

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1831 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 1609 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 1617 of 2022****JENIL RAJESHBAI MEHTA****Versus****STATE OF GUJARAT****Appearance:**

MR NV GANDHI for Petitioner No. 1 in Special Civil Application No.1831 of 2022
MR DIGANT M POPAT for the Petitioner in Special Civil Application No.1609 of 2022
MR PA JADEJA for the Petitioner in Special Civil Application No.1617 of 2022
MS MANISHA LAVKUMAR, GOVERNMENT PLEADER assisted by Mr.D.M.
DEVNANI, AGP for the Respondent(s) No. 1
MR. KM ANTANI(6547) for the Respondent(s) No. 2

**CORAM:HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND
KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

Date : 31/01/2022

COMMON ORAL ORDER

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

1. Petitioners are seeking for striking down the Notification dated 09.11.2020 qua its applicability for the purpose of seeking admission for the academic year 2020-21 and they are also seeking for extending the benefit of the Notification dated 09.11.2020 to them on the ground that they had taken admission before 23.06.2017 in 10th Standard and passed 10th Standard from the school located outside the State of Gujarat.

2. We have heard the arguments of Shri Digant M. Popat, Shri P.A.Jadeja and Shri Nehal Gandhi, learned advocates appearing for petitioners and Ms. Manisha Lavkumar, learned Government Pleader appearing for the State and perused the records.

3. The facts which have unfolded in each of these cases are crystallized as under.

Re: SCA NO.1609 of 2022

4. Petitioner who is aspiring for admission to undergraduate medical course viz., M.B.B.S. course is said to be domicile of State of Gujarat and claims to have completed 10th Standard Examination on 20.02.2017 in an institution situated outside the State of Gujarat i.e. Rajasthan and is said to have completed Plus 2 Examination (12th Standard) at Gandhinagar, Gujarat State, during March-2020. Petitioner appeared for the National Eligibility Entrance Test (NEET) examination during the academic year 2020-21 seeking admission to Medical Course but did not obtain admission though was eligible for admission under management quota. Petitioner again

appeared for the NEET-UG-2021 Examination and secured All India Rank of 81190 with percentile of 94.7217882. Petitioner thereafter preferred Special Civil Application No.14259 of 2021 and withdrew the application on the ground it was premature. Subsequently, petitioner filed one more petition in Special Civil Application No.17311 of 2021 challenging the validity of the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 (for short "Rules-2017"), which came to be introduced in the year 2017 with effect from 23.06.2017 contending condition imposed thereunder that a student should have passed 10th Standard in the State of Gujarat itself should not be applied and his candidature should be considered as eligible to secure admission under the State merit list, which came to be disposed of by order dated 14.12.2021 with an observation that State should ponder as to whether Rule 4(3)(ii) should continue in the same form or not and left the decision to be taken by the State, as object of the rule is to give benefit to the candidates who are domicile of State of Gujarat. Respondent authorities

announced the merit list *vide* Annexure-Q whereunder petitioner was held to be disqualified on account of having not passed 10th Standard examination in the State of Gujarat and not being entitled for being admitted to the Medical College in the State of Gujarat or in other words, his candidature/application came to be rejected on the said ground.

Re: SCA No.1617 of 2022

5. Petitioner was born in the State of Gujarat and studied upto 8th Standard at Vadodara. She completed her 10th Standard Examination from Central Board of Secondary Education in a school situated at Thane, Maharashtra in the year 2018 namely on 29.05.2018 after having got herself admitted in the year April-2017. Subsequently, she completed her Plus 2 viz., 11 and 12 Standard in State of Gujarat namely at Vadodara in academic year 2018-20 and thereafter appeared for the NEET Examination and secured 377 marks out of 720 with a total percentile of 84.3646736. On account of her ranking not being within the zone of availability of a medical seat in the State of Gujarat, she ventured to take up the

examination yet again namely the NEET Examination in the next academic year, that is, 2020-21 and secured 499 rank with All India percentile of 94.4401022. On account of the Rules-2017 being made applicable she has been denied a medical seat in the State of Gujarat as she did not possess the requisite qualification namely had not passed her 10th Standard Examination in the State of Gujarat. By reply (email at page 169), petitioner has been intimated the reason for having refused admission namely on the ground that a candidate should have passed both 10th and 12th Standard Examinations from the State of Gujarat which petitioner did not possess.

