Gujarat University, is entitled to follow its own Rules so as to give preference to its students in the matter of admission to PG Medical Courses. Mr. Tanna submitted that in order to have uniformity in the entire country in the matter of admission in the medical courses and in the large public interest, if MCI has provided for single entrance test, with avowed purpose of

seeing that hospitals in the country gets doctors with high merits, no illegality could be found in the decision of the State Government and this Court, therefore, may not interfere with the decision of the State Government while exercising the powers under Article 226 of the Constitution of India. Mr. Tanna submitted that since the petitions are concerning the admission to the PG Medical Courses, MCI is a necessary party. Mr. Tanna submitted that in fact, if the relief prayed for in the petitions is granted, the same would amount to taking away the rights of the other meritorious students and therefore, affected students are required to be joined as parties and no relief can be granted to the petitioners in absence of joining the MCI or affected students. Mr. Tanna thus urged to dismiss the petitions.

14. Learned Assistant Government Pleader Mr. M.G. Nanavati submitted that the respondent Universities/ Institutions are State funded and the State is empowered to take any decision for the purposes of the University Act and for the matters connected with the medical education. Mr. Nanavati submitted that the State Government cannot be said to have taken any belated decision. Mr. Nanavati submitted that there was no question of taking any decision by the State Government in respect of the admission to the medical courses till PG MCI Amended Regulations, 2010 providing for NEET exam was implemented and till such exams were actually held by the concerned authorities. Mr. Nanavati submitted that immediately after declaration of the results of NEET exams, the State Government spared no time in taking decision to prepare the merit list based on NEET and to decide about the procedure to be followed for the purpose of giving admission to PG Medical Courses. Mr. Nanavati submitted that there is no malafide intention on the part of the State Government to take decision to have the Centralized Admission Committee nor the State Government has any intention to deprive the students of their legitimate rights to get admission in Medical courses. Mr. Nanavati submitted that the State Government has not

encroached upon the powers of the Gujarat University because by the impugned decision, the State Government is just regulating the admission process to be undertaken for the purpose of admission in the medical courses and it cannot be said that the State Government has got no such power. Mr. Nanavati submitted that what was otherwise required to be done by the concerned Universities individually, the State Government has decided to do so for the purpose of admission in the medical courses based on NEET by one Centralized Committee involving representatives of such Universities. Mr. Nanavati submitted that the State Government has not taken unilateral decision but the decision of the State Government is on the basis of consensus of all the Universities. Mr. Nanavati submitted that such decision of the State Government involving all Universities is in the larger public interest to see the intent and purpose behind implementing NEET by Amended PG MCI Regulations to have one eligibility test for all students in the country is well achieved and students with high merits could get admission in the medical courses. Mr. Nanavati submitted that if the State Government with the above avowed object has exercised its powers under Article 162 of the Constitution of India, no illegality could be found with the decision of the State Government. Mr. Nanavati submitted that preparation of the State merit list for admission in the medical courses based on NEET merit list and the decision to form Centralized Admission Committee with representative of the concerned University since in consonance with MCI Regulations cannot be said to be in violation of the Rules of any University for the purpose of giving admissions to the medical courses. Mr. Nanavati submitted that after the amendment in Clause 9 of PG MCI Regulations of 2000, the Universities/ Institutions are divested of their powers to give preferences to their own students in medical courses. Mr. Nanavati submitted that though the Rules of the Gujarat University are held statutory and the Gujarat University having followed such Rules for the purpose of giving preferences to its students, that by itself is

no ground to ignore the development in law and as per his submission, important development is of prescribing one and only eligibility test, namely NEET based on which, all Universities/ Institutions are now bound to give admissions to the students in medical courses. Mr. Nanavati submitted that allowing the Gujarat University to follow its own Rules after Amended PG MCI Regulations are implemented, would amount to permit the Gujarat University to violate the mandate of MCI Regulations, which is declared as law by the Hon'ble Supreme Court and therefore, it could be said that decision taken by the State Government is in consonance with law. Mr. Nanavati submitted that the very issue about giving preferences by the Gujarat University and Saurashtra University for admission in medical courses is pending before the Hon'ble Supreme Court and therefore, permitting the Gujarat University to follow its Rules for the purpose of giving preference to its students and to interfere with the decision of the State Government of formation of the Central Admission Committee for the purpose of giving admission to the medical courses based on NEET might result into conflicting view in the proceedings which are pending before the Hon'ble Supreme Court. Mr. Nanavati submitted that claiming benefit by the petitioners on further interim order by the Hon'ble Supreme Court for declaration of result of different examinations, including NEET, is nothing but misconception as even if the ban is lifted by the Hon'ble Supreme Court, the Universities are required to follow NEET results for the purpose of giving admission to the medical courses and what is being done by the State Government by the impugned decision is just to follow NEET based merit list and for that purpose, decision is taken to form Central Admission Committee. Mr. Nanavati submitted that in such course being adopted by the State Government while exercising its powers available to it under the Statute of the Gujarat University as also under the constitution can in no manner be said to be illegal or invalid. Mr. Nanavati submitted that the State has exercised its executive power in relation to the matters concerning

the medical education and such being within the competence of the State Government, the State Government is justified in exercising such powers under Article 162 of the Constitution of India and therefore, the resolution passed by the State Government to follow the MCI Regulations for preparation of the merit list based on NEET exams and for taking further action of formation of Central Admission Committee, cannot be held to be in violation of either the provisions of the Gujarat University Act or the Rules framed thereunder. He thus urged not to interfere with the decision taken by the State Government while exercising the powers under Article 226 of the Constitution as the impugned decision is taken in the larger public interest.

