(1983) 09 BOM CK 0064

Bombay High Court

Case No: Writ Petition Nos.2360, 2656, 2664, 2734 and 3145 of 1983

Rajashri Yeshwant Jadhav and etc.		APPELLANT
	Vs	
State of Maharashtra and Others		RESPONDENT

Date of Decision: Sept. 30, 1983

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 226
- Medical Colleges Government of Maharashtra Rules, 1983 - Rule 4C, 6B

Citation: AIR 1985 Bom 31 : (1985) ILR (Bom) 356

Hon'ble Judges: Kantharia, J; Dharmadhikari, J

Bench: Division Bench

Advocate: S.P.Thorat, Avinash Shivade, V.B. Rairikar, K.K. Singhvi, K.H. Chopra, N.H. Gursahani, Narendra V. Walawalkar, for the Appellant; A.G. Sabnis, M.B. Mehere and V.S. Dighe, Addl. Govt. Pleaders, for the Respondent

Judgement

Dharmadhikari, J.

In all these writ petitions the petitioners have challenged R.6 of the Medical Colleges of the Government of Maharashtra Rules for Admission 1983-84 (hereinafter called the Admission Rules) on the ground that the said Rule is violative of the petitioners'' fundamental right guaranteed under Art. 14 of the Constitution it being arbitrary in nature and has no nexus with the objects sought to be achieved viz. selection of meritorious candidate for admission to the medical college.

2. Shri K.K.Singhvi and Shri Avinash Shivade, learned Counsel appearing for the petitioners contended before us that the addition of marks to give weightage to the students for admission to the medical college as incorporated in the various sub-rules of R. 6 is wholly unwarranted, arbitrary and has no nexus with the objects sought to be achieved. According to the learned Counsel, this Rule giving weightage

in substance purports to defeat the very purpose of selection viz. selection of the most meritorious student. It also creates unhealthy competition amongst the students belonging to the same class and has no nexus with the object. It is also contended by the learned Counsel that while laying down such weightage the Government has not followed any uniform policy and different weightage is provided in the rules relating to admissions to the medical colleges, engineering colleges or the Dental colleges or Ayurvedic colleges. Some of the rules which were in the field for earlier years were arbitrarily deleted and some new rules are introduced. According to the petitioners the rules are being changed from time to time to suit particular vested interests and depend upon lobby power leaving the fortunes of students to litigative astrology annually. Shri Rairikar, learned counsel appearing for one of the petitioners adopted the arguments advanced by Shri K.K.Singhvi and Shri Shivade.

3. On the other hand, it is contended by the respondent Government that R.6 as a whole has a nexus with the object sought to be achieved and is neither arbitrary nor unwarranted. Since each and every sub-rule of R.6 is independently challenged on one or other ground, it is necessary to deal with each and every sub-rule independently. Rule 6 of the Admission Rules reads as under:-

"Selection

A. Selection of students amongst those who have applied for admission to a medical college will be on the basis of merit as determined by the marks obtained in the science subjects as specified in R.3(ii) and further subject to additions and / or deduction as detailed under the Rules. These conditions will also govern the selection inter se of candidates for the reserved seats at the colleges.

B. Additions :- (i) The total number of additional marks under all the headings together shall not be more than 15.

(ii) 3 marks for first class and 5 for distinction at any of the examinations specified in R.4C(ix).

(iii) 3 marks for sports and cultural activities specified in each rule No. 4C(x)(xi) may be given to a student who has represented his/her college and actually played in an inter-collegiate tournament arranged by the University, the State Government or a National Sports Organization during the period between his/her S.S.C. (or equivalent examination) and qualifying examination as defined in R.3(ii) and attained the standards as specified in R. 4C(x) and (xi) in any of the games, sports or athletics namely, Hockey, Football, Cricket, Tennis, Tennicoit, Badminton, Table-tennis, Basket-ball, Volley-ball, Swimming, Hutu-tu, Khokho, Athletics, Boxing, Gymnastics, Malkhamb, Chess, Bridge, Squash, Kabaddi, Rowing, sailing, shooting, Diving, Water-polo, wrestling, (wrestling include Indian free and Greco Roman Style Karate), weight-lifting, Best Physique, Atya-patya, cycling, Billiards, Ball Badminton, Mountaineering and Soft-Ball or has represented his/her college during the

aforementioned period in inter-collegiate debates, elocution competitions or dramatic competitions, singing, dancing organised by the University, the State Government of National Authorised Organisation,

(a) Member of the team that participated in the tournament ..... 3 marks

(b) winner of the championship in games where there is individual participation

..... 3 marks

(c) for representative in debates or elocution competitions, dramatic

competitions ..... 3 marks

Limited to a maximum of 10 marks.

(iv) 5 marks shall be added if the student is a freedom fighter or his wife, son or daughter or the son or daughter of deceased son of a freedom fighter (Certificate No.4C(xii)).

(v) 3 marks for student affected by a Defence Irrigation Project as stated in R.4C(xiii).

