
**G.S.F. Medical and Para Medical Association Vs State of Gujarat and
Another**

Special Civil Application No. 10583 of 2005 and Civil Application No. 5779 of 2005

Court: Gujarat High Court

Date of Decision: July 15, 2005

Acts Referred:

Constitution of India, 1950 – Article 144, 226#Indian Medical Council on Graduate Medical Education Regulations, 1997 – Regulation 4, 5(5)

Citation: (2005) 3 GLR 2350

Hon'ble Judges: M.S. Shah, J; D.H. Waghela, J; Bankim N. Mehta, J

Bench: Full Bench

Advocate: N.D. Nanavati and Mitul K. Shelat, for the Appellant; Ad Oza, Government Pleader for Respondent No. 1 and Bhaskar P. Tanna and Mahrook N. Kerravala, for Tanna Associates, for the Respondent

Judgement

M.S. Shah, J.

This petition has been placed before us pursuant to the order of reference dated 4.7.2005 passed by a learned Single Judge

of this Court expressing disagreement with the view taken by another learned Single Judge of this Court in the decision dated 23/24.6.2004

dismissing Special Civil Application No. 6309 of 2004 which was filed by this very petitioner - GSF Medical & Paramedical Association

regarding Common Entrance Test to be conducted for admissions to the management quota in self-financed Medical, Dental and Physiotherapy

colleges which are members of the petitioner association.

2. Having heard the learned counsel for the parties for some time, we are of the view that in view of pendency of other matters involving, inter alia,

a similar controversy before the Hon"ble Supreme Court, the present petition is not required to be heard and decided finally. At this stage,

however, in view of the urgent orders of interim relief prayed for in Civil Application No. 5779 of 2005 in Special Civil Application No. 10583 of

2005, we have taken up the said Civil Application for hearing and appropriate orders.

3. The petitioner association is an association representing 4 medical colleges, 3 dental colleges (plus 3 more dental colleges whose case is pending

before the Dental Council of India) and a Physiotherapy college, which are seeking to fill in the management quota seats in their respective colleges

on the basis of the Common Entrance Test proposed to be held for selecting the students to be admitted to 1st MBBS/1st BDS/1st B.

Physiotherapy courses in their respective colleges. The facts leading to filing of the main petition and the above numbered Civil Application may be

stated in three parts.

4. Two Supreme Court Judgments on CET After the Apex Court held in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

that self-financed institutions running professional courses have the right to select their students, qualified the said right by laying down that such

admissions should be given on merit alone. In para 59 of the said judgment, the Bench of eleven learned Judges of the Apex Court observed as

under:-

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the

qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution or in

the case of professional colleges, by government agencies.

68.It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do

not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting

recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient

discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for

admission by the management out of those students who had passed the common entrance test held by itself or by the State/university and have

applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency.

In Islamic Academy of Education and Another Vs. State of Karnataka and Others, , a Bench of five learned Judges of the Apex Court, after

examining the hardships to which the students would be exposed if different self-financed institutions were to hold different tests, held as under:-

In our view what is necessary is a practical approach keeping in mind the need for a merit-based selection. Paragraph 68 provides that admission

by the management can be by a common entrance test held by itself or by the State/University. The words common entrance test clearly

indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of either quota, either on the basis

of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of

a particular type in that State e.g. Medical, engineering or technical etc. The common entrance test, held by the association, must be for admission

to all colleges of that type in the State.

(emphasis supplied)

After laying down the above modality in paragraph 16 of the judgment, the Court further directed in paragraph 19 of the said judgment that the

State Government shall appoint a permanent Committee which would ensure that the tests conducted by the colleges is f and transparent. After

providing for composition of such Committee to be headed by a retired Judge of the High Court to be nominated by the Chief Justice of that Court

and after providing for composition of the Committee, the Apex Court laid down as under:-

The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed

question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The

Committee shall supervise and ensure that the test is conducted in a f and transparent manner.

(emphasis supplied)

5.0 Academic Year 2004-05

5.1 In 2004, the petitioner association had requested Justice RJ Shah Committee (appointed by the State Government as per the directions given

by the Hon"ble Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, [hereinafter referred to as the

respondent Committee] or the Committee for permission to hold a Common Entrance Test (CET) for granting admissions to first year

courses in the Medical/Dental/Physiotherapy colleges run by the members of the Association. The request was not granted by the Committee. That

decision for the year 2004-05 came to be challenged in Special Civil Application No. 6307 of 2004. A learned Single Judge of this Court (Coram

: Hon"ble Mr Justice Jayant Patel) dismissed the petition mainly on the following grounds :-

(i) CET cannot be conducted by an association unless it is an association of all colleges of a particular type in the State e.g. Medical. All the

medical and paramedical colleges in the State of Gujarat are not the members of the petitioner association.

(ii) The criterion for judging the merits of students on the basis of the marks obtained at the qualifying examination is not a concept foreign to the

assessment of students" merits which mode of selection is being practiced in the State of Gujarat for the last more than two decades.

(iii) The students must be given sufficient notice well in time, that is, notice of six months to one year prior to holding of the CET, but it was not

possible in the last week of June, 2004 to give such direction to hold the CET in July, 2004.

5.2 The aforesaid decision came to be challenged in LPA No. 1356 of 2004 which came to be admitted, but by order dated 22.7.2004, the

Division Bench (to which one of us was a party) declined to grant interim relief in favour of the association, mainly on the ground that the time

schedule specified by the Medical Council of India in accordance with the decision of the Apex Court in Medical Council of India Vs. Madhu

Singh and Others, cannot be observed, if reasonable time is given to the students for appearing at the CET, thereafter the Common Entrance Test

is held and the admission process is thereafter undertaken. It was also observed that on the date when the Civil Application was being decided

(2.7.2004), admission process for the seats in the Government quota in the self financed medical and paramedical colleges had already

commenced.

5.3 The aforesaid order was carried in appeal before the Hon"ble Supreme Court and in the order dated 23.7.2004, the Apex Court observed as

under in SLP (Civil) No. 11930 of 2004 :-

Prima facie, we are of the view that the stand of the State Government as has been upheld by the High Court appears to be contrary to the

substance of paragraph 16 of the decision in Islamic Academy's case (supra) in which this Court appears to have proceeded on the basis that

common entrance tests are conducted by the States.