15. Before the rival contentions and the issues raised by the petitioners could be dealt with, Medical Regulations providing for selection of the students by determining their academic merits need to be referred. Clause 9 of the PG MCI Regulation 2000 for such purpose as existed prior to its substitution by amendment reads as under:-

“9. SELECTION OF POSTGRADUATE STUDENTS.

1. Students for Postgraduate medical courses shall be selected strictly on the basis of their academic merit.

2. For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses :-

1. On the basis of merit as determined by the competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same state; or

2. On the basis of merit as determined by a centralized competitive test held at the national level; or

3. On the basis of the individual cumulative performance at the first, second and their MBBS examination, if such examination have been passed from the same university; or

4. Combination of (i) and (iii):

Provided that wherever entrance test for Postgraduate

admission is held by the State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty per cent for general category candidates and 40 per cent for the candidate belonging to Scheduled Castes, Scheduled Tribes and Other Backward classes.

Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institution on the basis of merit."

15.1. By notification dated 21.12.2010, the above-said Clause stood amended and substituted by PG Medical Education (Amendment) Regulations 2010, as stated in para 5 above.

16. The amended PG Medical Regulations, 2010 were decided to be implemented from the academic year commencing from 2013-14 and further amended vide MCI Notification dated 15.2.2012, as under:-

**"MEDICAL COUNCIL OF INDIA
NOTIFICATION**

New Delhi, the 15th February, 2012

No.MCI-18(1)/2010-Med./62052.-In exercise of the powers conferred by Section 33 of the Indian medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous approval of the Central Government hereby makes the following regulations to further amend the "Postgraduate medical Education Regulations, 2000", namely:-

1. (i) These regulations may be called the "Postgraduate Medical Education (Amendment) Regulations, 2012 (Part I)".

(ii) They shall come into force on the date of their publication in the Official Gazette.
2. Postgraduate Medical Education (Amendment) Regulations, 2010 (Part II), vide notification No.MCI 18(1)/2010-Med/49070 dated 21st December, 2010 published on 27th December

2010, shall be applicable from the academic year commencing from 2013-2014.

3. In the "Postgraduate Medical Education Regulations, 2000", the following additions/ modifications/ deletions/ substitutions, shall be as indicated therein:-
4. Clause 9 sub-clause III, under the heading "SELECTION OF POSTGRADUATE STUDENTS" as amended vide notification No.MCI. 18(1)/2010-Med/49070 dated 21st December 2010, following shall be substituted as under:

"In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test for Postgraduate course' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in 'National Eligibility-cum-Entrance Test' for Postgraduate courses:

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only."

5. Clause 9 under the heading 'SELECTION OF POSTGRADUATE STUDENTS' as amended vide notification No. MCI 18(1)/2010-Med/49070 dated 21st December 2010, following shall be added after sub-clause IV with is as under:-

"Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/ Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult

areas shall be as defined by State Government/Competent authority from time to time."

6. Clause 9 under the heading 'SELECTION OF POSTGRADUATE STUDENTS' as amended vide notification No. MCI 18(1)/2010-Med/49070 dated 21st December 2010, following shall be added after sub-clause VI with is as under:-

"VII. 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as defined by State Government/Competent authority form time to time.

VIII. The Universities and other authorities concerned shall organize admission process in such a way that teaching in postgraduate courses starts by 2nd may and by 1st August for super specialty courses each year. For this purpose, they shall follow the time schedule indicated in Appendix-III.

IX. There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super specialty courses under any circumstances. The Universities shall not register any student admitted beyond the said date.

X. The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to fact such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year."

Dr.SANGEETA SHARMA, Secy.

[ADVT.III/4/100/11/Exty.]

Foot Note- The Principal Regulations namely, "Postgraduate Medical Education Regulations, 2000" were published in Part III, Section 4 of the Gazette of India on the 7th October, 2000" and amended vide MCI notification dated 3-3-2001, 6-10-2001, 16-3-2005, 23-3-2006, 20-10-2008, 25-3-2009, 21-7-2009, 17-

11-2009, 9-12-2009, 16-4-2010 and 27-12-2010.”

Based on the above decisions, NEET exam was conducted on 23.11.2012 to 6.12.2012 and result came to be declared on 16.5.2013.

17. It appears that it is only after declaration of the NEET exam result, the State Government thought of taking action of preparation of the State merit list based on NEET and about the procedure to be followed for giving admissions to PG Medical Courses. As reflected in the impugned decision of the State Government vide Resolution dated 17.6.2013, first meeting for such purpose was held on 21.5.2013.

