

HIGH COURT OF GUJARAT

**KUMARI JAYSHREE CHANDRACHUD DIXIT
V/S
STATE OF GUJARAT**

Date of Decision: 20 September 1978

Citation: 1978 LawSuit(Guj) 148

Hon'ble Judges: [P D Desai](#)

Eq. Citations: 1979 (1) GLR 614

Case Type: Special Civil Application

Case No: 1174 of 1978

Subject: Constitution

Acts Referred:

[Constitution Of India Art 16](#), [Art 14](#)

Final Decision: Petition dismissed

Advocates: [K L Abichandani](#), [M B Shah](#), [Ambubhai & Diwanji](#), K S Nanavati, [M R Gehani](#)

Reference Cases:

[Cases Cited in \(+\): 5](#)

[Cases Referred in \(+\): 7](#)

Judgement Text:-

[1] This petition filed by an applicant for admission to the first M.B.B.S. Course in one of the Government Medical Colleges in the State of Gujarat challenges the validity of Rule 5.2(A) added on July 1, 1978 in the Rules for Admission to First M.B B S. Course at the Government Medical Colleges in the State of Gujarat, 1978 (hereinafter referred to as 'the Rules') In order to appreciate the points which arise for determination, it would be necessary to make an appraisal of the problem against its proper background.

[2] There are the following four Government Medical Colleges in the State of Gujarat; (1) B. J. Medical College at Ahmedabad affiliated to the Gujarat University, (2) Medical College at Baroda affiliated to the M. S. University, (3) M. P. Shah Medical College at Jamnagar affiliated to the Saurashtra University and (4) Government Medical College at Surat affiliated to the South Gujarat University. In order to regulate admission to these Colleges during the year 1978 the Government of Gujarat has framed the Rules. Rule I.(A) prescribes the qualifying examinations for admission to the Course. Accordingly, speaking broadly, only those students who have passed the following examinations are eligible for being admitted to the Course in the respective Colleges:

1. F.Y.B.Sc. (B-Group) examination of the Gujarat University taking physics, chemistry and biology, including a practical test in each of those subjects, (Ahmedabad College);
2. Higher Secondary Certificate Examination (Science Stream) taking physics, chemistry, biology, mathematics and English under the new 10 t 2 educational pattern conducted by the Gujarat Secondary School Education Board, (all Colleges);
3. Pre-medical examination of M. S. University, Saurashtra University and South Gujarat University, (Baroda, Jamnagar and Surat Colleges).
4. Any other examination of the University or of the Statutory Board which, in scope and standard, is found to be equivalent to the above qualifying examinations, taking physics, chemistry and biology, including a practical test in each of these subjects, (Ahmedabad College);

Having laid down the qualifying examinations, the Rules proceeded to prescribe, inter alia, marks which will be taken into consideration for determining merit order of a candidate for the purpose of admission, the categories of students eligible to apply for admission and the minimum total marks in the Science subjects which are required to be obtained at the qualifying examination. This field is covered by Rule 2.1(B)(i) to Rule 2.2. Rule 3 provides that the application for admission must be submitted to the prescribed authority so as to reach the concerned authority on or before June 8, 1978. There is a specific mandate contained in the said Rule that no application received after the prescribed date would be considered irrespective of the reason for late receipt. The next material Rule is Rule 5.1 which lays down the basis for determining the merit order. It provides that: (a) External marks obtained in the theory examination in the subjects of physics, chemistry and biology at the F.Y. B.Sc. (B-Group) examination modified with reference to the provision under Rule 5.2 shall determine the merit order of candidates seeking admission against the seats earmarked for the students passing F.Y.B.Sc. (B-Group) examination from the Gujarat University, and (b) marks obtained in the theory examination in the subjects of physics, chemistry, biology, mathematics and English at the Higher Secondary Certificate Examination of the Gujarat Secondary School Education Board, modified with reference to the provisions under Rule 5.2 shall determine the merit order of candidates seeking admission against the seats earmarked for the students passing Higher Secondary Certificate Examination of the Gujarat Secondary School Education Board. Under the scheme of this Rule the merit order is not determined merely on the basis of the marks obtained in the concerned theory examination since those marks have to be modified with reference to the provision made in Rule 5.2 which provides for certain credit being given on the basis of the performance of the student at the preceding examinations. Since Rule 5.2 is the material rule for the purposes of the decision of this petition, it may be set out in extenso :-