While referring the matter to the Larger Bench on the ground that the issue raised in the above SLP is in addition to the issues raised in connection

with the admission to un-aided professional colleges in the other States which have been referred to a Larger Bench, the Apex Court passed the

following order :-

As an interim measure, we permit the petitioner-association to proceed to conduct the common entrance test and to admit students against the

management quota.

Needless to say the Committee shall have the powers to oversee the tests conducted by the petitioner-association in terms of paragraph 19 of the

decision in Islamic Academy's case (Supra). It is made clear that we do not intend to interfere with the programme which has been fixed by the

Medical Council of India in accordance with the decision in Madhu Singh's case.

5.4 Pursuant to the above direction, the petitioner association conducted the CET on 28.7.2004. However, in view of the complaints made before

the respondent Committee that the CET was not conducted by the petitioner association in a fair and transparent manner, the Committee issued a

notice to the association and after hearing them, the Committee by their order dated 16.8.2004 held that the Common Entrance Test (CET) taken

by GSF Medical and Paramedical Association was not fair and transparent as per the directions of the Hon"ble Supreme Court given in the

judgment of Islamic Academy v. State of Karnataka and Ors.. The Committee, therefore, unanimously decided that the C.E.T. carried out by GSF

Medical and Para Medical Association on dt. 28.7.2004 stood cancelled.

The aforesaid decision came to be challenged in IA Nos. 9 to 13 of 2004 in SLP (Civil) No. 11930 of 2004. The Apex Court noticed that the

main complaints against the CET conducted by the association were that for almost all the questions in the test (which were objective questions),

the correct option was SC $\bar{A}$ $\hat{A}$ $\frac{1}{2}$ (so that the candidates who had access to such information would secure more marks) and also that such students

had left the examination hall within 45 minutes as against the stipulated time of two hours for answering 200 questions. The Apex Court noticed

that out of 150 candidates admitted to the management quota of self financed medical colleges in the State on the basis of the CET, 48 of them had

secured more than 80% or above marks in the HSC examination, another 48 had obtained between 70% and 80% marks at the HSC

examination, another 39 had obtained between 60% and 70% marks, 14 students had obtained between 50% and 60% marks at the HSC

examination and that only one student belonging to reserved category had obtained between 40% and 50% marks at the HSC examination. The

Apex Court, however, found that on the date of hearing of the above numbered Interlocutory Applications (i.e. 16.9.2004) everybody was racing

against the time, because as per the schedule fixed by the Medical Council of India in compliance with the directions in Madhu Singh's case the

admissions were required to be granted in August and no admissions could be granted after 30th September and, therefore, at that time it was not

possible to disturb the result of the CET which was already conducted and on the basis of which admissions were already granted for the year

2004-05. Hence, the Apex Court stayed the impugned order dated 16.8.2004 of the respondent Committee. The question whether the

respondent Committee appointed pursuant to the directions of the Hon"ble Supreme Court in Islamic Academy's case has the power to cancel the

examination was also referred to the Larger Bench of the Apex Court along with other issues.

5.5 The matter, therefore, rested there for the year 2004-05. Of course, the reference made to the Larger Bench of the Apex Court came to be

placed before the Bench of seven learned Judges of the Apex Court and the reference has been heard and the judgment is awaited. In view of

pendency of that reference, the Full Bench of this Court constituted to hear LPA No. 1356 of 2004 adjourned the hearing sine die.

6.0 Current Academic Year : 2005-06

6.1 On 19.2.2005 the petitioner Association informed the respondent Committee that they wanted to hold a Common Entrance Test for granting

admissions to the 1st MBBS/1st BDS/1st B. Physiotherapy in the colleges run by the members of the petitioner association. By letter dated

5.4.2005, the Committee sought certain information about the registration of the association and consent letters from their member institutions. The

association furnished such particulars by their letter dated 13.4.2005. By letter dated 17.5.2005, the respondent Committee informed the

association that permission for holding CET by the petitioner association cannot be granted having regard to the judgments and orders of the

Hon"ble Supreme Court and having regard to the fact that there is not only one registered and recognized Association to hold CET. The

Committee further expressed the view that the only option available is to give admissions on the basis of the marks obtained by the students in the

HSC examination conducted by the Gujarat Higher Secondary Certificate Examination Board and that in the State of Gujarat, there is only one

Board holding the qualifying examination. The association thereupon by their letter dated 18.5.2005 informed the Committee that the association

had decided to conduct the CET as per the program indicated in the said letter, that is - the test would be conducted on 18.6.2005. By another

letter dated 24.5.2005, the association requested the Committee to reconsider the decision dated 17.5.2005 and to permit the association to

conduct the test for admissions to eleven medical/dental/physiotherapy colleges whose consent letters were also enclosed. Thereafter by letter

dated 15.6.2005, the Committee reiterated their decision and stated that the CET could be conducted only if the association had as its members all

the self financed colleges of that particular category. Since all the 27 self financed medical, dental and physiotherapy colleges in the State of Gujarat

were not members of the petitioner association and only 8 were members of the petitioner association (out of 11 colleges for which the association

wanted to conduct the test, 3 are as yet not recognized by the Dental Council of India). The Committee also referred to the observations made by

a learned Single Judge of this Court on 13.5.2005 in Special Civil Application No. 2214 of 2005 wherein allegations and counter allegations were

made by two rival associations.

6.2 In the meantime, it appears that the State Government by resolution dated 20.4.2005 (Annexure P5) decided that the management quota in the

medical/dental/physiotherapy courses shall be 25% whereas the State quota shall be 75% and that the State quota seats shall be filled in on the

basis of the merit list prepared by the Joint Centralized Admission Committee for Professional Courses (on the basis of HSC examination results in

the science theory papers) and the management quota seats shall be filled in on the basis of the Supreme Court judgments. The association

requested for 50% management quota as per their representation dated 18.5.2005.