18. As stated above, pursuant to the meeting dated 21.5.2013, initial decision as reflected in the Circular letter dated 3.6.2013 for preparation of the State merit list based on NEET and for constitution of the Central Admission Committee was taken.

19. Medical Council Regulations are framed under the provisions of the Indian Medical Council Act, 1956.

20. The Hon'ble Supreme Court in the case of **Priya Gupta Vs. State of Chhattisgarh and others**, reported in **(2012)7 SCC 433** after referring to various decisions has held and observed that Regulations framed by Medical Council of India are binding and these standards cannot be deviated from. In the said decision, the Hon'ble Supreme Court has further held and observed in para 38 and 40 as under:-

“38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, non exploitative and fair are mandatory requirements of the entire scheme.

40. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations."

21. In the case of **Asha Vs. B.D. Sharma University of Health Sciences and others** reported in **(2012)7 SCC 389**, Hon'ble Supreme Court has held and observed that criteria for selection has to be merit alone. Merit, fairness and transparency are the ethos of the process for admission to such courses. It is further observed that it will be a travesty of the scheme formulated by the Supreme Court and duly notified by the States, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission.

22. As per Clause 9, as it existed in PG Medical Education Regulations 2000, the concerned Universities/ Institutions were at liberty to adopt any of the methods provided therein for selection of students for admission to medical courses. But then all the different methods were only for the purpose of selecting the students, on the basis of their academic merits. Amendment in 2010 in the PG Medical Regulations 2000, vide notification dated 21.12.2010 only substituted the above methods by providing a distinct procedure of having single eligibility-cum-entrance examinations, namely National Eligibility-cum Entrance Test (NEET) for admission to the Post Graduate Medical courses in each academic year. While substituting the methods for selection of the students, for their academic merits, it was further

provided in Amended Clause 9 that over all superintendence, direction and control of the National Eligibility-cum Entrance Test shall vest with the Medical Council of India. Thus, by the said amendment, it was intended that no University/ Institution shall have any other choice for selection of the students based on any other method except a Single Eligibility-cum-Entrance Examination (NEET). Clause-IV thereof, first part of which was heavily relied on by the learned advocates for the petitioners and second part of which was then heavily relied by learned advocates for the opposing students, makes the intention on the part of the MCI further clear and to let every University/ Institution know that they will have no other option but to accept the students only from the merit list based on NEET. Second part of Clause IV clearly stipulates that all India merit list as well as State wise merit list of eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and the candidates shall be admitted to Post Graduate Medical Courses from the said merit list only. The question then remains whether such mandate could be read as also a directive by Medical Council of India to the Universities/ Institutions not to follow their statutory Rules for the purpose of giving admission to the medical courses. So far as Gujarat University is concerned, there is no dispute that there is a specific provision in Rule 4.1 for giving preference to its own students for admission in medical courses. Rule 4.1 reads as under:-

“4.1. Preference shall be given to candidates graduating from Gujarat University.”

23. From the book-let provided to the Court, which contains proforma admission forms and Rules made by the Gujarat University, providing for eligibility criteria, it is found provided in Rule 1.8 that the Gujarat University has made compulsory for every student to appear in NEET exam and to secure minimum of marks at 50th Percentile in NEET Post graduate and minimum marks at 48th

Percentile in NEET Post Graduate for Scheduled Caste / Scheduled Tribe and SEBC category seats. Therefore, the Gujarat University has amended the Rules so as to include the provisions made by MCI in its notification dated 21.12.2010 and further amended Regulations notified by notification dated 15.2.2012 for NEET examination. The Court is informed that based on such Rules providing for NEET examinations and also providing for giving preference to its students, the Gujarat University gave Public Notice for admission to PG Medical course and the students have already filled in forms between 14.12.2012 and 24.12.2012.

24. The Rules especially Rule 4.1 was under challenge before this Court by filing Special Civil Application No.5607 of 1996, with another matter at the instance of the students of other University on the ground that giving of preference by the Gujarat University to its own students in medical courses was unconstitutional and a direction was sought not to enforce the Rules for giving such preference and further direction was sought to consider the cases of the students of other Universities who were seeking admission in Gujarat University. The Hon'ble Division Bench of this Court has upheld the validity of the said Rule providing for preference in the decision in the case of ***Karamsad Medical Association Vs. State of Gujarat*** reported in ***41(2) GLR 1648***, wherefrom para 14 is quoted below:-