"Credit of two marks shall be given to those who have passed S. S. C. (Old or New) examination or any equivalent examination of a statutory body, at first attempt and have secured 60 per cent or more marks of the total marks in all the subjects taken together at the examination. Credit of another three marks shall be given to those who have passed pre-University Science

Examination or any equivalent examination of a University at first attempt and have secured 60 per cent or more marks of the total marks in all the subjects taken together at the examination. No credit marks shall be given if attested attempt certificate and attested marksheet certificate in all respect are not produced with the application form."

Rule 5.3 makes provision for dealing with a situation in which candidates are found to have secured equal marks corrected as per Rule 5.2. We are not directly concerned with the said rule in this petition and it may, therefore, be passed over. Next following Rules are also not material for the purposes of the decision of this petition until we reach Rule 15 which provides for the reservation of the right of the Government to introduce any new rule or to make change in any of the existing rules at any time without prior notice. These were the material Rules in force on June 9, 1978 which was the last date for submission of application for admission, to any of the Government Medical Colleges.

[3] On July 1, 1978, the Government issued a Memorandum (Annexure-I to the affidavit-in-reply dated July 14, 1978 filed by Mr. M. H. Dhanesha, Under Secretary to Government, Health and Family Welfare Department) with a view to modifying the Rules by insertion of Rule 5.2 (A). The newly added Rule 5.2(A) reads as under :

"Credit of five marks shall be given to those who have passed the All India Higher Secondary Examination of the Central Board of Higher Secondary Examination at first attempt and have secured 60% or more marks thereat provided that they must also have passed the next lower Examination of the said Board at first attempt and must have secured 60% or more marks thereat."

The words "Central Board of Higher Secondary Examination" appearing in the aforesaid Rule do not correctly describe the body which was in the mind of the Government. It is agreed by all that there is no organisation known by the name "Central Board of Higher Secondary Examination". There is only one body known as "Central Board of Secondary Education". Mr. M. B. Shah, learned Assistant Government Pleader appearing on behalf of respondent No. 1, stated to the Court that there is an obvious or apparent

mistake in describing the "Central Board of Secondary Education" as "Central Board of Higher Secondary Examination" and that if necessary the respondents will issue a clarification giving the correct description. In the meantime, all the parties appearing before me have agreed to proceed on the basis that Rule 5.2(A) operates in relation to the All India Higher Secondary Examination of the Central Board of Secondary Education. I will, therefore, proceed to consider the question of the validity of the Rule aforesaid on the abovementioned basis.

[4] Rule 5.2(A) was obviously introduced after the last date of submitting application for admission to any of the Government Medical Colleges had expired and the purpose of the Rule was to give the benefit of credit of five marks to those of the applicants who had passed the All India Higher Secondary Examination of the Central Board of Secondary Education (hereinafter referred to as "the Board Examination") on their satisfying the prescribed conditions. It might be clarified at this stage that the Board Examination is not by itself a qualifying examination for admission to the Government Medical Colleges under the Rules. However, the Academic Council of the Gujarat University in exercise of its powers under sec. 22(x) of the Gujarat University Act has framed Regulations prescribing the equivalence of examinations and in the said Regulations the Board Examination has been recognized as equivalent to the Pre-University Science Examination of the Gujarat University, if such examination is passed with Mathematics (Advance level), Physics, Chemistry and Biology. As a result, a student passing the Board Examination with the abovementioned subjects becomes eligible for being admitted to the F.Y.B.Sc. Class of any of the Colleges affiliated to the Gujarat University. If any of such students accordingly gets admitted to F.Y.B.Sc. (B-Group) Class and passes the said examination in the subjects prescribed in Rule 1. (A)(i) of the Rules, such student becomes eligible for being admitted to First M.B.B.S. Course at the prescribed Government Medical College in the State of Gujarat. It is in the case of such a student that the newly added Rule 5,2(A) will operate so as to give him the benefit of credit of five marks provided he satisfies the conditions laid down in the said Rule.