6.3 In the present petition filed on 27.5.2005, it appears that the association initially challenged both the Government Resolution dated 20.4.2005

fixing the management quota at 25% and also the decision dated 17.5.2005 of the respondent Committee rejecting the petitioner association"s

request to permit the association to hold a CET. In view of the subsequent decision dated 15.6.2005 of the Committee, that decision also came to

be challenged by amendment. As far as the challenge to the fixing of management quota at 25% is concerned, it appears that the association made

a representation to the respondent Committee to fix the management quota at 50% but the respondent Committee fixed the management quota at

33%. Although the fixation of quota at 25% was initially challenged in the present petition, in view of the subsequent development about fixation of

management quota at 33%, that decision has been challenged in another petition and, therefore, in the present petition we are only concerned with

the petitioner association's challenge to the decisions dated 17.5.2005 and 15.6.2005 of Justice RJ Shah Committee (respondent Committee)

appointed pursuant to the directions given by the Hon"ble Supreme Court in Islamic Academy's case rejecting the association's request to permit

them to hold the CET for the management quota.

6.4 When the said challenge came up for consideration before another learned Single Judge of this Court (Hon"ble Mr Justice DN Patel), the

learned Single Judge was not inclined to agree with the view taken by Hon"ble Mr Justice Jayant Patel in the judgment dated 23/24.6.2004 in

Special Civil Application No. 6307 of 2004 as summarized in para 4.1 hereinabove. Hence, by order dated 4.7.2005, Hon"ble Mr Justice DN

Patel referred the matter to the Larger Bench after expressing the opinion that " (i) it is not necessary that all the medical and para-medical self

financed colleges must be members of the petitioner association, (ii) those institutions/colleges which have opted for CET may form an association

and they can hold CET, rest of the colleges have to choose their students from the merit list on the basis of the HSC (Science Steam) Examination

conducted by the Board of the State. Therefore, the petitioner association can hold Common Entrance Test.

Hence, the present petition came to be referred to the Larger Bench. That is how the matter is placed before us.

Submissions of the Learned Counsel

7. Mr N.D. Nanavati, learned counsel appearing with Mr Mitul K Shelat for the petitioner association submitted that apart from the clear

pronouncement of the Apex Court in TMA Pai Foundation case (supra) the grounds on which the Committee rejected the petitioner's request for

permission to hold a CET for the current year were very much there even last year and on that basis a learned Single Judge of this Court through

the decision dated 23/24.6.2005 rejected the petition for directions regarding CET. That decision came to be challenged in a Letters Patent

Appeal which was admitted, but no interim relief was granted and, therefore, the association carried the matter before the Hon"ble Supreme Court

which specifically observed in the order dated 23.7.2004 that prima facie the stand of the State Government as upheld by the High Court

appeared to be contrary to the substance of paragraph 16 of the decision in Islamic Academy's case; and that as an interim measure, the Apex

Court permitted the petitioner association to conduct CET and to admit students against management quota. It is further submitted that as

observed in the aforesaid order and as provided in para 19 of the Islamic Academy's case, the Committee does have power to oversee the test

conduct by the petitioner association and, therefore, the Committee ought to have granted permission for the current year subject to such

overseeing.

It was submitted that the allegations about the Common Entrance Test not having been properly conducted on 28.7.2004 and the order dated

16.8.2004 of the respondent Committee on the basis of those complaints were all placed before the Apex Court and still on 16.9.2004, the Apex

Court did not disturb the admissions granted by the members of the petitioner association on the basis of the CET conducted on 28.7.2004. It

was, therefore, submitted that those allegations cannot be permitted to come in the way of the fundamental right of the self financed institutions to

select the students for admission to professional courses on the basis of the CET to be conducted by the association, when there is no other

association which has come forward with any such request.

Mr Nanavati also submitted a proposal claiming that the association proposes to conduct the CET in a fair and transparent manner.

8. On the other hand, Mr BP Tanna, learned counsel appearing with Ms Mahrook N. Kerravala for the respondent Committee submitted that the

view taken by another learned Single Judge in the judgment dated 23/24.6.2004 may be accepted as the correct view and, therefore, the

Committee is justified in not permitting the association to conduct the CET as the association has as its members only 8 out of 27 self financed

medical and para medical colleges in the State . The association claims to have only 11 self financed medical and para medical colleges as its

members and out of them, 3 dental colleges are not even recognized by the Dental Council of India so far. Out of the 4 medical college, 2 medical

colleges have still to receive renewal of the recognition which was granted in their favour last year.

Mr Tanna also submitted that students are entitled to be informed at least six months in advance so that they can accordingly prepare themselves

for the CET.

9. Mr AD Oza, learned Government Pleader appearing for the State Government supported the decision of the respondent Committee and further

submitted that in the State of Gujarat, there is only one Board called Gujarat State Higher Secondary Education Board conducting HSC (Science

Stream) Examination and, therefore, it is not necessary to have a CET for admissions to the self financed medical and paramedical colleges. Mr

Oza stated that the Government has decided to hold a CET next year for admissions to the medical and paramedical courses but there will be

weightage for the marks obtained at the HSC (Science Stream) examination also; and the weightage to be given to the marks obtained at the HSC

(Science Stream) examination and at the CET will be in the ratio of 60 : 40. It was also submitted that granting admissions to such highly sought

after medical and paramedical courses only on the basis of the CET may give opportunities to the managements to resort to unfair practices .

9A. We also heard Mr Yatin Oza for the intervener "the Lawyers" Initiative. Mr Oza submitted that the Association should be permitted to

conduct the CET only after it is able to show that the CET would assess the merit in a better manner than the qualifying examination being

conducted by the Gujarat Higher Secondary Education Board. It is submitted that students by and large are happy with the system prevailing for

the last twenty years for giving admissions to the medical and paramedical courses on the basis of the marks obtained at the HSC (Science

Stream) examination conducted by the Gujarat Higher Secondary Education Board/ the Central Board of Secondary Education and, therefore, the

same system should continue this year also.