"14. In State of Andhra Pradesh and another vs. Lavu Narendra Nath and others (supra), the State Government had issued rules for selection of candidates for admission into the Medical Colleges and prescribed standard of eligibility. That was challenged by some of the students. The question considered by the Supreme Court was, whether the test prescribed by the Government in any way militated against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. What is highlighted by the Supreme Court in that case is that Entry 66 of List I gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated, but it has no relation to a

test prescribed by a Government or by a University for selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject. Again, in *Dr. Ambesh Kumar (supra)*, the question of law considered by the Supreme Court was, whether notice issued by the Government of Uttar Pradesh laying down qualification regarding eligibility of a candidate to be considered for admission to the post-graduate degree in M.D., M.S. and diploma course in M.D., M.S. etc., on the basis of merit in accordance with the Regulations made under the Indian Medical Council Act was valid or it trenching upon Entry 66 of List I of the Seventh Schedule to the Constitution. After reviewing the law on the point and examining the ambit of Entry 25 of the Concurrent List i.e. List III of the Seventh Schedule to the Constitution as well as Entry 66 of List-I, the Supreme Court has held that the order laying down the qualification for a candidate to be eligible for being considered for selection for admission to the medical courses on the basis of merit as specified by regulations made under the Indian Medical Council Act cannot be said to be in conflict with the said regulations or in any way repugnant to the said regulations. In view of the principles laid down in the above quoted decisions, the only question to be considered is, whether the rules for admission to post-graduate medical courses framed by the Gujarat University are repugnant to or encroaching upon or are in conflict with the regulations framed by the Medical Council of India in exercise of powers conferred on it under section 33 of the Indian Medical Council Act. By framing Rules 4 & 7, what is done by the Gujarat University is to prescribe sources of admission. In *Chitra Ghosh (supra)*, the appellants, who had passed the pre-medical examination of the Delhi University obtaining over 62 per cent marks, were refused admission to 1st Year M.B.B.S. Course at the Maulana Azad Medical College which was a constituent of the University of Delhi and was established by the Government of India. The college prospectus contained certain rules relating to admission of students which made reservations of place in the college in favour of various categories of students and provided for nomination to be made by the Central Government to fill some of the reserved places. The appellants challenged primarily power of the Central Government to make nomination and contended that 9 students nominated by the Government had obtained lower marks than theirs in pre-medical examination, so if they were to be excluded, the appellants would become entitled to be admitted in the College. Rejecting this contention, the Supreme Court said, "It is the Central Government which bears the financial burden of the

running medical colleges. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter-alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis, it is not for the courts to interfere with the manner and method of making the classification.

The above case atleast shows that the sources of admission can be prescribed by the University. This decision has been considered and interpreted by the Supreme Court in *State of Andhra Pradesh v. L. Narendra Nath*, AIR 1971 SC 2560 at para 13 to mean that "a candidate has not unqualified right to a seat in a medical college merely because he has obtained higher marks than another candidate at the qualifying examination." According to the regulations of the Medical Council of India, the selection to the post-graduate, both for degree and diploma courses should be strictly on academic basis, but the Medical Council of India has not precluded the University from prescribing sources of admission. If merit is the criteria adopted within the sources prescribed, it cannot be said that the rules for admission to post-graduate medical courses framed by the Gujarat University are, in any manner, repugnant to or encroach upon or are in conflict with the regulations framed by the Medical Council of India. In the reply affidavit filed on behalf of the University, it is pointed out that on an average more than 400 students are declared successful at the final M.B.B.S. examination, but only 194 students are admitted to post-graduate medical courses in order of merit. It means that large number of students of Gujarat University itself are left out from getting admission and even they have to compete for 25% of seats reserved for All India students if they want to prosecute post-graduate medical courses. It is not the case of the petitioners that while granting admissions to post-graduate medical courses to its students, Gujarat University overlooks merit or grants admission to a student who is lower in order of merit. The record indicates that Gujarat University admits students to post-graduate medical courses in order of merit and if merit is the criterion adopted within the sources prescribed, the rules framed cannot be regarded as either being repugnant to or in conflict with the regulations framed by the Medical Council of India. As the

rules for admission to post-graduate medical courses are not found to be either repugnant to or encroaching upon or in conflict with regulations framed by the Medical Council of India, they cannot be struck down as invalid. Therefore, challenge to validity of rules on this ground fails.”

The said decision has attained finality and the Rules which are held to be statutory and valid have been continuously followed by the Gujarat University for the purpose of giving admission to the medical courses.

25. At this stage, reference to the affidavit filed by one Hareet Shukla, Additional Secretary, Government of Gujarat, Health and Family Welfare Department dated 1.2.2013 in Writ Petition (C) No.34 of 2013 filed before Hon’ble Supreme Court is required to be made. Para 4 and 5 thereof are reproduced hereinbelow:-

- “4. It is submitted that the State Government has enacted Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) (Amendment) Rules, 2010 which seeks to make specific provisions for regulation of admission in professional medical educational colleges or institutions and deal with fixation of fees in such colleges or institutions. As far as admission to the Post Graduate Degree courses is concerned, the rules for admission to Post Graduate Medical and Dental courses have not been framed. At present, the admissions to Post Graduate Medical and Dental Courses are given by the concerned Universities of the State under their respective rules.
5. I say and submit that it is pertinent to note that Hon’ble Supreme Court vide interim order dated 13/12/2012 in Transferred Case No.101 of 2012 has directed that *“in the meantime, the Medical Council of India, the Dental Council of India as well as the States and Universities and other institutions, will be entitled to conduct their respective examinations for the M.B.B.S., B.D.S. And Post Graduate Courses, but shall not declare the results of the same, until further orders of this court. Wide publicity may also be given to this order by the States, Union of India, Medical Council of India and the Dental Council of India so that the students who are intending to sit for the entrance*

examination may have knowledge of the same.”