[5] The petitioner had passed S.S.C. Examination (old) conducted by a Statutory Board established in the State of Gujarat in June 1976 at first attempt securing 78% marks. She thereafter joined Pre-University Science Course in one of the Colleges affiliated to the Gujarat University and was declared successful at the examination held in March

1977 at first attempt having secured 72% marks. The petitioner then appeared at First Year B.Sc. (B-Group) examination in March 1978 and was declared successful thereat at first attempt, having secured 72% marks. The petitioner accordingly became eligible for seeking admission to the concerned Government Medical College in the State of Gujarat under Rule 1. (A) (i). She also became eligible to claim credit of 2 + 3 marks under Rule 5.2, she having passed the S. S. C. Examination (old) at first attempt having secured more than 60 per cent marks and having further passed Pre-University Science Examination at first attempt having secured more than the same percentage of marks.

[6] The fourth respondent had passed the Board Examination (11th Standard) held in March/April 1977 at first attempt having obtained 78% marks. Since she had passed the said examination with prescribed subjects, she was eligible for being admitted to the F.Y.B.Sc. course of the Gujarat University as per the Regulations prescribed by the Academic Council of the said University. After getting the eligibility certificate she took admission to the F.Y. B. SC. course in one of the Colleges affiliated to the Gujarat University. She appeared in the F.YB Sc. Examination (B-Group) held in March/ April 1978 and was declared successful thereat at first attempt upon securing 73% marks. According to the said respondent, the next lower examination of the said Board is the 10th Standard examination. So far as the said examination is concerned, the question papers were required to be supplied by the Board but the examination was to be conducted by the heads of the schools concerned and the assessment of answer books was also to be arranged by the heads of the institutions and the copy of the result after declaration was to be sent to the Board. The fourth respondent appeared in the 10th Standard examination of the Board in March/April 1976 and secured 72 % marks thereat. According to the fourth respondent, in view of the aforesaid position, she became eligible not only to seek admission to the concerned Government Medical College under Rule I.(A)(i) but she also became entitled to claim credit of five marks under Rule 5.2 (A) in view of the fact that she had passed the Board Examination (11th Standard) at first attempt having secured more than 60% marks and she had also passed the next lower examination of the said Board (10th Standard) at first attempt securing more than 60% marks thereat.

[7] The fifth respondent is also a candidate seeking admission to the concerned Government Medical College. He passed the Board Examination (11th Standard) in 1977 having secured 62.8% marks. Prior to that he had passed the 10th Standard examination in 1976 securing 61.2% marks. After passing the 11th Standard examination he joined the F.Y.B.Sc. course in one of the Colleges affiliated to the

Gujarat University and was declared successful at the F.Y.B.Sc. (B Group) examination in the year 1978 having secured 72.9 % marks. The said respondent also claims the benefit of Rule 5.2(A) on the same grounds that are urged by the fourth-respondents

[8] Before proceeding to consider the validity of Rule 5. 2 (A) against the aforesaid background, it may not be out of place to point out that the system of giving credit marks has been obviously introduced with a View to giving weightage to those students whose academic career has been of a high standard not only in the qualifying examination but also In the immediately preceding examinations. The reason behind the adoption Of such a system apparently has reasonable relation to the subject matter and one of the main objects of the Rules, namely, to secure the best possible material for admission to the Government Medical Colleges. Ordinarily, therefore, there cannot,, be any objection to the enactment of a rule based on such a rational policy so long as it operates fairly and the benefit conferred thereby is available to all who are similarly situate.