Discussion

10. What is essentially challenged in this writ petition is the decisions dated 17.5.2005 and 15.6.2005 of the respondent Committee appointed

pursuant to the directions in Islamic Academy's case (Supra) rejecting the petitioner association's request to permit them to hold CET for

admissions to the management quota in the medical and para medical colleges. In Letters Patent Appeal No. 1380 of 2004 filed by Charutar

Arogya Mandal & Others against the same Committee challenging the determination of fee structure for self financed medical and para medical

colleges in the State, a Division Bench of this Court has taken the view that when the Committee was constituted for determining the fee structure

with a wide area of discretion to be exercised by the Committee and to ensure fairness of the procedure and correctness of its decision, and the

Committee was essentially acting in executing of the order of the Hon"ble Supreme Court, the self financed institutions could have obtained

subsequent orders from the Hon"ble Supreme Court, if the directions given by the Hon"ble Supreme Court were not duly and properly enforced

as contended by those institutions. The High Court is required to act in aid of the Hon"ble Supreme Court as provided in Article 144 of the

Constitution. This Court, therefore, did not entertain the plea of the self financed institutions that execution of the orders of the Apex Court

regarding fee structure would result into violation of any fundamental rights of the self financed institutions. However, as already indicated earlier,

notwithstanding the previous decision of the respondent Committee not to permit the petitioner association to hold the CET for the year 2004-05,

by order dated 23.7.2004, the Hon"ble Supreme Court granted the permission to hold the CET, thereafter also when the CET was conducted and

the respondent Committee decided to cancel the results of the CET conducted last year, the Apex Court stayed that order of the Committee. We

cannot, therefore, undo the Apex Court order dated 23.7.2004. The perspective would, therefore, be clearly different from the perspective in the

appeal of Charutar Arogya Mandal.

11. On the one hand, Mr YN Oza, learned counsel for the intervener submitted that the HSC marks should be the only criterion for determining

the merit as per the practice for the last twenty years. On the other hand, Mr Nanavati for the petitioner association contended that CET

comprising of objective question answers measures the students analytical abilities better than the HSC examination where the emphasis is more on

memorizing.

This debate need not detain us for long for the simple reason that the State Government has also now decided to conduct CET for admissions to

medical and paramedical courses, albeit from the next year (as stated by the learned Government Pleader). So the debate whether CET should or

should not be conducted at all has run out of steam. This is, however, not to underestimate the importance of the HSC examination. When it comes

to study of medicine, nobody can possibly assert that mere analytical abilities are required. How is a student going to be able to analyze if he has

not memorized various structures and functions of various parts of the body. Nobody can dispute the proposition that to make a better study of

medicine, one has to excel in various skills including both memorizing and analytical skills. Hence, at the time of granting admissions to medical and

paramedical courses, selection of students has to be made out of those who excel in both the skills which are not only compatible with each other,

but also complementary to each other.

12. In view of the above shift in focus, after we heard all the learned counsel for some time, we put it to the learned counsel that when in the order

dated 23.7.2004 (quoted in para 5.3 of this order) , the Apex Court had clearly observed that the stand of the State Government as accepted by

the High Court prima facie appeared to be contrary to para 16 of the decision in Islamic Academy's case and that when the test conducted

pursuant to that order of the Hon"ble Supreme Court was sought to be cancelled by the respondent Committee on the basis that the test was not

conducted in a fair and transparent manner, and further that the Hon"ble Supreme Court did not examine that question on 16.9.2004 on the

ground that the mandatory time limits set out in the Medical Council of India schedule as per the directions of the Apex Court in Madhu Singh's

case were staring in the face (no admissions to be given after 30.9.2004), why the association and the respondent Committee can not evolve a

suitable method of conducting CET so that it is conducted in a fair and transparent manner and the colleges can still commence the academic

session within the time limit fixed in the MCI schedule requiring the colleges to start before 1st September, 2005 as indicated in the recent decision

of the Apex Court in Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others,

SUBMISSIONS ON CUT-OFF MARKS

13. While Mr ND Nanavati on behalf of the Association submitted the proposed procedure for conducting the CET (in Physics, Chemistry and

Biology) to show fairness and transparency, Mr Tanna, learned counsel for the Committee submitted a more detailed procedure to ensure fairness

and transparency with an additional condition that the permission to appear at the Common Entrance Test should not be given to students who

have obtained less than 80% marks in the theory papers of Physics, Chemistry and Biology at the HSC examination. Mr Tanna submitted that

there is no reservation in the management quota and, therefore, the percentage of marks on which admissions to the open merit students have

stopped in the last three years will give a good indication for fixing the cut off percentage. This year (2005-06) the admissions to the 1st MBBS on

open merit have stopped at 91.5% in the Government medical colleges and have stopped at 90% in the Government quota in self financed

institutions where the students have to pay high fees running upto Rs.1,45,000/- per year. Similarly in the last two years that percentage was above

86%. It was, therefore, submitted that such cut off percentage should be 80%, particularly when once students appear at the CET, no weightage is

to be given to marks at the HSC (Science) examination for which the students have put in hard work for the last two years and they will not have

sufficient time for the CET.

14. Mr N.D. Nanavati, learned counsel for the association has responded by stating that while the petitioner-association itself is not averse to any

such cut off percentage being placed, the following aspects are required to be taken into consideration before accepting the suggestion made by

the respondent-Committee because the students likely to be affected by such percentage formula are not before the Court and they are going to

find it very onerous:-

(i) In view of the statutory MCI regulations, which are mandatory in nature and having binding effect, any student with 50% marks in the three

science subjects (Physics, Chemistry & Biology) at the HSC Examination is eligible to be admitted to 1st MBBS course. Hence, not allowing

students with 50% or more marks, but less than cut-off percentage would deprive such students of their constitutional right to obtain admission to a

medical college on the basis of the statutory eligibility criteria. No such provision in the admission rules could be made without seeking prior

permission of the Medical Council of India.

(ii) Once the students enter the medical and para medical colleges, whether after having secured 90% at the HSC Examination or after having

secured 50% at the HSC examination and then passing the CET, they are going to study the same subjects through the same teachers and are

going to pass the same examination to be conducted by the concerned University and, therefore, the Court should not accept the suggestion of the

Committee to stipulate any such cut-off percentage for appearing at the CET.