The writ petition in which the said affidavit is filed before the Hon'ble Supreme Court is at the instance of the students who have challenged Rule Nos.4.1 and 4.3 of the Gujarat University Rules and Rule Nos.2.0, 4.1 and 4.3 of the Saurashtra University Rules, for admission to Post Graduate Degree and Diploma in Medical courses. They want that institutional preferences adopted by the Universities in the Gujarat State be declared and held as unconstitutional. The said petition was filed before the Hon'ble Supreme Court on 15.1.2013 and in the said petition, as stated above, the affidavit is filed by the Government of Gujarat through its Additional Secretary and made its stand clear that the Universities in Gujarat, including Gujarat University, follow their own Rules for the purpose of giving admissions to the medical courses. What is further found in respect of the said petition before the Hon'ble Supreme Court is that the affidavit of urgency was filed therein on 14.5.2013 stating that the Hon'ble Supreme Court has permitted the results of exams including NEET result, to be declared and on the basis of such declaration of result of NEET, Gujarat University shall proceed ahead with the admission process and if the same is completed, the petition would be rendered infructuous. On the above said premises, a prayer was made in the said urgent affidavit to take up the said petition for consideration of the Hon'ble Supreme Court for urgent interim relief. The Court is informed that in the said petition, the State moved I.A. No.3 of 2013 on 7.6.2013 to stay the further proceedings of Special Civil Application No.9004 of 2013 pending before this Court. The I.A. was mentioned on 20.6.2013, the same was allowed to be listed on 24.6.2013 but, before that date, since above Special Civil Application filed before this Court against M.S. University praying to follow the norms existed prior to NEET for the purpose of admission in medical courses, was withdrawn with the permission of the Court, to which learned Assistant Government Pleader Mr. Nanavati had not taken

any objection, the said I.A. Was withdrawn from the Hon'ble Supreme Court.

26. The Court is informed that there was no move by the students for early hearing of the petition though affidavit of urgency was preferred therein as stated above. Learned advocate Mr. Panchal however pointed out that while moving I.A. No.3 of 2013 before the Hon'ble Supreme Court and even while seeking permission to withdraw the said I.A. on subsequent date, the State Government did not bring to the notice of the Hon'ble Supreme Court that before moving of the said application, the State Government had taken decision to form Centralized Admission Committee by circular letter dated 3.6.2013 and the said decision is under challenge before this Court. Be that as it may. The stand of the State Government is that the impugned decision having been taken in the larger public interest, even if the Court finds that there is some lapse on the part of the State Government, the Court may not interfere with such decision of the State Government and allow the State Government to proceed with the admission process based on NEET merit list through the Centralized Admission Committee for PG Medical Courses.

27. In the case of ***D.N. Chanchala etc. Vs. The State of Mysore and others*** reported in ***AIR 1971 SC 1762***, the Hon'ble Supreme Court has held and observed in para 16 as under:-

“16. The medical colleges in question are not university colleges but have been set up and are being maintained by the State Government from out of public funds. Since they are affiliated to one or the other of the three universities, the Government cannot frame rules or act inconsistently with the ordinances or the regulations of the universities laying down standards of eligibility. It is nobody's case that the Government has made rules which are in any way inconsistent with the rules for eligibility laid, down in such ordinances and regulations.”

28. In the case of **Saurabh Chaudri and others Vs. Union of India and others** reported in **(2003)11 SCC 146**, the Hon'ble Supreme Court has held and observed in para 38,39,40,43,64,65,66,67,70,71 and 108 as under:-

- “38. The third question that arises for our consideration is, whether the reservation by institutional preference is valid? India is one country and all its citizens should equally be treated. The essence of equality is enshrined in Art. 14 of the Constitution of India. But does it mean that equality clause must be applied to all citizens to all situations? It is true that the country should strive to achieve a goal of excellence which in turn would mean that meritorious students should not be denied pursuit of higher studies. This itself brings us the question, who is to judge the merit and what are the standards therefor? It is extremely difficult to lay down a fool proof criteria. Success or failure of a candidate in one examination or the other may not lead to infallible conclusion as regard the merit of a candidate so as to achieve excellence. The larger question, therefore, would be how to and to what extent balance should be struck.
39. Ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to show that India is not ready therefor. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Arts. 15 and 16 in the Constitution. The said articles for all intent and purport are species of Art. 14 which is the genius in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in our constitutional scheme. Whereas larger interest of the country must be perceived, the law makers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Arts. 41 and 47 of the Constitution of India.
40. For the last five decades this Court times without number had adopted the efficacy of one criteria or the other for giving preference to a section of students.
43. In D. P. Joshi's case (supra) advantage given to local residents as regard payment of capitation fee was upheld. A Constitution Bench of this Court in *Km. Chitra Ghosh and another v. Union of India and others* ((1969) 2 SCC 228)

stated the law thus :