Re: SCA No.1831 of 2022

6. Petitioner was born in State of Gujarat and studied from Standard 1 to 8 in Gujarat and completed his 10th Standard Examination on 06.05.2019 and also cleared the 11th and 12th Standard from school affiliated to CBSE Board, New Delhi on 17.07.2021 and aspiring to secure seat for undergraduate medical course had applied for the same. Petitioner appeared for the NEET examination held for the academic year

2021-22 and secured All India NEET rank of 141826 with percentile of 90.4048054. On account of 10th and 12th Standard having been studied outside the State of Gujarat or in other words, petitioner not having passed 10th and 12th Standard Examination in the State of Gujarat, his name did not appear in selected candidates list or appeared in the list of disqualified candidates as amended Rule of 2017 did not permit students who had studied 10th and 12th Standard outside State of Gujarat and as such petitioner has approached this Court.

Re: CONTENTIONS OF PETITIONERS

7. The sum and substance of the contentions of petitioners are as under:

7.1 They are born in the State of Gujarat and have studied from Class 1 to Class 6th/8th/9th in the State of Gujarat and after they secured admission in schools other than State of Gujarat to 10th Standard in the year 2017, 'Rules-2017' came to be notified and at the undisputed point of time namely when Rule-2017 was made, petitioners had already joined the

10th Standard Examination and now petitioners are held to be not eligible to seek for admission to Medical Course by applying the said Rules which was not in vogue when they were admitted to 10th Standard. It is contended that such requirement of completing 10th and 12th Standard from the State of Gujarat prescribed under Rules-2017 was relaxed for the academic year 2018-19 by Notification dated 25.06.2018 by introducing proviso to Rule 4(3)(ii) whereby the candidates who have studied and passed Standard 10 from the school located outside the State of Gujarat were also held eligible to seek admission to Medical Course in the academic year 2018-19 and similar notification came to be issued for the academic year 2019-20 and yet one more notification was issued for the academic year 2020-21 extending the relaxation.

7.2 It is contended that object of the Rules is to give benefit to the candidates who are domicile of the State of Gujarat and petitioners having been born and brought up in the State of Gujarat, should not be denied the benefits flowing from 3 notifications namely Notification dated 25.06.2018, 15.06.2019 and

09.11.2020 merely on the ground they have studied 10th or 12th Standard outside the State of Gujarat. It is contended that petitioners are eligible to seek admission to undergraduate course till they complete 25 years which is the upper age limit fixed for seeking admission to Medical Course and as such keeping this in mind, the State itself at the first instance had extended the non-applicability of Rules-2017 for the academic year 2018-19 and thereafter for the academic years 2019-20 and 2020-21 also by inserting a proviso to Rule 4(3) and as such the classification being proper and based on intelligible differentia, petitioners cannot now be denied the benefit of the said exemption inasmuch as they would be eligible to take up the entrance examination of undergraduate course namely M.B.B.S. upto the age of 25 years. Hence, they contend that denial of the benefit of exemption for the academic year 2021-22 is illegal, improper and irrational and if it is to be construed that there is a bar for considering their claim, the notification to the extent it bars petitioners for being eligible to be considered for admission to Medical Course should be struck down as

it is violative of their fundamental right and being vice of Article 14 of the Constitution of India.