(vi) 5 marks shall be added if the student is a child of a person belonging to the regular fighting forces whether in service or retired who had rendered full length of service and is not a temporarily commissioned person. This addition of marks is also admissible to children, wives and widows of winners of Military decorations (serving as well as retired and dead personnel) like Veer Chakra etc. and President Fire Service Medals for gallantry awards in token of service rendered in border area of the country irrespective of rank.

(vii) 1 mark for sterilisation operation as stated in R.4C(xv)(a) and (b).

(viii) The students (10 + 2) 12th standard examination in the Science faculty who offer their services during their vacation under Voluntary Health Services shall be entitled to 1 additional mark for the work of 15 days limited for a maximum of 5 marks. These services will be rendered by the students of Standard XI and XII during the Oct. and

"Summer vacations occurring in the respective academic year.

(ix) 3 marks for participation in (a) Hyderabad Llliberation, (b) Goa Llliberation and (c) Samyukta Maharashtra Movement as stated in R. 4C(xii)".

Rule 4 of the Admission Rules deals with various kinds of certificates. R. 4 enjoins a duty upon the students to produce these certificates for claiming additional marks.

4. It is true that Art.14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved. The object to be achieved in the case with which we are concerned in this case is to get best talent for admission to professional colleges. The rules for

admission must have some nexus with the medical education or national health. This does not mean that the person to be admitted should be bookish or a book-worm. Therefore, his merit in the field of extra-curricular activities can also be taken into consideration, so as to judge the development of integrated personality of the candidate concerned. Further as observed by the Supreme Court in Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, . It is for the Government which bears the financial burden of running medical college to lay down criteria for eligibility. The questions of policy must depend inter alia on the over-all assessment and survey and requirements of the residents of particular territory and other categories of persons for whom it is essential to provide facilities for medical education. Further the rules, which partake the character of legislation, conferring benefits on various categories of persons, it is no argument to say that if the petitioners had known of such rules, they would have taken care to see that they came within the category of persons who are entitled to such a benefit. In this background we will have to consider the challenge raised before us.

5. In the present writ petition we are also concerned with R. 4C(ix) to (xviii). R. 6(b)(ii) provides for addition of 3 marks for first class and for 5 marks for distinction at any of the examinations referred to in R. 4C(ix). These examinations are B.Sc., B.Pharm, B.sc. (Vet), B.sc.(Occupational Therapy), B.Sc. (Physiotherapy), B.Sc.(Nursing) and B.D.S. It was contended by the learned Counsel appearing for the petitioners that having prescribed the test of eligibility for getting admission to the course of M.B.B.S. giving additional weightage for passing such higher examination is wholly uncalled for and it has no nexus with the object sought to be achieved. It is not possible for us to accept this contention. R. 6 deals with the addition of marks. Eligibility for admission stands on a different footing because unless a person is eligible for admission, he is not entitled to get admission at all. By R. 3 it is laid down that to be eligible for admission to M.B.B.S. course, the qualifying examination is 12th standard examination of the Maharashtra Secondary School Certificate Examination Board. Then by sub-rule (ii) of R. 3 a person is made eligible for admission if he passes the equivalent examination. Therefore, eligibility for admission is only passing of qualifying examination. This eligibility is uniform for all the candidates. However, the students who have passed the examination such as B.Sc. (Physics, Chemistry, Microbiology, Zoology, Botony) as the principal subjects, and B.Pharm., B.Sc. (Vet), B.Sc.(Physiotherapy), B.Sc.(Nursing) and B.D.S. are given additional marks if they pass examination in first class or have secured distinction. It is not that each and every student who passes these examinations is given additional marks. For getting these additional marks he has to pass the examination either in the first class or with distinction. The examinations referred to have direct nexus with medical education. The additional marks are granted for better and improved qualification. Therefore it cannot be said that this Rule is either arbitrary or has no nexus with the object sought to be achieved. It was also contended that no weightage is given for excellence in qualifying examination, though it is provided

for the higher examinations, which is wholly unwarranted. It is not possible for us to accept this contention. It is common knowledge that unless a person gets higher percentage of marks in a qualifying examination, he has no chance of getting admission to the medical college. Therefore, giving additional marks for excellence in qualifying examination has no meaning. The student who gets himself better qualified by passing higher examinations in first class or with distinction alone is given additional marks. Therefore there is no substance in the contention raised in this behalf.