- "9. It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is necessary to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification."
64. The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means- (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis.
65. Hence, we may also notice the argument, whether institutional reservation fulfils the aforementioned criteria or not must be judged on the following :-
1. There is a presumption of constitutionality;
 2. The burden of proof is upon the writ petitioners as they have questioned the constitutionality of the provisions;
 3. There is a presumption as regard the State's power on extent of its legislative competence;
 4. Hardship of few cannot be the basis for determining the validity of any statute.
66. The Court while adjudicating upon the constitutionality of the provisions of the statute may notice all relevant facts whether existing or conceived.
67. This Court may, therefore, notice the following:
- (i) The State runs the Universities.
 - (ii) It has to spend a lot of money in imparting medical education to the students of the state.
 - (iii) Those who get admission in Post-Graduate Courses

- are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.
- (iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for last about two decades.
 - (v) Even those States which defied the decision of this Court in Dr. Pradeep Jain's case (supra) had realized the need for institutional preference.
 - (vi) No sufficient material has been brought on record for departing from this well-established admission criteria.
 - (vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile /residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in All India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.
 - (viii) Giving of such a preference is a matter of State Policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.
 - (ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation.
70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.
71. However, the test to uphold the validity of a statute on equality must be judged on the touchstone of reasonableness. It was noticed in Dr. Pradeep Jain's case (supra) that reservation to the extent of 50% was held to be reasonable. Although subsequently in Dr. Dinesh Kumar's case (supra) it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time have produced a large number of Post-Graduate doctors.

Our Constitution is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

108. As regards the constitutional validity of institutional/regional/University wise reservation/preference, in view of this Court's emphasis on the need to strive for excellence which alone is in the national interest, it may not be possible to sustain its constitutional validity. However, the presently available decisional law is in support of institutional preference to the extent of 50% of the total available seats in the concerned educational institutions.

Conclusions :

1. In the case of Central educational institutions and other institutions of excellence in the country the judicial thinking has veered around the dominant idea of national interest with its limiting effect on the constitutional prescription of reservations. The result is that in the case of these institutions the scope for reservations is minimal.

2. As regards the feasibility of constitutional reservations at the level of super-specialities, the position is that the judiciary has adopted the dominant norm, i.e., "the higher the level of the speciality the lesser the role of reservation". At the level of super-specialities the rule of "equal chance for equal marks" dominates. This view equally applies to all super-speciality institutions.

3. As regards the scope of reservation of seats in educational institutions affiliated and recognised by State Universities, the constitutional prescription of reservation of 50% of the available seats has to be respected and enforced.

4. The institutional preference should be limited to 50% and the rest being left for open competition based purely on merits on an All-India basis.

5. As regards private non-minority educational institutions distinction between Government aided and unaided institutions. While Government/State can prescribe guidelines as to the process of selection and admission of students, the Government/State while issuing guidelines has to take into consideration the constitutional mandate of the requirement of protective discrimination in matters of reservation of seats as ordained by the decisional law in the country.

Accordingly, the extent of reservation in no case can exceed 50% of the seats. The inter se merit may be assessed on the basis of a common All India Entrance Test or on the basis of marks at the level of qualifying examination.

6. The position with respect to minority aided institutions is that they are bound by the requirement of constitutional reservation along with other regulatory controls. However, the right to admit students of their choice being part of the right of religious and linguistic minorities, to establish and administer educational institutions of their choice, the managements of these educational institutions can reserve seats to a reasonable extent not necessarily 50% as laid down in Stephens College case. Out of the seats left after the deduction of management quota, the State can require the observance of the requirement of Constitutional reservation.

7. As regards the unaided institutions, they have large measure of autonomy even in matters of admission of students as they are not bound by the constraints of the demands of Art. 29(2). Nor are they bound by the constraints of the obligatory requirements of Constitutional reservation."

29. In light of the above, institutional preference embodied in the Rules of Gujarat University, unless taken away either by amending the Rules or by any Regulation under the provisions of the Medical Council of India, has to be adhered to. PG MCI Regulations of 2010, later on amended in 2012 and implemented from the academic year 2013-14 has just taken away the choices available with the Universities/ Institutions for determining the academic merits of the students by mandating to accept the academic merits of the students as determined through Single Eligibility Entrance Test (NEET). Simply because such provision of Single Eligibility Test for determining the merits of the students for admission to PG Medical Courses is introduced by amendment in the MCI Regulation and emphases is laid in Clause I and IV thereof to strictly follow NEET merit list for giving admission in PG Medical course, the same could not be taken to have done away with university preference in respect of the

Universities where such preference is provided in statutory Rules framed by them. Since there is no specific provision in the MCI Regulation taking away or to do away with University preference, it cannot be said that the existing rule of Gujarat University for preference is repugnant to MCI Regulations and permitting to operate such rule for preference would violate the Regulation of MCI. Under the circumstances, the statutory Rules of Gujarat University providing for preference to its students for admission to PG Medical courses on NEET based merit list have to operate and consequently, the petitioners of Special Civil Application Nos.9062 of 2013 and 9583 of 2013 are required to be held entitled to be governed by such preference under the Rules of the Gujarat University for admission to PG Medical Courses based on NEET examination.