[9] The contention urged on behalf of the petitioner, however, is that by enacting Rule 5.2(A) the State Government has treated unequals as equals. The argument was that so far as the assignment of credit marks is concerned, a student who has passed the Board Examination as also the next lower examination could not have been legitimately put on a par with a student who has passed S.S.C. (old or new) examination and the Pre-University Science Examination. Alternatively, it was contended that the formula adopted for the giving of credit marks under Rules 5. 2 and 5. 2(A) itself brings about unequal treatment inasmuch as whereas a student who is covered by Rule 5.2 is given credit marks separately (2 + 3) for having passed two different examinations, a student who falls within the preview of Rule 5.2(A) is given a lump sum credit of five marks. The further grievance was that in effect Rule 5.2(A) operates retrospectively since it came to be enacted after the last date for filing of application for admission had expired and that consistently with the high policy upon which the rule of law is based; no executive action could have been validly taken in such a manner so as to affect the existing rights and/or privileges. One more ground of challenge was that the Rule was enacted mala fide in order primarily to favour the fourth respondent who happens to be the daughter of a highly placed State Government Officer.

[10] Now, it cannot be doubted that since the State Government maintains the four Medical Colleges in question, it has the power to frame Rules regulating admission to those Colleges. It cannot be disputed at the same time that since those Colleges are maintained out of public funds and that the authority which maintains them is the State

Government, such Rules must conform to the guarantee of equal protection conferred by Article 14. The Rules, therefore, must not operate in a discriminatory manner and if any of the Rules including the rule relating to giving of credit marks is arbitrary or brings about unfair treatment, it will have to be struck down as offending Article 14. When a challenge based on Article 14 against any of those rules is brought before the Court, however, it would be worthwhile to remember that the legitimate presumption is that the rule must have been framed by the State Government in good faith and with full knowledge of the existing conditions as well as requirements and that the amendment, if any, must have been made to solve difficulties manifested by experience. The State Government is required to deal with diverse problems arising out of an infinite variety of situations and it must, therefore, have the power to make provision to meet with such problems and to attain particular rational objects. Another thing which requires to be borne in mind is that in order to come within the mischief of Article 14 it is not sufficient to show merely that there is differentiation or inequality of treatment, for, differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the said Article it is necessary to show that the differentiation or inequality, if any, is irrational or arbitrary and this it has no rational relation to the object sought to be achieved {Ameerunissa v. Mahboob Begum, A.I R. 1953 S.C. 91}. Equal treatment of unequal objects, transactions or persons is also not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved (see *Jalan Trading Co. v. Mill Mazdoor Sabha*, A I.R. 1967 S.C. 691). It is also an accepted principle that if the difference in treatment is of a trivial, unsubstantial or illusory nature, then that difference alone is sometimes regarded as a cogent ground for holding that the action is not discriminatory at all or no inequality has, in fact, been created (See *State of W.B. v. Anwar Ali*, A I.R. 1952 S.C. 75). Mathematical nicety and perfect equality are also not required to meet the test of Article 14. What is of the essence of the matter is similarity and not identity of the treatment (*State of Bombay v. F. N. Bhargava*, A.I R. 195 S.C. 318). The formula devised with a view to attaining the given object need not be scientifically perfect or logically complete so long as it satisfies the test of reasonableness and it has nexus with the object sought to be achieved (See *Ganga Ram v. The Union of India*, A.I.R. 1970 S.C. 3178). Invalidity of such formula cannot be established by merely finding fault with the scheme adopted to achieve the purpose in view (See *John Trading Co.*). It is against this background that we must proceed to consider the challenge levelled against Rule 5.2(A).