7.3 Learned advocates appearing for petitioners would also draw the attention of the Court to the earlier judgments of this Court and particularly the judgment rendered by the Coordinate Bench in Letters Patent Appeal No.799 of 2020 whereunder the State was directed to reconsider the matter and take appropriate decision in the larger interest of student community, which resulted in extending the benefit for the academic years 2018-19 to 2020-21 by insertion of proviso to Rule 4(3) and as such petitioners should also be extended same benefit by the State Government, as otherwise there would be hostile discrimination between the candidates who have been extended the benefit for the previous academic year and petitioners who are seeking admission to Medical Course in the present academic year 2021-22. Yet another contention which has been raised is that the learned Single Judge in Special Civil Application No.17311 of 2021 has considered these aspects and though has held that the Rules-2017 are *intra vires* has directed the State Government to

consider the claim of the petitioner in the background of the observations made by the Division Bench in Letters Patent Appeal No.799 of 2020 referred to supra and this exercise having not been undertaken for the academic year 2021-22 even as on today and the last date for counselling for the seats getting over today (31st January, 2022), the prayer of the petitioners cannot be nipped at the bud and as such they have prayed for suitable directions being issued to the State.

8. Per contra, Ms. Manisha Lavkumar, learned Government Pleader appearing for the State would submit that when the Rules-2017 was brought in the year 2017 and applied universally to all the students keeping in mind that students who have studied in Gujarat State in general and particularly 10th and 12th Standards ought to be given preference, said Rules was made and having noticed that by the time Rules-2017 was introduced on 23.06.2017, the students of the Gujarat State had already got admitted to 10th Standard for the academic year 2016-17 elsewhere other than State of Gujarat to mitigate the hardship of those students, proviso was initially introduced

to exempt students seeking UG admission for the academic year 2018-19 and later extended for the year 2019-20 and 2020-21 which was in deference to the observations made by the Division Bench in Letters Patent Appeal No.799 of 2020. However, it was made clear when the amendment was made to Rules-2017 on 09.11.2020 that it would only be for the academic year 2020-21 since amendment was brought three years prior and for ensuring such exemption would benefit those students who had got admitted for 10th Standard Examination 3 years prior to 2020-21 as students who got admitted subsequently were well within know-how about Rule-2017 having been brought about and as such there is no error committed by the State in restricting the benefit of exemption of Rule 4(3)(ii) only upto the year 2020-21. Hence, she has prayed for dismissal of the petitions. She would also rely upon the Division Bench judgments of this Court whereunder the validity of Rule-2017 has been held as *intra vires* of the powers of the State Government and there is no error which would call for interference at the hands of this Court. Hence, she prays for dismissal of the writ petitions.

DISCUSSIONS AND FINDINGS:

9. It would be necessary to note that the Government of Gujarat made Rules-2017 for admission to MBBS/BDS/BPT/BAMS and other courses as more fully described in the said Rules in exercise of the powers conferred by Sub-section (1) of Section 20 read with Section 8 of the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007, the Rules known and called as the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2016 (for short "Rules-2016"), which admittedly did not prescribe studying of 10th Standard from a school/institution located in the State of Gujarat. The said Rules came to be amended by Notification dated 23.06.2017 known as Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 namely "Rules-2017" whereby a requirement of passing of 10th Standard and 12th Standard from the school/institution located in the State of Gujarat was included under the said Rule.

10. The aforesaid Rules came to be called in question by some of the aggrieved students by filing an application in Special Civil Application No.8590 of 2018 by laying challenge to Rule 4(3)(ii) and Rule 4(1)A of Rules-2017. The said Special Civil Application came to be dismissed by the coordinate Bench *vide* order dated 25.06.2018 by observing thus :

"[23.4] The argument of the petitioners that classification of students, who have passed 10thStandard from school situated in the State of Gujarat and outside State of Gujarat amounts to micro classification, also cannot be accepted. Said classification is to be held reasonable classification, so as to achieve object, to ensure that local residents get admission in undergraduate medical courses. It is well settled that classification which has nexus with the object which is sought to be achieved, is to be held to be reasonable classification and it will not infringe rights of the petitioners guaranteed under Article 14 of the Constitution of India. It is also well settled that when Rule is made to implement provisions of legislation, legitimate presumption is that the rule must have been framed by the State Government in good faith and with full knowledge of the existing conditions as well as requirements and the amendment, if any, must have been made to solve difficulties manifested by experience. It is also to be noticed that mere differentiation will not amount to discrimination and further trivial or illusory itself in classification, in treatment cannot attract Article 14 of the Constitution of India. In the judgment in the case of Kumari Jayshree Chandrachud Dixit v/s. State of Gujarat reported in 1979 GLR 614, while