6. By sub-rule (iv) of R. 6B five marks are added if the student is freedom fighter or is wife, son or daughter or the son or daughter of deceased freedom fighter. A person who claims concession of credit of these additional marks has to produce a certificate from the District Magistrate concerned to the effect that the concerned freedom fighter was sentenced to jail or has suffered in any other manner. For getting these additional marks the period of imprisonment should be not less than one month or fine of Rs.100/- or death in action or Sanmanpatra. According to the learned Counsel for the petitioners this rule is also arbitrary since additional marks depend upon the sentence or fine awarded. The quantum of punishment depends upon the discretion of the Judge concerned and only because a person is sentenced to pay a fine of Rs.100/-, it cannot be said that he is a political sufferer or a freedom fighter. It was also contended that so far as the quantum of punishment is concerned, a distinction is made between two types of freedom fighters. Under sub-rule (iv) viz. qua the person who participated in (a) Hyderabad Llliberation; (b) Goa Llliberation and (c) Samyukta Maharashtra Movement, the imprisonment contemplated is of 6 months or more. It was also contended that this policy of granting additional marks to the children of freedom fighters has also no nexus with the objects sought to be achieved. A similar argument was advanced qua sub-rule (vi) relating to the children of the persons belonging to the fighting forces. It is not necessary to deal with this argument in detail in view of the decision of the Supreme Court in D.N. Chanchala Ors. Vs. The State of Mysore and Others, In that case the Supreme Court had an occasion to consider somewhat similar contention. After making reference to the decisions of various High Courts, this is what the Supreme Court has observed in para 43 of the judgement (at p. 1775) :-
"Once the power to lay down the classifications or categories of persons from whom admission is to be given is granted, the only question which would remain for consideration would be whether such categorisation has an intelligible criteria and whether it has a reasonable relation with the object for which the rules for admission are made. Rules for admission are inevitable so long as the demand of every candidate seeking admission cannot be complied with in view of the paucity of institutions imparting training in such subjects as medicine. The definition of a ''political sufferer'' being a detailed one and in certain terms, it would be easily possible to distinguish children of such political sufferers from the rest as possessing the criteria laid down by the definition. The object of the rules for

admission can obviously be to secure a fair and equitable distribution of seats amongst those seeking admission and who are eligible under the University Regulations. Such distribution can be on the principle that admission should be available to the best and the most meritorious. But an equally fair and equitable principle would also be that which secures admission in a just proportion to those who are handicapped and who but for the preferential treatment given to them, would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Art.15(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Art. 15(4). It is on such a principle that reservation for children of Defence personnel and Ex-Defence personnel appears to have been upheld. The criteria for such reservation is that those serving in Defence Forces or those who had so served are and were at a disadvantage in giving education to their children since they had to live, while discharging their duties in difficult places where normal facilities available elsewhere are and were not available. In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined, and were, therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage. If that be so, it must follow that the definition of ''political sufferers'' not only makes the children of such sufferers distinguishable from the rest but such a classification has a reasonable nexus with the object of the rules which can be nothing else than a fair and just distribution of seats. In our view, neither of the two contentions raised by counsel for the petitioner can be accepted with the result that the writ petition fails and is dismissed."

In our view, the petitioners have taken a wholly uncharitable view while challenging the present rules. It does not befit the gainers to speak contemptuously about the political sufferers. If consideration could be shown to the persons who had participated in world wars for and on behalf of British Empire, we fail to understand, why no consideration could be shown to the freedom fighters. In any case the case of freedom fighters is not worse than those who helped the British Empire by participating in the world wars. We fail to understand why sufferance of freedom fighters is being looked upon so contemptuously. To say the least by raising such a challenge the petitioners have added insult to the injury and have belittled the sufferings of the freedom fighters. To borrow the observations of Hegde, J. (as he then was) in Subhashini K. v. State AIR 1966 Mys 40 this criticism clearly shows how shortsighted one could be when blinded by selfishness. The petitioners were not well advised in taking up such extreme positions. Therefore, challenge to sub-rule

(iv) relating to the children and wards of freedom fighters and sub-rule (vi) relating to the children of regular fighting forces must fail. However, in this context we would like to draw the attention of the respondents to the decision of Nagpur Bench of this Court in Madhuvanti Purushottam Thatte Vs. State of Maharashtra and Others, by Tulpule and Jamdar JJ., wherein the scope and ambit of sub-rule (vi) has been fully explained.

7. Sub-rule (vii) provides for granting one additional mark for family planning. It was contended by the learned Counsel for the petitioners that this rule has no nexus with the object sought to be achieved. Such a rule is not there in the admission rules relating to the engineering colleges. It was seriously contended that such a rule has no nexus with the object sought to be achieved viz. admission of meritorious students to the medical colleges. It was also contended that a student cannot be punished for act or omission of his parents. On the other hand it is contended by the respondent-Government that it is the Ministry of Health which is concerned with the formation of rules to the medical colleges. The Ministry of Health though it fit to give such weightage in view of the national policy. According to the respondents to put check on population is the national policy and to implement this policy is mainly the responsibility of the Health Department and the persons concerned with it. The Division Bench of this Court in Ku. Madhuvanti''s case had an occasion to consider the ambit and scope of this rule. This is what the Division Bench as observed in paras 19, 20 and 21 of the judgement.

"19. If, therefore, we interpret this rule in the spirit and in the broad sense in which it was intended to be worked, then we think the technical and formal insistence upon a formal sterilisation operation need not be enforced. It need not become a pre-condition. If there is a limited family and the limited family is achieved by means other than the sterilisation. We think, the benefit of the rule should not be denied merely because the parents have not shown the further circumspection in undergoing sterilisation operation just before making an application for admission to medical college.

20. It was urged by Mr.Aney, the learned counsel before us that the petitioner''s father or mother for the benefit of their daughter could have undergone this operation and secured for their daughter an addition of one mark. It was, therefore, urged that the technical and formal requirement should not be placed as a bar to achieve the object.