30. However, since the petitioners of Special Civil Application Nos.9639 of 2013 and 9018 of 2013 are from the Universities where there are no such Rules for preferences and since their Universities are bound to follow NEET based merit list, their claim to adopt old norms for admission cannot be accepted. Once the determination of the merits of the students aspiring for admission in medical courses is mandated by MCI only on NEET based merit list, admissions to medical courses in M.S. University and Bhavnagar University are to be strictly based on NEET merit list. Therefore, the contention of the petitioners of the above said two petitions that they are entitled to get admissions in PG Medical Courses based on the norms existed prior to implementation of the Medical Regulations 2010 cannot be accepted. In fact, acceptance of such contention of the petitioners of the above said two petitions would amount to directing the concerned Universities to violate the MCI Regulations and therefore, no such direction could be given as prayed for by the petitioners of the above said two petitions.

31. In the back ground of the above discussion, the impugned

decision of the State Government vide the Government Resolution dated 17.6.2013 is required to be examined. The first part of the resolution providing for preparation of the State merit list based on NEET for the purpose of admission to PG Medical Courses could be said to be in consonance with the MCI Regulations of 2010 and 2012. However, so far as second part of the resolution providing for formation of the Central Admission committee for the purpose of giving admission in PG Medical Courses in the Universities/ Institutions in the State of Gujarat is concerned, learned advocates for the petitioners of Special Civil Application Nos.9583 of 2013 and 9062 of 2013 submitted that such decision of giving admission to PG medical courses by forming Central Admission Committee would take away the preferential rights of the students of the Gujarat University for admission in PG Medical Courses and, therefore, it is *ultra vires* to the statutory Rules and impeaches upon the field occupied by the Gujarat University under the statutory Rules framed under the delegated legislation and therefore, to the extent the same is in derogation of and repugnant to Rules of preference given by the Gujarat University to its students, it is required to be held invalid and cannot be permitted to be acted upon or operated.

32. There is no dispute about the fact that the State has got control over the State aided institutions. Therefore, in the matters of education in the State of Gujarat, the State is empowered to take administrative and policy decision. For such purpose, the State can resort to Article 162 of the Constitution of India. However, the State can pass executive orders for its policy decision in respect of the matters where there is no law legislated or statutory Rules framed under such legislation. If there is already provision in the law for any matter, the Court while exercising the judicial review of the executive order passed by the State Government, can always look at and find out whether such executive order is in violation or *ultra vires* to the existing statutory Rules or the law. If the Court finds that any such

decision of the State Government through any executive order violates any statutory Rule or in excess of the power vested in it, the Court can certainly strike down the decision of the State Government to the extent required.

33. In the case of ***Jaipur Development Authority and others Vs. Vijay Kumar Data and Another*** reported in **(2011)12 SCC 94**, the Hon'ble Supreme Court has held and observed in para 49,53 and 54 as under:-

- “49. It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in rules to be made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)].
53. It is thus clear that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of letter dated 6.12.2001 shows that it was neither expressed in the name of the Governor nor it was authenticated manner prescribed by the Rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution.
54. We are further of the view that even if the instructions contained in letter dated 6.12.2001 could be treated as policy decision of the Government, the High Court should have quashed the same because the said policy was clearly contrary to the law declared by this Court in Radhey Shyam's case and Daulat Mal Jain's case and was a crude attempt by the concerned political functionaries of the State to legalise what had already been declared illegal by this Court.”

34. In the case of ***Pancham Chand and others Vs. State of Himachal Pradesh and others*** reported in **(2008)7 SCC 117**, the

Hon'ble Supreme Court has held and observed in para 18 as under:-

"18. The Act is a self-contained Code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. The, State, although, have a general control but such control must be exercised strictly in terms of Article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorize any Minister including the Chief Minister to act in derogation of the statutory provisions. Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of Council of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under Article 166 of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognizes that, howsoever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits."

35. Learned Assistant Government Pleader Mr. Nanavati submitted that the Universities through their Vice Chancellors who have taken part in the decision making process, have agreed for the impugned decision. However, no material is placed on record by the State Government to point out that either there was a resolution passed by the concerned University through its legislative body or that the University adopted any amendment in its Rules so as to confirm to the decision of the State Government.

35.1. Faced with the above situation, the Court has considered as to whether the impugned decision could be interfered with to a possible extent or to be quashed in its entirety. So far as the first part of the resolution for preparing State merit list based on NEET is concerned, it being in consonance with MCI Regulations of 2010 and 2012, the same could be said to have been in conformity with executive power under Article 162 of the Constitution of India. However, so far as the second part of the decision is concerned, if the same could be made subject to statutory Rules of the University

providing for preference, the decision of the State will not be required to be set aside instead it could be modified so as to provide for University preference for the students of Gujarat University while operating the State merit list based on NEET. Therefore, even while holding that the decision of the State Government insofar as it has taken away the effect of statutory Rules of the Gujarat University for giving preference to its students, violates the statutory Rules of the Gujarat University to the said extent, still such decision/ resolution of the State Government dated 17.6.2013 could be allowed to stand so as to permit the State Government to act on the basis of the said Resolution by making provision for giving preference to the students of the Gujarat University. Since the petitioners who are students only from the Gujarat University, the State Government could be directed to adhere to the statutory Rules of the Gujarat University limited to the students of Gujarat University and to give admission based on NEET result in PG Medical Courses in the State of Gujarat.