considering the validity of rules of admission to First MBBS course, the learned Single Judge of this Court has considered identical situation and in the said case, learned Single Judge has held that mathematical nicety or perfect equality is not essential to meet the test of Article 14 of the Constitution of India. Having regard to the objectives of the Rules, and the plea of the respondent in reply affidavit, we are of the view that impugned rules are not arbitrary and illegal as prayed for and they do not amount to micro classification offending rights guaranteed under Article 14 of the Constitution of India. We are of the view that such rules are framed only in furtherance of the object to reserve 85% of the seats in undergraduate medical courses for residents of the State of Gujarat. In that view of the matter, we are not persuaded to accept the plea of discrimination as prayed for.

[27] In the case of *Prashant Pravinbhai Kanabar v/s. Gujarat University* reported in 1990 (2) GLR 1066, challenge was to rules of admission to postgraduate degree and diploma medical courses. In identical situation, when there is challenge to the rules, it is held by Division Bench of this Court that no right will accrue in admission to medical educational courses unless one is admitted to the course. In absence of admission to the course, it is held that the petitioners cannot be said to have accrued any right. It is further held that, in such situation, taking away of their right does not arise. Further in the said case, while considering change of rules for post graduation admissions, in similar situation, it is held that no promise can be said to have been made by the University to the effect that same rules which were governing admission to postgraduate medical courses would continue to apply to them. We are totally in agreement with the

view taken by the Division Bench. By applying said ratio, we are of the view that merely because, condition imposing requirement of passing of 10th Standard from the school situated in the State of Gujarat was not there, when the petitioners passed 10th Standard, it cannot be said that they have acquired any right. Whether the rules which are in force for entry to medical courses are to be amended or not, it is primarily for the respondent State to do so. Having regard to past experience and requirements, it is always open for the State Government to update the rules as required to meet the situation to fulfill criteria having regard to object of the legislation. Merely because said rules are not suiting some candidates, it cannot be said that such amendment amounts to taking away their rights. It is to be noticed that in absence of any right, it cannot be said that any right is taken away. Similarly, promissory estoppel and legitimate expectation also cannot be accepted. Such eventualities will have to be considered in case where the candidates prove that they were promised and further they have changed their position in anticipation. In absence of any such eventualities, we are unable to agree with the submissions of the petitioners that view taken by the Bombay High Court in W.P.No.8268 of 2017 is to be accepted for grant of directions as prayed for. It is brought to our notice that SLP filed against the judgment of the Bombay High Court in W.P.No.8268 of 2017 is dismissed. However, learned Senior Counsel Mr. Dave appearing for impleaded respondents has placed reliance on the judgment in the case of Justice P. Venugopal v/s. Union of India [(2003) 7 SCC 726]. In the aforesaid judgment, the Hon'ble Supreme Court has held that when the SLP is dismissed in limine, same will not amount to binding precedent, in terms of Article 141 of the Constitution of India. Paragraph Nos.24 and 25 of the said judgment read as under: -

"24. It may be true that this Court did not grant special leave to appeal from the judgment of Justice Nand Lal Ganguly (supra) but the same by itself would not render the decision as binding precedent in terms of Article 141 of the Constitution of India.

25. In Kunhayammed and others v. State of Kerala and another, (AIR 2000 SC 2587) this Court, inter alia, held :

"(iv) An order refusing special leave to appeal may be a non speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.""