[11] Now, under Rule 1.(A)(i) students who have passed F.Y.B. Sc. (B-Group)

examination of the Gujarat University with the prescribed subjects are eligible for admission to the B J. Medical College at Ahmedabad against the seats earmarked for the said College in the annexure to the Rules. In order to get admission to F.Y.B.Sc. course of the Gujarat University a student is required to pass the Pre-University Science Examination or an examination which is treated as equivalent thereto by the Academic Council of the Gujarat University. The Academic Council of the Gujarat University he framed Regulations under sec. 22(x) of the Gujarat University Act and, as earlier stated, the Board Examination has been recognized as equivalent to the Pre-University Science Examination of the Gujarat University if such examination is passed with Mathamatics (advance level), Physics, Chemistry and Biology. A student who has been declared successful at the Board Examination with the prescribed subjects would, therefore, be eligible for being admitted to the F.Y.B.Sc. coarse of the Gujarat University. The position obtaining as aforesaid would show that a student seeking admission to the B. J. Medical College at Ahmedabad under Rule I.(A)(i) could have been admitted to the F.Y. B.Sc. course from at least two different sources (though the possibility of there being more sources cannot be ruled out). So far as admission to the Pre-University Science class is concerned, it appears that the qualifying examination is the requisite S.S.C. Examination. It appears that when the Rules were enacted, (he State Government had in its mind only those students who had passed the S.S.C. Examination and the Pre-University Science Examination or any other equivalent examination of a statutory Board or of a University, as the case may be, for the purposes of giving credit marks. Rule 5 2, therefore, provided for giving of credit of two marks to the students who had passed S.S.C. (old or new) Examination or any equivalent examination of a statutory body at first attempt having secured 60% or more marks of the total marks in all the subjects taken together at the examination. Further credit of 3 marks is required to be given thereunder to a student who had passed the Pre-University Science Examination or any equivalent examination of a University at first attempt having secured 60% or more marks of the total marks in all the subjects taken together at the examination. The formula adopted as aforesaid would show that credit marks are to be given on the basis of (he performance of the concerned student in two examinations immediately preceding the F.Y.B Sc. Examination and that the total credit of five marks is split up into two distinct components, each component being relatable to one of the preceding examinations.

[12] After the Rules were enacted, the attention of the State Government appears to have been drawn to the fact that the benefit of credit marks on the basis of performance in two immediately preceding Examinations to the F. Y. B.Sc. Examination should also

be given to those students who secured admission to the F.Y.B.Sc. course after having passed the Board Examination. The fourth respondent has stated in her affidavit dated July 10, 1978 that on May 30, 1978 she made an application to the State Government requesting that an appropriate provision should be made in the Rules for giving credit marks to students who had joined the F.Y.B. Sc. course after passing the Board Examination. Though this application was made before the expiry of the last date for the submission of the application forms for admission to the Government Medical College, no action appears to have been taken thereon. According to the fourth respondent, under those circumstances she met the Minister of Education on June 12, 1978 and made a representation to him in this behalf. The State Government appears to have favourably considered the said representation and the Director of Medical Education and Research was informed by a communication dated June 21, 1978 issued by the Health and Family Welfare Department regarding the State Government's decision to give five credit marks to students who had passed the Board Examination in First Class at the first attempt. The formal memorandum enacting Rule 5.2(A) was thereafter issued on July 1, 1978. However, as it would appear from what follows, in the said rule the aforesaid decision of the State Government was given effect to with some modification in as much as the passing of two and not one examination with certain percentage of marks at the first attempt was made the precondition for earning the credit of five marks. It would thus appear that Rule 5.2(A) was enacted with a view to giving the benefit of five credit marks to students who applied for admission to the B. J. Medical College at Ahmedabad after having passed the F.Y.B.Sc. (B-group) Examination but whose admission to the F.Y.B.Sc. course was after passing the Board Examination which has been treated by the Gujarat University as equivalent to the Pre-University Science Examination. Broadly speaking, therefore, the object of enactment of Rule 5.2(A) was to give similar treatment to a class of students who were not covered by Rule 5.2.