36. Learned Assistant Government Pleader Mr. Nanavati has relied on the decision in the case of **Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and others** reported in **1986 (Supp) SCC 543**, to point out that the State is entitled to exercise its power in relation to the matters within the competence of the State legislature and therefore, the decision of the State Government may not be interfered with. The decision in the said case will have no application as the field in respect of the matter for preference is occupied by statutory Rules of University. However, as stated above, the decision of the State Government insofar as it has not made any provision for compliance of the statutory Rules of the Gujarat University, is required to be suitably modified.

37. Learned senior advocate Mr. Tanna has raised objection against maintainability of the petitions on the ground that MCI and other affected students are not joined. Mr. Tanna has relied upon the

following decisions of the Hon'ble Supreme Court:-

- (1) ***Medical Council of India Vs. Swati Sethi and others*** reported in **(2004)5 SCC 798**;
- (2) ***Allwyn Housing Colony Welfare Association Vs. Government of Andhra Pradesh and others*** reported in **(2009)9 SCC 489**;
- (3) ***A.M.S. Sushanth and others Vs. M. Sujatha and others*** reported in **(2000)10 SCC 197**;
- (4) ***Iskon and Another Vs. Nanigopal Ghosh and others*** reported in **(2000)10 SCC 595**.

In my view, the principles laid down in the said decisions will have no application to the facts of the case. Present is a case where the petitioners are not asking for any relief against the MCI nor even the petitioners have challenged any Regulations of MCI. What the petitioners of Special Civil Application Nos.9583 of 2013 and 9062 of 2013 assert is that the concerned authority either of the Gujarat University or the State, must follow the statutory Rules of the Gujarat University for the purpose of giving admission in PG Medical Courses for the current academic year. The petitioners are thus asserting their rights based on existing statutory Rules which as on today hold good. Therefore, neither the MCI nor any other students are required to be joined. There is no challenge by anybody to the statutory Rules of Gujarat University. The challenge is pending before the Hon'ble Supreme Court and so long as such challenge is accepted by the Hon'ble Supreme Court, the concerned authorities either of the Gujarat University or the State Government are bound to follow the statutory Rules especially when such statutory Rules are found not to be in derogation or repugnant to the MCI Regulations.

38. For the reasons stated above, the petitions, being Special Civil Application Nos.9639 of 2013 and 9018 of 2013 are dismissed. Special Civil Application Nos.9583 of 2013 and 9062 of 2013 are partly allowed. State of Gujarat as also the Gujarat University are

directed to follow the statutory Rules of the Gujarat University, especially Rule 4.1 providing for preferences to be given to the students of the Gujarat University for admission in PG Medical Courses while operating the NEET based State list for the purpose of giving admission in the first year PG Medical Courses for the academic year 2013-2014. Since the petitioners of Special Civil Application Nos.9583 of 2013 and 9062 of 2013, who are from the Gujarat University, have already filled in forms, the same shall be relied for the purpose of giving admissions to the First Year PG Medical Courses in the Gujarat University. However, for streamlining the procedure by the State of Gujarat for admission into PG Medical Courses, if any form/ application is required to be filled in, the petitioners shall comply with such requirement.

39. The State as also the Gujarat University both are directed to commence the requisite procedure for the purpose of admissions to PG Medical Courses in the State of Gujarat based on NEET merit list so as to strictly adhere to the time schedule provided by MCI. In order to see that there is no delay on the part of the State authorities or the concerned University for admission to PG Medical Courses, the State as also the Gujarat University both are directed to commence such procedure by *2nd July 2013*. It is made clear that if the State fails to commence such procedure for the purpose of admission to PG Medical Courses based on NEET merit list, the Gujarat University is directed to immediately commence such procedure by following its statutory Rules based on NEET merit list so as to strictly adhere to the time schedule provided by the MCI. Rule is discharged qua Special Civil Application Nos.9639 of 2013 and 9018 of 2013 and Rule is made absolute to the extent above qua Special Civil Application Nos.9583 of 2013 and 9062 of 2013.

40. At this stage, learned advocate Mr. Majmudar appearing for the respondents- students requests to stay this judgment and order. Hon'ble Division Bench of this Court has already upheld the validity of

the Rules of the Gujarat University as back as in 2000, which holds good as on today and based on that, this Court finds that the students of the Gujarat University are entitled to preference for admission in PG Medical Courses in the Gujarat University. Apart from this, as per the directives of the Hon'ble Supreme Court, every authority, howsoever, is bound to follow the time schedule prescribed by MCI. Therefore, accepting the request of learned advocate Mr. Majmudar would amount to violating the directions issued by the Hon'ble Supreme Court as regards the time schedule. Therefore, such request is not accepted.

Sd/-

(C.L. SONI, J.)

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