(iii) Even if such a cut-off percentage could be stipulated, it could only be done by the State Government, but the State Government has

prescribed eligibility criteria in the Admission Rules at only 50% marks in the subjects of Physics, Chemistry, Biology and Mathematics. When the

State Government has not prescribed any such percentage for admissions to Government medical and para medical Colleges and to Government

quota in self-financed colleges, stipulating any such cut-off percentage for admissions to the self-financed medical and para medical colleges would

be violative of the equality right of the students who had obtained 50% marks or higher marks at the HSC exam, but less than any such cut-off

percentage.

(iv) Even if the State Government or the Committee could prescribe any such different percentage for admissions to self-financed institutions, so

far there is no such stipulation in the Rules for Admission.

15. At this stage, Mr Tanna, learned counsel for the respondent-Committee as well as Mr AD Oza, learned Government Pleader for the State

Government have stated that the respondent-authorities are ready and willing to undertake the exercise of amending the Rules for Admission, if

required, to provide that only students having the marks above the cut-off percentage should be allowed to appear at the Common Entrance Test,

but such an amendment would again be challenged in further litigation and that process will result into further delay and if the CET is thereafter held,

the admission process will not be completed within the mandatory time limit stipulated in the MCI Rules as mentioned by the Hon^{ble} Supreme

Court in the latest decision in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, . Hence, both the learned counsel have

submitted that they are leaving it to the Court to stipulate any cut-off percentage which the Court may consider to be reasonable and that they will

accept the same; and that they are inviting and requesting the Court to do so in order to save valuable time of all concerned. The learned

Government Pleader and the learned counsel for the respondent Committee have also stated that as and when any CET is conducted by the State

Government in future, the cut-off percentage for appearing at such CET for the open merit candidates will not be lower than the cut-off percentage

for appearing at the CET for the management quota.

DISCUSSION ON CUT-OFF PERCENTAGE

16. We have given anxious and thoughtful consideration to the submissions made by all the learned counsel including the learned counsel for the

intervener. While the points of difference between the procedure suggested by the Association and the procedure suggested by the respondent-

Committee are not substantial in so far as the manner of conducting the Common Entrance Test is concerned, the debate for prescribing the cut-off

percentage does merit serious consideration. Before proceeding to enter into discussion for fixing any particular percentage, it is necessary to deal

with the submissions made by Mr ND Nanavati, not on behalf of the management but essentially anticipating objections on behalf of the students

who have secured between 50% and 70% marks in the Science subjects at the HSC (Science) exam. .

17. Regulation 5(5)(ii) of the Medical Council of India Regulations on Graduate Medical Education, 1997 reads as under:-

5. Selection of Students:

(1) to (4)

(5) Procedure for selection to MBBS course shall be as follows:-

(i)

(ii) In case of admission on the basis of competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in

the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics,

Chemistry and Biology at the qualifying examination as mentioned in clause (2) of regulation 4 and in addition must have come in the merit list

prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken

together in the competitive examination.

(emphasis supplied)

The Regulation itself prescribes the bare minimum, it does not and cannot have any bearing on the question of limiting the zone of consideration,

where the number of candidates seeking admission is very large as compared to the number of available seats.

The first contention that the State cannot impose additional qualification over and above the minimum eligibility criteria prescribed by the MCI in its

statutory regulations has in terms been rejected by a Constitution Bench of the Apex Court in Dr Preeti Srivastava and Another Vs. State of M.P.

and Others, Although that case was concerned with similar regulations for admissions to post-graduate courses, the principles laid down in the said

decision apply with equal force to admissions to graduate medical courses as well.

After considering the relevant constitutional and statutory provisions, the Constitution Bench held by majority of 4 : 1 that while prescribing the

criteria for admissions to the institutions for higher education including medical education, the State cannot adversely affect the standards laid down

by the Union of India. It would not be correct to say that the norms for admission have no connection with the standards of education. Norms of

admission can have a direct impact on the standards of education. While the rules for admission cannot adversely affect the standards of education

prescribed by the Medical Council of India regulations, a State may for admission to medical courses lay down qualifications in addition to those

prescribed by the MCI. This would be consistent with promoting higher standards of education to higher educational courses. But any lowering of

the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Thus, once the

minimum standards are laid down by the MCI having the power to do so, any further qualifications laid down by the State which will lead to the

selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the MCI.

The aforesaid authentic pronouncement by a Constitution Bench of the Apex Court is more than sufficient to repel the first contention urged by Mr

Nanavati.

We have perused the decisions of the Apex Court in *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, and in *GSF*

Medical and Paramedical Association Vs. Association of Management of Self Financing Technical Institutes and Another etc. etc., referred to by

Mr Nanavati. However, we do not find anything in the aforesaid decisions which runs counter to the principles enunciated by the Apex Court in *Dr*

Preeti Srivastava's case (supra). In *State of M.P v. Gopal D Tirthani (supra)* the Court was concerned with the action of the Government in

lowering the minimum qualifying percentage prescribed by the MCI and obviously this was impermissible as already held in the case of *Dr Preeti*

Srivastava's case (supra). The case of this very petitioner association reported in *GSF Medical and Paramedical Association Vs. Association of*

Management of Self Financing Technical Institutes and Another etc. etc., was concerned with the controversy regarding allocation of seats to

management quota for the year 2003-04. That decision is, therefore, not at all relevant to the controversy at hand.

18. As regards the second contention that no concern need be shown about the qualifications of the students at the entry level to the medical and

para medical courses, this facile submission has also been repelled by the same Constitution Bench in *Dr Preeti Srivastava's case (supra)* with the

same conviction and clarity as will be apparent from the following observations in paragraphs 37 and 48 of the said judgment:-

37. While considering the standards of education in any college or institution, the caliber of students who are admitted to that institution or college

cannot be ignored. If the students are of a high caliber, training programmes can be suitably moulded so that they can receive the maximum benefit

out of a high level of teaching. If the caliber of the students is poor or they are unable to follow the instructions being imparted, the standard of

teaching unnecessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the

levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the

students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the

caliber of the students as on the caliber of the teachers and the availability of adequate infrastructural facilities.