21. We think that the benefit of the rule is intended for children of those persons "who regulate their family and plan it in accordance with the national objective and goal. If that is so, then we think that it is intended to be extended as an incentive and as a benefit which ought not to be denied in a particular case, merely because there was no formal compliance. The rule has to be interpreted in its broad sense and essentially in its spirit. If that is done, the petitioner would be entitled to one mark more to be added to her total."

A candidate who is a member of planned family has a sense of involvement. He is a part and parcel of the said family. The Division Bench also found that this rule was intended to be extended as an incentive to achieve the national objective and goal of family planning. Therefore, it is quite obvious that the rule has a nexus with the national policy of population control. Population control is closely connected with national health. Various ways and means invented for controlling population and the programme framed in that behalf has to be carried out by the medical practitioners. It cannot be said that the national policy of population control or planned family has no nexus with the medical education. Further only one additional mark is given on this count, which is wholly insignificant. The weightage given being microscopically insignificant, we do not propose to interfere with the said weightage.

8. Sub-rule (viii) provides for additional marks for additional marks for the students belonging to science faculty who offer their services during vacation under the voluntary health service scheme. This rule was also challenged on similar grounds. In the return filed by the respondents it is stated that these additional marks are given as an incentive in order to encourage the students to offer their services under the voluntary health service scheme. In the year 1982-83 the voluntary Health Scheme came into existence. This scheme is framed to utilise the services of the students of the science faculty of 11th and 12th standards during their vacations for improving the health services. We have gone through the scheme produced before us and we are satisfied that the scheme is in the best interests of and is connected with improvement of health services. Obviously this voluntary health service has direct nexus with the medical education. This voluntary health service is indication of the attitude and aptitude of the students. It is well known that normally doctors are reluctant to serve in rural areas and are concentrated in big cities. Doctor''s profession is known as noble profession. A student who joins such voluntary health services during his vacation is obviously better suited for such profession. The voluntary health service is made universal and the services are rendered by the students of 11th and 12th standards during October and summer vacations. Therefore, it cannot be said that addition of marks on this count is in any way arbitrary or unwarranted, nor it can be said that it has no nexus with the medical education.

9. Sub-rule (x) deals with addition of marks to be given to a candidate who has done NCC during the period between his or her passing SSC or equivalent examination. The said rule was also challenged on the same grounds. Annexure ''A'' to the Rules is a form of bond to be executed by a medical student. One of the terms of the bond is that he or she shall join armed forces, medical services and serve in any of the three Defence Services i.e. army, navy and air force anywhere in India or abroad etc. Therefore, after getting medical education a student is expected to serve in these Defence Services. This being the position, the said addition of marks has also nexus with the medical education.

10. Further, in this context, it cannot be forgotten that the Government is obliged to devise a system of education which will provide productive and socially useful employment and simultaneously develop all other faculties. It is the plinth and foundation of education that it will satisfy the demands of the present situation in India. Mere vocational training in itself is not sufficient nor it is desirable. Vocational skill can be developed even at the cost of human values. Medical college is not an educational demand shop. Medical education should not only be adequate, but it should also be conducive to the development of integrated personality of a man. A citizen with keen sense of service and responsibility and a robust outlook towards life is best suited to serve as a Doctor. The best service that a doctor can render to the society is to convert medical aid into real social service and to rescue it from the vice of glamorous commercialism and save it from becoming a purchasable commodity. Otherwise, one man''s difficulty becomes another man''s opportunity. Function of a doctor is to preserve life and to enhance value of life. To a doctor life of the pauper must be as valuable as the life of the prince. Otherwise, his functionalism will be coloured blind to all human values. This seems to be the reason why the Government thought it fit to give some weightage to health service programme, family planning, NCC and sports. Sportsmanship has its own value in the life of a man. This is perhaps the most spiritual and cultural aspect of the man''s life. It is only in sports there is a ''match'' and no ''war''. In sports you seek your opponent, who is a participant in game with you. He is your playmate. Such an outlook has its own relevance in the field of medical education. To accept the argument of the petitioners that voluntary health service or NCC or sports have no nexus with the education will practically convert education into a departmental stores. This Court in Ashok Krishnarao v. Dean Medical College (1967) 69 Bom LR 603 has observed:

"The normal rule for admission to educational institutions would be to regulate admission strictly on merits or the qualifying examination. In addition to academic performance of the candidate, his merit in other fields of curricular activities or extra-curricular activities can be properly taken into consideration. In fact, the system of computing corrected percentage of marks which has been accepted in the rules made by the State Government, recognizes this salutary principles. As regards the academic performance of a candidate for admission, marks are added or subtracted according as the student passes at the first attempt or at subsequent attempts, or after greater interval than is necessary, between the Matriculation and qualifying examinations. Then marks are added if "the candidate has represented and has actually played in any tournament arranged by the University so that his sporting activity during his college career is given due recognition. In addition, if the candidate has served in the Indian Territorial Force or the Home Guards or the University Officers Training course after passing SSC Examination, he also earns some additional credits. Thus the test that is laid down is to judge the development of integrated personality of the candidate, emphasis, of course, naturally being on his academic performance."