[29] It is further plea of some of the petitioners that though the petitioners are permanent residents of State of Gujarat and have done their qualifying 11th and 12th Standard from institutions situated in the State of Gujarat, but in view of the fact that they have pursued their 10th Standard outside State of Gujarat, they have become ineligible. It is submitted that by operation of such rule, they are being put to great hardship. It is well settled principle that hardship or inconvenience is no ground for interference with the rules or statute, if such provision or rule is made to achieve the object of the Act. In this regard, judgments relied by the respondents in the cases of *Rohitash Kumar v/s. Om Prakash Sharma* [2013 (11) SCC 451]; *Reserve Bank of India and Ors. v/s. C.N. Sahasranaman* reported in [AIR 1986 SC 1830] and *Kamal Kanti Dutta v/s. Union of India* [AIR 1980 SC 2056] support the case of the respondents.

[29.1] In the case of *Kamal Kanti Dutta v/s. Union of India* [AIR 1980 SC 2056], the Hon'ble Supreme Court has held in paragraph No.52 as under :-

"52. In regard to the individual instances cited before us as exemplifying the injustice caused to the promotees, it is not safe to test the constitutionality of a service rule on the touchstone of fortunes of individuals. No matter with what care, objectivity and foresight a rule is framed, some hardship, inconvenience or injustice is bound to result to some members of the service. The paramount consideration is the reconciliation of conflicting claims of two important constituents of Service, one of which brings fresh blood and the other mature experience."

[29.2] In the case of Reserve Bank of India and Ors. v/s. C.N. Sahasranaman reported in [AIR 1986 SC 1830], the Hon'ble Supreme Court in paragraph No.58 has held as under :-

"58. Whether there has been denial of equality of the view of promotion or any constitutional right infringed or not cannot be judged, where interest of large number of people are concerned, in the abstract. Vast majority, indeed the overwhelming majority of the workmen are in favour of the scheme as evolved by the Bank as modified as it would be apparent from the submissions urged on behalf of All India Reserve Bank Employees' Association - impleaded as party -respondent in this appeal as well as All India Reserve Bank Employees' Federation, Hyderabad. It has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touch stone. See in this connection the observations of this Court in Kamal Kanti Dutta v. Union of India, (AIR 1980 SC 2056) (supra)".

[29.3] In the case of Rohitash Kumar v/s. Om Prakash Sharma [2013 (11) SCC 451], the Hon'ble Supreme Court in paragraph No.18 has held asunder :-

"18. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigour. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if

such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. In view of ratio in the judgments of Hon'ble Supreme Court referred above, we cannot accept the plea of the petitioners to declare the impugned rules as illegal, on the ground that some of the petitioners are being put to hardship by virtue of such rules.

[30] Further, in absence of any ground to demonstrate that impugned rules are illegal and run contrary to the objects, which are intended to ensure proper implementation of reservation of 85% of available seats in undergraduate medical courses for the candidates having domicile/residents of State of Gujarat, we do not find any merit in these petitions. It is primarily for the respondent State to assess and fix eligibility criteria and qualification relevant for the purpose of admissions to the courses by way of framing appropriate rules. As such, we are of the view that the petitioners are not entitled for any relief as prayed for in these petitions filed under Article 226 of the Constitution of India.

[31] At the same time, it is to be noticed that to regulate admissions in undergraduate medical course, State of Gujarat has brought in force regulation titled 'Gujarat Professional Medical Educational College or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007. Section 20 of the said Act empowers the respondent State to make rules. After the Act has come into force, Rules are framed from time to time to regulate admission to undergraduate medical courses. Till the academic year 2016-2017, as per rules which were framed, there was only requirement of passing of qualifying examination of 11th and 12th Standard from the