48. In this connection, our attention is also drawn to the emphasis placed in some of the judgments on the fact that since all the candidates finally

appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In *Ajay*

Kumar Singh and Others Vs. State of Bihar and Others, this Court, relying on State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain

and Others, said that everybody has to take the same post-graduate examination to qualify for a post-graduate degree. Therefore, the guarantee of

quality lies in everybody passing the same final examination. The quality is guaranteed at the exit stage. Therefore, at the admission stage, even if

students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in Post Graduate Institute of

Medical Education & Research v. K.L. Narasimhan (1997 (3) SCC 283). This reasoning cannot be accepted. The final marks in an examination

indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence.

There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks.

(emphasis supplied)

19. The aforesaid observations apply with equal force while considering the merits of students with only 50% marks at the HSC examination on

the one hand and the students with high marks at the HSC examination on the other hand. We are, therefore, more than satisfied that both the

State Government as well the respondent-Committee are justified in insisting that there should be a cut-off percentage and the students below that

cut-off percentage should not be permitted to appear at the CET.

In this connection, certain relevant observations made by the Hon"ble Supreme Court need to be noted.

19.1 In the concurring judgment of Hon"ble Mr Justice SB Sinha in Islamic Academy of Education (supra), the following paragraph clearly

indicates that when complaints are received with regard to holding of a CET by the management-association, examination of such complaints with

reference to the performance of the students at the HSC examination conducted by the State Board and the performance of the same student at

the CET conducted by the Management-Association is a relevant consideration: -

179. It may be true that some self-financed professional institutions have been permitted to hold their own examination so as to enable the

management to fill up their seats from its own quota, as fixed by the State Government. Although no complaint has yet been received by the

respective Governments, it may be possible that the time was not ripe for it. As and when complaints are received with regard to holding of an

impartial and transparent test, the same had to be examined by the State/University. We may, however, place on record that the State of

Maharashtra has placed before us a chart showing that some of the students had appeared at two examinations and one who got only 8% in the

common entrance test held by the State, passed the examination held by the management. From the above chart supplied to us by the State of

Maharashtra, it appears that only three students who had appeared both at the common entrance test held by the State and the management had

passed the common entrance test held by the State whereas a large number of students had passed the test held by the management, although they

could not pass the common entrance test. The merits of the students whether belonging to the minority community or otherwise, thus, may be

required to be placed on a more rigid test.

(emphasis supplied)

19.2 It would also not be out of place to refer to the Apex Court order dated 16.9.2004 in IA No.9 to 13 of 2004 in SLP (C) No.11930 of 2004

filed by this very petitioner association. There were serious complaints against the CET conducted by the petitioner-association on 28.7.2004 and

the respondent-Committee had even cancelled that test by its order dated 16.8.2004. Though the Apex Court did not examine that controversy on

merits on the ground that time was running out and that any dislocation of admissions already given on the basis of the CET conducted on

28.7.2004 would result into violating the mandatory time limit prescribed in the MCI regulations for completion of the admission process before

30th September under any circumstances, the Apex Court did refer to the following facts which were placed on record :-

The subject matter of controversy is restricted to admissions in Medical and Dental Colleges i.e. 240 seats (150 in Medical colleges and 90 in

Dental colleges) in the Management quota that have been filled. the charts have been filed showing that 48 students had secured more than

80% marks, another 48 students secured between 70% and 80% marks, 39 students had secured marks between 60% and 70%, 14 students

secured 50% to 60% marks and only one student belonging to reserved category had secured between 40% and 50% marks in HSC examination.

Likewise, similar details in respect of admissions in Dental colleges have been given by the petitioner. The admission of State quota seats were

given on the basis of marks obtained by students in HSC examination.

(emphasis supplied)

While the Apex Court, after referring to the above figures as a part of the material on record, did not express any opinion, it would be reasonable

to infer that, the fact that out of 150 students admitted to 1st MBBS course on the basis of the CET conducted by the petitioner-association,

almost two-third students (48 + 48 = 96) had obtained more than 70% marks in the science subjects at the HSC examination was not without

significance. If converse was the case, that is, if two-third students admitted in that course had obtained less than 70% marks at the HSC

examination, we are not sure whether the Apex Court would have allowed the admissions granted on the basis of such CET to remain undisturbed,

notwithstanding the race against time.

19.3 The point that we want to drive home is that even for examining the question of fairness and transparency at the CET, performance of

successful candidates at such CET has been explained with reference to their performance at the HSC examination about the fairness and

transparency of which there is no doubt raised by anyone. But, it would not be fair to the meritorious, honest and hardworking amongst the

students appearing at the CET, to have the question of fairness and transparency of the CET decided EX-POST FACTO every year, always

keeping them under suspense as to whether mal-practices and irregularities, if any, on the part of some other students who had not obtained good

marks at the HSC exam would result into cancellation of the entire CET.

20. Now, we have considered the specific request made on behalf of the State Government as well as the respondent-Committee that requiring the

State Government to make any amendments to the Admission Rules at this stage would result into unnecessary and avoidable delay in the entire

process of admission when we are running against time and any further delay would only result into impermissible violation of mandatory time limit

stipulated by the MCI as noted by the Apex Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, Hence

we permitted the State Government to place on record the figures about the number of seats in the management quota to be filled in on the basis of

CET results and the number of students who have obtained more than 60% marks in science subjects at the HSC examination.

20.1 Number of Seats to be filled in as per CET results this year are:-

Management Quota

@ 33% @ 50%

SFI Colleges

No. of Colleges

Total Seats

Medical

2

250

83

150

Dental

4

280

93

140

Physiotherapy

1

30

10

15

Total Management Quota to be filled in by CET

186

280

Minimum seats

Maximum seats

As per the chart produced by the respondent-authorities, out of 250 seats in self-financed medical colleges, if the management quota is to consist

of 33% as already fixed by the respondent-Committee, there would be 83 seats in management quota. Similarly, in the dental colleges with total

280 seats, the number of management quota seats is 93 and in one physiotherapy college which is a member of the association, the number of

management seats is 10 making an aggregate of 186 seats in the management quota for medical and paramedical colleges. Even if the management

quota is raised to 50% as demanded by them (which claim is the subject matter of another petition pending before another Bench) at the highest,

the management quota would be 280 seats in medical and paramedical colleges as indicated in the above chart. It is also required to be noted that

three self-financed medical colleges (run by Charutar Arogya Mandal, Ahmedabad Municipal Corporation and Surat Municipal Corporation) have

given admissions to management quota seats on the basis of marks at the HSC examination. Out of total 11 self-financed physiotherapy colleges,

only one college is a member of the petitioner-association, and other physiotherapy colleges have decided to give admissions according to the

marks at the HSC examination.