Therefore, it cannot be said that the rule relating to additional marks on the grounds of participation in NCC or sports or other extra-curricular activities, has no nexus with medical education. As to what is the scope of sub-rule (iii) also fell for consideration before the Division Bench of this Court in Madhuvanti Purushottam Thatte Vs. State of Maharashtra and Others, . In this context this is what the Division Bench has observed in paras 11, 12 and 12A of the said judgment.

"We do not think that the petitioner is entitled to any addition of marks on the ground that she had qualified for them either under R. 16(iv) or (viii). As sub-rule (iv) or R. 16 would indicate, these marks are to be given to a student who has "represented his/her college and actually played in an inter-collegiate tournament arranged by the University, the State Government or a National Sports Authorised Organisation". Amongst the branches of the various sports which would qualify for the addition of marks, a number of sports items are given, which include mountaineering, riding and also shooting. The contention of the learned counsel for the petitioner was that shooting is never organised as a team event, as also mountaineering. It is an individual event and participation, therefore, for term events is not possible in such cases. The second contention was that at the National level or the University level or the State Government level, sports or events in riding, mountaineering, as also shooting had not been organised. Therefore, the contention is that if a student qualifies or enjoys in any of these activities of sports, though he may be a very good student thereat, may be because no competitions are held at either University or State or National level, the student is deprived of the prospect of getting marks on that account. Besides, it was contended that this has no nexus to the admission in medical colleges or the studies therein.
We do not think that the second or latter contention of the learned counsel for the petitioner merits any attention. Obviously, the grant of additional marks for students participating in various sports is to some extent compensate them for extra-curricular activities, in which they obtain proficiency. Besides medical students need not and should not be mere book-worms or concerned with studies only. A student who takes part in sports would be physically better to continue his studies and would also be able to represent his college.

12A. Sub-rule (iv) of R. 16 clearly indicates a large number of sports therein. But the contention that the University, State or National level tournaments must and ought to be held therein so that without discrimination benefit of participation in all the various sports is available to all the students is, we think, unsound. The qualification for marks is not simple participation in games or sports. It is for participation in games or sports at a certain level and obtaining a degree of proficiency therein. A mere participation or a mere fact of having played in all the sports or partaking in any of the tournaments or activities which are included in R. 16(iv) does not entitle any benefit of addition of marks. That he may do so for his own advantage. In order to earn marks he must further acquire a status or proficiency in that branch, in that

he must represent his institution and must participate in any of these levels of tournaments specified. Unless he does that, he does not get any entitlement. We do not think, therefore, that merely because no such competitions or tournaments at the various levels were held relating to mountaineering or shooting or riding, the petitioner who has participated at the Bhonsla Military School in riding and shooting should be straightway given these three marks."

Similar view is taken by Mysore High Court in Subhashini''s case, AIR 1966 Mys 40, wherein it was observed (at p. 46):

"Reservation made in favour of candidates who have shown exceptional skill and aptitude in sports and games was also assailed. The learned Government Pleader informed us that only 4 seats were given for exceptionally good sportsmen. Out of them one has secured in aggregate 251 marks, the second 211 marks, the third 194 marks and the last 198 marks. The candidate who had secured 251 marks was even otherwise entitled to a seat. Our country, though big in size, its inhabitants very large in number, is yet to make its marks in international games and sports. It is the duty of the Government to encourage by all appropriate means, sportsmanship of high order. It is well known that a good sportsman cannot afford to be a book-worm. For that reason his claim to become a good Doctor or a good Engineer cannot be ignored. He is likely to be a better Doctor or Engineer than his competitor who knows only books but not men and matters."

As held by this Court in Ku. Madhuvanti''s case, the weightage is not for simple participation in games or sports. It is for actual participation at a certain level and obtaining certain degree of proficiency therein. The tournaments should be at University, State or National level. It is no doubt true that a contention was raised before us that many false certificates are obtained in support of such a claim. However, in the petitions before us only the vires of the rule is challenged and individual certificates issued in favour of a candidate are not under challenge. Once it is held that extra-curricular activities are relevant for judging the integrated development and personality of a candidate, then it cannot be said that the said rule has no nexus with the object sought to be achieved. In this view of the matter challenge to this rule must also fail. As already observed, the scope of the rule is already explained by the Division Bench in Ku. Madhuvanti''s case. It is contended by the learned Counsel for the petitioners that in spite of the decision of this Court in Madhuvanti''s case, the respondents have acted contrary to the said decision and the weightage is being given to the students who had participated at district and taluka levels also. It is not possible for us to entertain such a challenge at this stage. If the certificate issued in favour of a candidate is sought to be challenged, then the petitioners were obliged to raise such a specific plea in the petition and also join such a candidate as party respondent. However, we find that there is large scope for mischief, as the rule is vaguely worded and this seems to be the reason, why the Division Bench has restricted the scope of the rule to the University, State and

National level tournaments only. It is at these levels only that proficiency or participant is tested. However, it is not necessary to probe into this matter any further in view of the fact that challenge before us is restricted to vires of the rule only. Moreover, such a challenge cannot be permitted to be raised at this stage qua a particular student or a certificate. Jurisdiction conferred upon this Court under Article 226 of the Constitution cannot be used to unsettle everything at such a late stage. However, for future guidance we hereby direct that the Government should prescribe a form of certificate so as to provide (a) date, (b) place of event in which the candidate had actually played or participated, (c) level of the tournament or competition viz. whether University level, State level or National level and (d) whether the candidate had represented his or her college or institution and had actually taken part in the event. If it is a match then the certificate should also reveal the name of the opponent team. It is needless to say that these competitions or tournaments should be organised by University, State Government or National authorised Organisation. Therefore, the certificate should also include the name of the organisations.