institute located in the State of Gujarat. To ensure reservation to local resident, in the year 2017, rules were framed in supercession of earlier rules. The respondent – State has framed the rules in the year 2017 to the effect that the candidates will be eligible under 85% if he / she has passed 10th, 11th and 12th Standard from the schools situated in the State of Gujarat and CBSE schools situated in the State of Gujarat. Challenging the Rules of 2017, when batch of petitions was filed questioning such rules, the respondents have not seriously insisted for complying requirement of passing 10th Standard from the school situated in the State of Gujarat. It is the case of the respondent State that in last year about 400 students got admission in the medical stream who belong to outside State of Gujarat, by joining in 11th and 12th Standard in the State of Gujarat only for the purpose of entry in medical stream. In view of the same, Rule 4 is further amended by amending Act, 2018 which was notified on 04.05.2018. By aforesaid Rule, domicile requirement is introduced for the purpose of claiming 85% of reserved quota. It is true that earlier when the rules were challenged, we have confirmed Rule 4(3)(ii) of the Rules, 2017 in Special Civil Application No. 13877 of 2017 and Special Civil Application No. 14260 of 2017 vide judgment dated 04.08.2017 and Special Civil Application No. 13842 of 2017, but there is noticeable change thereafter in the Rules i.e. insertion of Rule 4(1-A) of the Rules, requiring fulfillment of domicile criteria for the purpose of reservation in the State quota. In the year 2017, when domiciliary requirement was not there in the Rules, passing of 10th Standard from the school situated in the State of Gujarat, in addition to existing requirement of 11th and 12th Standard was introduced, but further to ensure that quota is reserved for candidates of Gujarat, domiciliary requirement is also introduced under Rule 4(1-A) of the Rules, 2017.

[32] Having regard to defence put forth by the respondents, further considering that the eligibility criteria and qualification to be prescribed for making admission, is a matter primarily within the domain of the respondents, in absence of demonstrating that the impugned rules are arbitrary, we cannot grant any relief, as prayed for, by the petitioners in these petitions filed under Article 226 of the Constitution of India. At the same time, as it is the case of some of the petitioners that they are permanent residents of State of Gujarat and having passed 11th and 12th Standard from the schools situated in State of Gujarat, they are not fitting into eligibility criteria only on the ground that they have studied 10th Standard from the schools situated outside State of Gujarat, we deem it appropriate that said matter is required to be considered by the respondents."

11. In the background of the aforesaid observations made by the coordinate Bench that issue relating to some of the students who have studied 10th Standard from the schools situated outside State of Gujarat being allowed to take admission being a policy decision, State was directed to take a decision forthwith on the said issue viz., whether to continue to Rule 4(3)(ii) or Rules-2017 in the same form or not and called upon the Government to take appropriate decision without loss of any time. This observation was found in favour and the Government

issued Notification on 25.06.2018 by incorporating a proviso before existing proviso to Sub-rule (3) of Rule 4 whereby the candidates who have studied and passed Standard 10 from school located outside the State of Gujarat were held to be eligible to be considered for admission to UG course for the academic year 2018-19 and extended the benefit for the academic year 2019-20 also.

12. However, the candidate who was not extended the benefit of aforesaid two (2) Notifications in the academic year 2020-21 filed Special Civil Application No.3576 of 2020 for declaring Rule 4(3)(ii) of Rules-2017 would not be applicable to her though she had taken 10th Standard Examination in an institution situated outside the State of Gujarat. This application came to be dismissed by order dated 14.10.2020. Correctness and legality of said order came to be called in question before the coordinate Bench in Letters Patent Appeal No.799 of 2020 which also came to be dismissed with the following observations :

"23. If the academic year is to be calculated in accordance with the amended

rule, then the same would relate back to the year 2017-18 and, in such circumstances, for one last time, the State may consider a third extension, i.e., for the year 2020-21. The hard fact or reality is that the academic year for the CBSE students had already commenced sometime in March, 2017, whereas the amended rule came to be introduced on 23.06.2017. The domicile of the appellant is not in dispute. She is having domicile of the State of Gujarat. The appellant was promoted to Standard 10th and took admission on 14.03.2017, whereas the State amended the rule on 23.06.2017, i.e., after the academic term of the CBSE had commenced. It is a settled principle of law that whenever a cut-off date is fixed to categorize one set for favourable consideration over the other, the twin test for a valid classification or valid discrimination must necessarily be satisfied. In this regard, we may refer to and rely upon the decision of the Supreme Court in the case of *Kallakkurichi Taluk Retired Officials Assn. vs. State of T.N.*, reported in 2013 (2) SCC 772, more particularly, the observations made in Para-33;

"At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see, *State of Kerala vs. N.M. Thomas* (1976) 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved.

Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied Truthfully, it may be difficult to imagine a valid basis of classification for remedying the malaise of inflation. In the absence of any objective, projected in this case, the question of examining the reasonableness to the object sought to be achieved, simply does not arise. Our straying into this expressed realm of imagination, was occasioned by the fact, that the pleadings filed on behalf of the State Government, do not reveal any reason for the classification, which is subject matter of challenge in the instant appeal."

25. *We may only observe that the rule as such could have been made operative only from the academic term commencing from March-April 2021 or from the date of commencement of the academic term for the standard-10 commencing from the year 2021. If the rule is not made operative from the academic term commencing from the year 2021, the same will exclude many students much to their disadvantage and without any fault on their part. This is precisely the reason why the two notifications came to be issued by the State of Gujarat, referred to above. The inclusion of Standard-10 in the amended Rule 4(3)(ii) dated 23.06.2017 makes the rule operative for the next three years, i.e., till the academic year 2020-21 and in this regard, the State*

Government rightly interpreted and amended the Rule 4(3)(ii) for the past two academic terms, i.e., 2018-19 and 2019.20.

28. Although we are leaving to the better discretion of the State Government, yet we may only remind the State that here is a case of a bright student aspiring to become a Doctor and any decision at this point of time may be a guiding factor so far as the career of the student is concerned.

29. We dispose of this appeal leaving it to the State Government to reconsider the entire matter and take an appropriate decision in the larger interest of a student. The State Government may reconsider the matter from the perspective this Court has looked into. We expect the State Government to take appropriate decision within a period of one week from today. The appeal stands disposed of with the aforesaid observations."

13. The aforesaid observation triggered the State to extend the exemption as had been done earlier by its Notifications dated 25.06.2018 and 15.06.2019 to issue one more Notification dated 09.11.2020 whereby the students got the benefit to take admission for UG course for the academic year 2020-21 in the State of Gujarat though they had studied 10th Standard in an institution situated outside the State of Gujarat.

14. The sum and substance of the contention of the petitioners or the thrust of the argument in this petition is that petitioners are eligible to appear in the NEET examination upto the age of 25 years and therefore they should not be disqualified to appear for the UG course in the State of Gujarat only on the ground of they having not passed 10th Standard examination or 12th Standard examination in the State of Gujarat and the cut-off of 23.06.2017 when came into existence, should have ensured that students who would be appearing for the course of M.B.B.S. for the year 2021-22 would also be eligible. It has been further contended that principle of *casus omissus* should be applied to the Notification dated 09.11.2020 and respondent authorities should be directed to consider the case of the petitioners to be eligible for admission for the academic year 2021-22 also.

15. It would be necessary to note at this juncture itself that similar contentions had in fact been raised in Special Civil Application No.8590 of 2018 and connected matters and grounds urged similar to the ones urged in the present petition was

considered and rejected by order dated 25.06.2018 as already noticed hereinabove.

16. In Special Civil Application No.3576 of 2020, as noticed hereinabove Rule 4(3)(ii) was challenged on similar grounds now urged in the present petitions came to be considered and negatived and said Special Civil Application came to be rejected by order dated 14.10.2020 which was affirmed in Letters Patent Appeal No.799 of 2020 by order dated 06.11.2020 which had laid challenge to the order of the learned Single Judge passed in Special Civil Application No.3576 of 2020 dated 14.10.2020.

17. The amended Rules having come into effect from 23.06.2017 had not taken note of the fact that by the time the Rules came into force, the students who had joined the 10th Standard at different States were being unaware and by that time they had already joined the 10th Standard of the academic year 2016-

17. It is this which necessitated the State to issue Notification on 25.06.2018 exempting the candidates who have studied 10th Standard from school located outside the State to be considered as eligible to

undergraduate courses for the academic year 2018-19. Having noticed that the said extension would not suffice for one (1) year, it was extended upto the year 2020-21. Having regard to the fact that students/candidates prior to Rules-2017 coming into force had already taken admission to 10th Standard or 12th Standard outside the State of Gujarat, could not have been brought within the sweep of said Rules-2017. Said Rule could have been made operative only from the academic year 2020-21 or from the date of commencement of the academic term for the 10th Standard commencing from the year 2021 and its applicability to students who have got admitted in the academic year 2017 i.e. prior to Rules-2017 coming into force would have been operative or disadvantageous to those students. It is for this precise reason three (3) exemption notifications to benefit the students of the requirement of Rule 4(3) (ii) were extended by the State.