20.2 As against the above proposed intake on the basis of Common Entrance Test, the number of candidates who have applied before the

Centralized Admission Committee (for medical, dental and physiotherapy colleges) in the year 2005-06 is as under:-

Percentage at HSC Exam in March, 2005

No. of candidates in open merit list of Gujarat Higher Secondary Education Board

No. of candidates in open merit list of Central Board of Secondary Education

Total

(a)

(b)

(c)

(d)

80% & Above

3094

184

3278

75% & Above

4600

283

4883

70% & Above

5781

377

6158

65% & Above

6980

486

7466

60% & Above

8300

571

8871

As already pointed out on behalf of the respondent-authorities, there is no reservation in the management quota and this year the admissions in the

open merit category for the Gujarat Board have stopped at Sr. No. 681 in the 1st MBBS course and at Sr. No.946 in the 1st BDS course i.e. in

the dental college. For the Central Board, the admissions have stopped at Sr. No. 48 in medical colleges . In other words, the number of students

likely to appear at the proposed CET would be the number of students in column No (d) minus 1000 approximately. Hence, if the cut off

percentage is fixed at 80%, about 2000 candidates can appear at CET. If the cut off percentage is fixed at 70%, about 5000 can appear at CET

as against the intake capacity of about 186 seats which may go upto 280 in case the management succeed in getting their quota raised from 33%

to 50% seats.

20.3 The following figures indicate the percentage in science subjects where admissions stopped in the open merit category in medical and dental

colleges at regular counselling in the last three years:-

Medical

Dental

Physiotherapy

2005

2004

2003

2005

2004

2003

2005

2004

2004

Govt. Medical Colleges

91.5%

90.6%

88.4%

90.0%

89.1%

87.5%

Yet to be granted

83.3%

83.3%

Govt. Quota in SFIs

90.0%

88.4%

86.2%

88.6%

87.7%

80.8%

S

73.11%

73.3%

20.4. We have also thought it fit to consider that as per the conventional pattern of marking, students with 50% marks are given second class,

students with 60% marks are given first class and those with 70% and above marks are given distinction. At the cost of repetition, we would again

refer to the observations made by a Constitution Bench of the Apex Court in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, that

the pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive depend as much on the caliber of the

students as the caliber of the teachers. Looking to the above table, if the cut-off percentage is determined at 70%, about 5000 students would be

in a position to appear at the Common Entrance Test proposed to be conducted by the petitioner-association for which the entire exercise has

been undertaken and about which the present litigation has been going on. As per the number of total seats available for management quota for

which Common Entrance Test is to be held, that is for seats between 186 (minimum) and 280 (maximum) [with the possibility of the number of

seats going upto about 250 (minimum) to 400 (maximum) in case a few more SFIs are granted recognition or renewal of recognition], permitting

5000 students to appear at the Common Entrance Test would be definitely reasonable, if not more than reasonable.

21. As regards the third contention raised by Mr Nanavati that no cut-off percentage is prescribed for admission to Government colleges or to

Government quota seats in self-financed institutions, the answer is obvious. In those colleges, the admissions in the open merit category have

stopped at 90 to 88 percentage in medical and dental colleges as already indicated in para 20.3 hereinabove. Hence, there was no need to

prescribe any such percentage. Judicial notice can also be taken of the fact that when admissions in the open merit category stop at 90% or 88% in

science subjects at the HSC. Examination, there would be no practical need for prescribing any cut-off percentage at 80% or 70%. Here, what the

petitioner-Association proposes to do is to give admissions to 1st MBBS in the medical and paramedical colleges only on the basis of marks

obtained by the students at the Common Entrance Test without any weightage whatsoever to the marks obtained at the HSC Science examination.

Therefore, the justification to stipulate the cut off percentage. In any view of the matter, the learned Government Pleader and the learned counsel

for the respondent Committee have also stated that as and when any CET is conducted by the State Government in future, the cut-off percentage

for appearing at such CET for the open merit candidates will not be lower than the cut-off percentage for appearing at the CET for the

management quota.

22. For the reasons indicated in paras 11 and 16 to 20 of this judgment and in view of the above data, as per the specific request made on behalf

of the respondent-authorities, we fix the cut-off percentage at aggregate 70% of the marks in theory papers of physics, chemistry and biology at

the HSC examination conducted by the Gujarat Higher Secondary Education Board/ Central Board of Secondary Education or at an equivalent

qualifying examination as per the Admission Rules. We may also note that both the learned Government Pleader for the State Government and Mr

Tanna, learned counsel for the respondent-Committee have accepted this percentage as reasonable cut-off percentage for permitting the students

to appear at the Common Entrance Test, instead of 80% which was initially suggested by them.

23. Since we have fixed the cut-off percentage at 70% in theory papers of Physics, Chemistry & Biology, the rule of rounding off should be

applied to consider 69.5% or higher marks as 70%. In *State of UP v. Pawan Kumar Tiwari* (2005) 2 SCC 10, the Apex Court has observed that

the rule of rounding off is based on logic and common sense – if part is one half or more, its value should be increased to one and if part is less than

half then its value should be ignored.

CET to be conducted in a fair and transparent manner

24. As indicated earlier, both the learned counsel for the petitioner Association and the learned counsel for the respondent Committee made their

respective suggestions for ensuring that the CET is conducted in a fair and transparent manner. The suggestions made by the learned counsel for

the respondent Committee were more detailed and, there was no difference of opinion except variations in approach on a few issues.