11. It was also contended that the rule giving weightage for extra-curricular activities is discriminatory and suffers from gender preference, since it includes games which are not normally played by women, such as weight lifting, wrestling, boxing etc. A contention was also raised that weightage given is also excessive. It is not possible for us to accept these contentions. There is nothing in the rules or otherwise, from which an inference could be drawn that women are prohibited from participating in these games. If these games are not normally played by women, there are many other games included in the rules in which women can participate and are normally taking part. If there is any disadvantage because of the inclusion of these items, like singing, dancing etc. in which women have upper hand. It cannot also be said that marks allocated are either arbitrary or unreasonable, so as to render the selection of the candidate arbitrary and violative or equality clause of the Constitution. The total marks on this count are also restricted by providing a maximum limit. The marks allocated if read with the maximum limit prescribed, cannot be said to be beyond the reasonable proportion, so as to render selection invalid. As already observed these additional marks are given to the candidates who have shown proficiency and skill of high order at a University, State or National level. We are informed that in some cases, 11th and 12th standard classes are attached to higher secondary schools and these classes are known as junior college classes. The students studying in these classes also take part in the tournaments and competitions arranged at University or State or national levels which are arranged by the authorities specified in the rules and therefore they will be entitled to the weightage and on that count it cannot be said that rule is discriminatory.

12. However, we feel that it is not only advisable but it is also necessary that whenever a student is admitted on the basis of additional weightage, at the time of declaring provisional merit list for admission, the Dean of the Medical College

should put on the notice board bifurcation of marks qua each item of weightage. In case a challenge is raised, the objector should be given an opportunity to inspect the particular objected certificate. It should be notified that objection would be entertained if raised within a prescribed time. Thus, in substance the provisional merit list must show bifurcation of marks and authorities concerned should invite objections to the provisional list within a prescribed period, scrutinize the objections if any, and then finalise the merit list. Inspection contemplated should be qua a particular certificate or certificates and should not be of general nature. It is the duty of the selection committee to scrutinise in minutes details the scope for malpractices and the authorities will also be protected from the allegations of mala fides.

13. A contention was also raised before us regarding sub-rule (ix) which provides additional three marks for participation in Hyderabad Llliberation, Goa Liberation and Samyukta Maharashtra Movements. It was contended that the movement relating to Hyderabad :lliberation or Goa Llliberation may stand on the same footing as that of the national freedom steuggle. But Samyukta Maharashtra movement cannot be equated with Liberation movement. Llliberation Movement is contemplated qua a foreign power and Samyukta Maharashtra Movement cannot be termed as a Llliberation Movement in any sense of the term. When linguistic provinces were formed, the citizens were nit liberated from any alien power. In this context our attention was drawn towards the following lines of poetry reproduced by the Supreme Court in Dharles K.Skaria v; Dr. D. Mathew AIR 1980 SC 1230:-

"Pity the nation

Divided into fragments Each fragment deeming itself a nation."

The said movement was merely a movement for reorganisation of the State on linguistic basis and nothing more. It cannot be forgotten that though Indian Constitution had adopted a federal structure, it has not adopted the principle of dual citizenship, which is in vogue in America. A person may be resident of any place, might belong to any caste, creed or religion or language, he is only a ''Citizen of India''. Therefore, while reorganising the State on linguistic basis, the question of llliberation did not arise because llliberation could be from alien power and not from your own brothers speaking different languages. It was also contended that giving weightage on this count is also discriminatory since such weightage is not given to the candidate who suffered because of his own detention or detention of his parents during emergency. Such a weightage is also not given in case of similar agitations including one for establishment of University or medical college at a particular place or in a region so as to remove regional imbalance or for Vidarbha Andolan. In our opinion there is much substance in this contention and the Government will be well advised to delete the weightage on this count, i.e. for participation in Samyukta Maharashtra Movement. However, it is not necessary to finally decide this question since we are informed that not a single candidate is

given weightage on this count.