18. Thus, if amended rule is reckoned from the academic year, it would relate back to the year 2017-18 and it is for this precise reason, the learned Government Pleader has rightly contended that State

has extended the exemption for the last time for the academic year 2020-21. Hence, the contention of petitioners that such exemption should be extended for further years namely till they complete 25 years cannot be accepted.

19. As such, the contention raised by the learned advocates appearing for the parties that Rule 4(3)(ii) is to be struck down as *ultra vires* of the Constitution requires to be considered for the purposes of outright rejection and we do so accordingly.

20. Learned advocates appearing for petitioners have also contended that on account of the candidates who had appeared for the SSC Examination in the year 2017 prior to 23.06.2017 being deprived of the earlier existing Rules namely the benefit flowing prior to amendment was found to be defective by the appropriate government itself and as such, it had issued the exemption thrice namely for the academic year 2018-19, 2019-20 and 2020-21 and it requires to be extended till the students who had appeared in the SSC Examination in the academic

year 2016-17 upto the age of 25 years inasmuch as the rules governing admission to undergraduate medical course enables them to seek for admission till the age of 25 years, is an argument which requires to be considered for the purposes of outright rejection. The purpose and intent with which the 2017 Rules came to be amended is to ensure that candidates who have passed both the 10th Standard Examination as well as 12th Standard Examination in the State of Gujarat are not being deprived of a medical seat in the medical colleges established in the State of Gujarat and to deny the said benefit to students who have gone out of the State for studying 10th Standard or 12th Standard as the case may be. Thus, State having noticed that candidates who had got admitted prior to the amendment of the Rules came into force should not be deprived from seeking admission to the undergraduate medical course since by that time they had already joined the 10th Standard course, rightly extended the benefit of exemption for the period of 3 years that is upto 2020-21 and it cannot be gainsaid by the candidates that till they attain the age of 25 years, they should be extended the benefit as they

would be eligible to seek for admission to undergraduate course upto the age of 25 years. Insofar as the State of Gujarat is concerned, Rules-2017 prescribe or clearly mandate that such of the students who have passed the examination of 10th Standard and 12th Standard would only be eligible which is *intra vires* of the Constitution and the benefit of exemption notifications being extended for 3 years has reasonable nexus to the object of the Act as well as Rules-2017 which is just and proper and as such, the claim of the petitioners cannot be accepted. The issue relating to competence to legislate not being an issue in these writ petitions, we do not propose to go into said aspect and as such the contention raised by petitioners stands rejected. It would not be out of context to refer before we conclude our decision that petitioners/applicants in Special Civil Application No.1609 of 2022 and Special Civil Application No.1831 of 2022 who were though not eligible to secure admission by virtue of Rules-2017, yet got the benefit of exemption notification issued for the academic year 2020-21 and they attempted to seek admission to UG – Medical Course in the academic

year 2020-21 and were unsuccessful, namely petitioner/applicant in Special Civil Application No.1609 of 2022 had secured a Medical Seat in State of Gujarat under management quota but did not get admitted for the reason of financial difficulties. Whereas applicant/petitioner in Special Civil Application No.1831 of 2022 did not secure requisite ranking to secure admission to UG – Medical Course though appeared for entrance examination.

21. For the reasons aforesated, we proceed to pass the following

ORDER

Special Civil Application Nos.1831 of 2022, 1617 of 2022 and 1609 of 2022 are dismissed. No order as to costs. All Civil Application/s stands consigned to records.

(ARAVIND KUMAR, CJ)

(ASHUTOSH J. SHASTRI, J)

GAURAV J THAKER