On behalf of the respondent Committee, it was suggested that since the questions at the CET are to comprise of only objective type question

answers, there should be negative marking for incorrect answers. The learned counsel for the petitioner association, however, submitted that

negative marking is provided at the examinations like CAT where the candidates are graduates competing for admissions to postgraduate courses

like management courses; but here the candidates are children aged about 17 years who have just passed out from their schools and, therefore,

cannot be said to be mature minds ready to face the system of negative marking.

Without expressing any final opinion on the above debate, we have only indicated that for this year negative marking may not be adopted, but it

would be open to the concerned authorities to examine this question (objectively ?!) for the CETs to be held in future.

As regards the suggestion made on behalf of the respondent Committee that all the assistance may be taken from the Vice Chancellor of the MS

University for conducting the CET, on behalf of the management Association it was agreed that CET shall be held in the M.S. University campus

and that all the infrastructural facilities may be provided by the MS University for which all the expenses will be borne by the petitioner association.

25. As regards the selection of paper setters, examiners and supervisors, the management Association has agreed to provide well in advance the

names, addresses and contact numbers of paper setters, examiners and supervisors and the respondent Committee may select appropriate number

of paper setters, examiners and supervisors out of such lists. In our view, the powers of the Committee as indicated in the judgment in *Islamic*

Academy of Education and Another Vs. State of Karnataka and Others, are only illustrative (the word is includes – $\hat{A} \hat{C} \hat{A} \frac{1}{2}$) and not exhaustive. Hence,

the power to ensure that the CET conducted by the association of colleges is fair and transparent includes not only the power to ensure that there

is no leakage of question papers and that the paper setters and the examiners are not influenced or allowed to be influenced by any one, but also

includes the power to see that no copying or other malpractices take place in or around the examination halls. The respondent Committee is not

only entitled but also duty bound to exercise all the powers envisaged in the aforesaid judgment of the Apex Court in Islamic Academy of

Education to ensure that the CET and the admission process are conducted in a fair and transparent manner. It goes without saying that apart from

any judgment, any body or association conducting any such entrance test (for thousands of students all over the State for selecting the students for

admission to professional courses run by institutions subject to regulation by statutory authorities) has to conduct the test in a fair and transparent

manner and that the power to ensure compliance with such obligation inheres in this Court under Article 226 as well.

26. We are sure that since the directions contained in this judgment are being given at the specific request of the State Government and the

respondent Committee, including the direction stipulating the cut off percentage, Montesquieu would have no reason to get upset. This confidence

stems from the following inspiring observations made by the Hon"ble Chief Justice of India in B.P. Achala Anand Vs. S. Appi Reddy and Another,

UNusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice.

The definition of justice mentioned in Justinian's Corpus Juris Civilis (adopted from the Roman jurist Ulpian) states : "Justice is constant and

perpetual will render to everyone that to which he is entitled." Similarly, Cicero described justice as "the disposition of the human mind to render

everyone his due".

The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast.

Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of

social tensions and conflicts. Lord Denning once said :

Law does not stand still; it moves continuously. Once this is recognized, then the task of a judge is put on a higher plane. He must consciously seek

to mould the law so as to serve the needs of the time.

We have accordingly done our modest best.

ORDER

27. In view of the above discussion, the following order is passed:-

I Subject to the conditions stipulated hereinafter, respondent No. 2 Committee shall permit the petitioner Association to conduct the Common

Entrance Test for admission to the management quota to the 1st MBBS/1st BDS/1st B. Physiotherapy courses in the colleges run by the members

of the petitioner Association as communicated to respondent No. 2 Committee vide its letter dated 18.5.2005, subject to the condition that only

the institutions recognized by the competent authorities according to the relevant applicable laws shall grant admissions to their colleges :-

(1) Only the students who have obtained at least aggregate 70% marks in the theory papers of Physics, Chemistry and Biology at the qualifying

examination (e.g. HSC (Science Stream) examination conducted by the Gujarat Higher Secondary Education Board/Central Board of Secondary

Education or other equivalent examinations specified in the Admission Rules as contained in the Government Resolution dated 28.4.2005) shall be

permitted to appear at the Common Entrance Test for the year 2005-06. For this purpose, a student having obtained 69.5% or higher marks shall

be treated as having obtained 70% marks.

(2) The Common Entrance Test shall be conducted on 14th August, 2005 as per the detailed program already worked out by the petitioner

Association in consultation with respondent No. 2 Committee (which is taken on record). The petitioner Association shall at its own expenses give

public notice in a prominent manner in all the leading newspapers having wide circulation in the State of Gujarat (at least 5 Gujarati and 2 English

newspapers) announcing the detailed program of the Common Entrance Test and the admission procedure and also specifying that only the

students referred to in condition (1) above shall be permitted to appear at the Common Entrance Test.

(3) The Common Entrance Test shall be conducted in a fair and transparent manner as per the detailed procedure worked out by the Association

and respondent No. 2 Committee. The petitioner Association and all its members shall abide by the statements made before this Court on the basis

of which this order is passed. Respondent No. 2 Committee shall have and exercise all the powers envisaged in the judgment of the Hon"ble

Supreme Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, to ensure that the Common

Entrance Test and the admission process are conducted in a fair and transparent manner.

(4) The proposed paper setters, examiners and supervisors shall be clearly informed that the examination is to be conducted in a fair and

transparent manner and that any leakage of the question papers or any unfair measures on the part of any person connected with the conduct of the

Common Entrance Test including the paper setters, examiners, supervisors, the persons concerned with the printing press or any other person

concerned with the Association will be viewed seriously and shall expose them to severe consequences including the proceedings for contempt of

this Court against such errant person.

II. No other Court in the State of Gujarat shall entertain any litigation either by any institution/s, any student/s and/or guardians or any other

person/s regarding the Common Entrance Test for admission to the 1st MBBS/1st BDS/1st B. Physiotherapy course for which the present order is

passed. If any such petition is filed in this Court, subject to the orders of the Hon"ble the Chief Justice, such petition shall be placed before the Full

Bench.

A copy of this order shall also be circulated to all the Civil Courts in the State of Gujarat.

III. The Civil Application accordingly stands disposed of. The main petition shall be listed on 23rd August, 2005.

IV. Liberty to apply in case of difficulty.