14. Sub-rule (v) of the Rules, providing for three marks for the students affected by the defence or irrigation projects was seriously challenged before us on the ground that it is not only vague and unworkable, but it has also no nexus with the objects sought to be achieved. It was also contended that the distinction made between various public purposes for which lands are acquired is wholly arbitrary and unscientific. It was then contended that the definition of the term "project affected" is so vague that it has resulted in uncertainties. The persons whose lands are acquired are fully compensated in terms of money. Certain other concessions are also given to them by the Government in the shape of providing employment and alternate lands. Acquisition of lands for defence project or irrigation project or power project has no nexus with the object sought to be achieved, that is, picking up the most talented person for admission. The rules framed for admission to medical colleges must have nexus with the medical education or national health. Weightage given to the project-affected persons has no nexus either with the medical education or national health. The respondents have tried to support this weightage on the ground that the persons whose lands are acquired for these projects get unsettled in life and to compensate them, to some extent, weightage is being provided in these admission Rules. Shri C.J.Sawant and Shri Andhyarujina, learned Counsel appearing for some of the students, who got weightage on this count contended before us that the children of the parents who are affected by acquisition of lands for these projects stand on the same footing, as that of freedom fighters or defence personnel. This weightage is being given to compensate them for loss in their studies because of the displacement in life. These students are a class by themselves and this classification cannot be termed as unreasonable. In any case, this being a question of principle or policy, this Court cannot sit in appeal over a policy decision taken by the Government. In support of this contention, reliance was placed upon the decision of the Supreme Court in D.N. Chanchala Ors. Vs. The State of Mysore and Others,

In our opinion, the nature of public purpose for which lands are acquired cannot furnish a national ground for classification. There is no intelligible differentia in this classification. If weightage is to be given or is meant for a person who has suffered because of displacement in life, then similar weightage should be given to all displaced persons, irrespective of public purposes for which their lands are acquired. What difference does it make, if a person is displaced in life because his lands are acquired for housing or hospital, irrigation scheme, slum clearance, defence or power project or town planning scheme, school building or medical college. Thus the weightage provided by this rule is wholly discriminatory between the persons similarly circumstanced and has also no nexus with the object sought to be achieved. In this context, reference could usefully be made to decision of the Supreme Court in State of Kerala and Others Vs. T.M. Peter and Others, . In our view differential nature of public purposes does not furnish any rational ground for such

a classification. It was not possible for the State Government to indicate as to why these categories alone are preferred, and other persons who are also displaced in life because of the acquisition of their properties for other public purposes are excluded. In this context it is also interesting to note that vide affidavit dt. 22nd Sept. 1983, the respondents have admitted that in spite of the best attempts of Shri Naik, Administrative Officer, and though he made a number of attempts by going to various departments in Mantralaya, including Health and Irrigation Department, he could not come across the relevant rules framed by the Irrigation Department. For this purpose, he contacted Secretaries of the Health and Irrigation Departments. According to him these rules are not traceable and, therefore, he is not in a position to produce the same before this Court. Thus, it is clear that so far rule was implemented on the basis of so-called irrigation department rules which are not traceable.

15. From the bare reading of this rule, it is quite clear that it is beautifully vague. Rule 4C(xiii) lays down the procedure for claiming this weightage. The said rule reads as under :

"4C(xiii) Persons who are affected by Irrigation/Defense Projects of Government and who desire to claim for themselves or for their son or daughter or children of their deceased son, the concession of credit of marks should produce certificate from the Collector of the District showing therein the details of property and the name of the project for which the property was acquired. The project affected person for this purpose mean a person whose land, partly or wholly has been acquired and has gone either under submergence or has been used for construction of land-works main canal and such other ancillary purposes for an irrigation project and further that consequent to such a loss of land such a person has become eligible under the existing Irrigation Department''s relevant rules for grant of land under the new command. So far as power projects and defence projects are concerned, the person may be considered to be project affected if the land partly or wholly has been acquired for specific use of the main works and not subsidiary work of setting up the power line tower so on and so forth. A certificate to that effect from a competent authority should be obtained."

The term "project affected persons" is defined. Definition uses the word "means", which clearly indicates that the definition is exhaustive. It means a person whose lands partly or wholly have been acquired etc. etc. for irrigation project and further consequent to such loss of land has become eligible for grant of land under the existing irrigation department''s rules. When the government has chosen to define the said phrase "project affected persons", anybody who wants to claim weightage must fit in the said definition. One of the necessary ingredients to claim this weightage will be that it will have to be established that consequent to the loss of land, a person has become eligible under the existing irrigation department''s relevant rules for grant of land under the new command. It is quite obvious from

the affidavit filed by the Government that the existing relevant rules are not available. Thus this rue is being operated and the certificates are being issued on the basis of non-existent rules. Further the phrases used such as "ancillary purposes", "so on and so forth" are so vague that it is difficult to find out its meaning even by applying the principle of ejusdem generis. The certificates which have been brought to our notice and are issued by the various officers deal with employment scheme and are not certificates issued under the relevant rules framed by the irrigation department. Therefore, it will have to be held that the rule in the present form is not only vague but is also unworkable. This is not the end of the matter. The phrase used "that lands partly or wholly have been acquired" is also vague. If a person is owning 100 acres of land, out of which only one acre is acquired, then also under the present rule, he will be entitled to weightage of three marks, though he is not adversely affected in life, nor is displaced by such acquisition. On the other hand a person who is wholly displaced in life because of the acquisition of the land for other public utility purposes, will not be entitled to get any weightage. We do not find any rational basis for such discrimination, nor any such basis has been disclosed by the Government in the affidavit. It is also not clear as to whether the operation of the rule is restricted to the lands within the State of Maharashtra, alone or covers the lands outside the State also.

16. It may be that the Government has taken a policy decision in this behalf. But the material on the basis of which this decision was taken is also not placed before us. In the recent decision i.e. State of Maharashtra Vs. Raj Kumar, , the Supreme Court approved the observations of this Court where the distinction made by the Government on the basis of sheer chance of candidates appearing and passing the examination from the rural area and getting advantage over all other by arbitrary addition of 10 per cent of marks was quashed, as being arbitrary and having no reasonable nexus or connection with the object of getting best candidate. In our opinion, these observations aptly apply to the present case also. By mere accident or sheer chance of the lands being acquired for irrigation project or power project or defence project a person cannot be allowed to get advantage over others whose lands are also acquired for public purposes. Apart from this we find no nexus with object sought to be achieved. This rule has also no nexus with the medical education or national health. Therefore taking any view of the matter, the validity of this rule cannot be sustained. The rule suffers from the vice of vagueness and uncertainty. It is unworkable since the relevant Irrigation Rules are non-existent. It is discriminatory in nature and has no nexus with the medical education, or national health. It is also not in tune with the principle underlying Art. 15(4) nor it is helpful in achieving the social object of helping the displaced persons. Therefore, we have no other alternative but to declare it invalid. We accordingly declare that R. 6(B)(v) read with R. 4C(xiii) is invalid and inoperative.

It ws also contended by the petitioners that these admission rules are discriminatory because some of these rules do not find place in admission rues

meant for engineering colleges and in some case method of weightage provided is different. Therefore, there is hostile discrimination. It is not possible for us to accept this contention because two sets of rules viz. meant for medical colleges and the engineering colleges cannot be identical in all respects. However, in the matter of policy and the areas which are common there should be an uniformity. It was contended by the State that there is no uniformity in these rules as they are framed by the different departments. In our opinion this excuse cannot be accepted. The Government is not a departmental store, nor can the policy of admission to professional colleges be decided departmentwise. This only means that the right hand does not know what left hand is doing, which is wholly unsatisfactory state of affairs. We hope that the Government will look into the matter and achieve uniformity as far as possible.

17. These writ petitions were filed on 21st July 1983 i.e. when the provisional merit list for admission to the B. J. Medical College, Pune was exhibited on the notice board. Admissions were finalised thereafter, which were obviously subject to the result of writ petitions. These writ petitions were restricted to the admissions to the B. J. Medical College, Pune and we are not concerned with other medical colleges we are to that as many as 12 students had secured advantage of this rule. Therefore we thought it fit to hear all of them. Obviously, once weightage given on this count is held to be bad, then because of the keen competition between the petitioners and these students admissions already given must get upset. However, having regard to the fact that the present rule is in operation from the year 1971 and though not properly worked out, rightly or wrongly, weightage was being given to the students, we do not think that the students already admitted by giving this weightage should be disturbed at this late stage. To say the least, for the mistake of the Government, these poor boys cannot be punished at this stage. Though certificates were required to be issued as per the existing relevant rules framed by the Irrigation Department, such rules never existed. In spite of this in all solemnity, the certificates were issued. This is not the end of the matter. In spite of the judgment of the Division Bench of this Court in Madhuvanti Purushottam Thatte Vs. State of Maharashtra and Others, , the respondents Government did not obey the said judgment by giving weightage to participants in sports at the levels indicated therein. In spite of this judgment, Government insisted upon the sterilisation certificate, which was not a must. To say the least, this conduct of the Government is not only unfortunate but is wholly regrettable. At one stage we were inclined to issue a notice for contempt of court. We were informed that the copies of the said judgment were not forwarded by the office of the Government Pleader at Nagpur to the departments concerned and therefore the State Government acted bona fide and in ignorance of the said judgment. However, we are satisfied that it was the Government which was at fault at all stages. We are happy to note that, in all fairness, the Government has shown its willingness to accommodate all the petitioners and the candidates getting the marks more than them by creating additional seats. A statement is also made that

the Government will approach the Medical Council of India for necessary permission. This being the position, we direct the State Government to increase number of seats in the respondent medical college so as to accommodate the students whose total comes to 368 marks or more and who are above the petitioners'' in the waiting list. We hope that the Medical Council of India will consider the case of creating of additional seats, sympathetically so as to help the Government to do justice to the petitioners.

18. Writ Petition No. 3145 of 1983 was also placed before us for admission. But the averments made in the said petition are not only hopelessly vague but practically make out no case for interference. Apart from the fact that it was filed on 13th Sept. 1983, in the said petition admissions to the reserved seats viz. seats reserved for the backward classes are challenged and that too without making any specific allegations or raising any specific pleas. As already observed admissions to the medical college were finalised in July 1983 and therefore disturbing these admissions at this late stage will result in injustice to students who are already admitted. No cause has been shown as to why the petition was filed so late. Hence, the said writ petition stands summarily rejected. We would like to make it very clear that if other petitions were not filed at the earliest opportunity viz. in second or third week of July 1983, we would not have entertained them, also.

19. Hence the Rule is partly made absolute in each of Writ Petitions Nos. 2360, 2656, 2264 and 2734 of 1983. However, in the circumstances of the case, there will be no order as to costs. The Writ Petition No. 3145 of 1983 stands summarily rejected.

20. Order accordingly.