[13] Against this background let us examine the content of Rule 5.2(A). In order to earn the credit of five marks under the said rule, two requirements must be satisfied: first, the concerned student must have passed the Board Examination at first attempt having secured 60% or more marks and, secondly, he must also have passed the next lower examination of the said Board at first attempt having secured 60% or more marks thereat. The scheme of Rule 5.2(A), therefore, is to an extent similar to that of Rule 5.2 in as much as Rule 5.2(A) also provides for giving of five credit marks on the basis of the performance of the concerned student in two examinations immediately preceding the F.Y.B.Sc. examination. The point of distinction, however, is that unlike Rule 5.2, Rule 5.2(A) does not provide for the split up of the credit of five marks into two different

components each relatable to each of the preceding examinations. This is given rise to the argument that the different formulae adopted for giving of credit marks under Rules 5.2 and 5.2(A) bring about unequal treatment. It would be "convenient to deal with this question at the outset since it is capable of comparatively simpler solution.

[14] It is true that whereas Rule 5.2 gives credit marks separately (2 + 3) for having passed two different examinations, namely, S.S.C. (old or new) and Pre-University Science Examination respectively, Rule 5.2(A) provides for giving of lump sum credit of five marks for having passed the Board Examination as also the next lower examination. This cannot, however, be held to be per se discriminatory. It requires to be noted in this connection that the matter of fitting up of credit marks into two components is not a matter of essential importance. Till and so long as it is not shown that the lump-sum method works unfairly and to the prejudice of students who are governed by the split-up method, such method cannot be assailed by merely finding fault with the scheme adopted to achieve the purpose in view. In other words, it must be shown that the adoption of different formulae leads to unequal treatment to persons similarly situate. The scheme of Rule 5.2(A), as explained earlier, is that two conditions are required to be fulfilled for the earning of lump-sum credit of five marks and each of the said conditions is related to the passing of an examination at first attempt having secured certain percentage of marks. Broadly speaking, therefore, the formula adopted for the assignment of credit marks in Rule 5.2(A) is analogous to the formula adopted in Rule 5.2. In the course of the discussion which follows, it will be shown that the Board Examination having been treated as equivalent to the Pre-University Science Examination, the assignment of three out of lump sum five marks to the Board students can be fairly and reasonably accounted for. With regard to the remaining two marks, as it will be pointed out later, the examination of 10th Standard of the Higher Secondary School, which is the next lower examination to the Board examination, has to be treated as equivalent to the S.S.C. (old) examination. Therefore, even those two marks can be reasonably and fairly accounted for. Under these circumstances and upon this notional split up, it would appear that the lump sum credit of five marks given to a student who has passed the Board Examination as also the immediately lower examination does not operate to give any favourable treatment to such students resulting in discrimination against the students who are governed by Rule 5.2. One has to remember that what is of the essence of the matter is similarity and not identity of treatment. The formulae devised with a view to meting out like treatment to persons similarly situate need not be so perfectly identical, however, as to be scientifically comparable. It is the substance which matters and not the form. An apparently similarly framed rule may in reality result

in invidious discrimination and vice versa. Having regard to all these circumstances, in my opinion, this ground of challenge has no merit.

[15] On behalf of the petitioner, it was urged in the forefront, however, that students who had joined the F.Y. B.Sc. course after passing the Board Examination could not be treated as similarly situate with those who had joined the F.Y.B. Sc. course after passing the Pre-University Science Examination and that, therefore, those students could not be given the benefit of any credit marks. To the aforesaid contention, complete answer is provided by the relevant Regulations framed by the Academic Council of the Gujarat University which has treated the Board Examination as equivalent to the Pre-University Science Examination of the University if the Board Examination was passed with Mathematics (Advance level), Physics, Chemistry and Biology as the subjects. The highest academic body of the Gujarat University having itself accorded this equivalence, it would be idle to contend that a student who has passed the Board Examination with the named subjects is not similarly situate as a student who has passed the Pre-University Science Examination. If, therefore, under Rule 5.2 credit of three marks is required to be given to a student who has passed the Pre-University Science Examination or an equivalent examination of a University at first attempt having secured 60% or more of the total marks in all the subjects taken together at the examination, there is no reason why similar credit should not be given to a student who has similarly passed the Board Examination. In fact, if such credit is not given to such a student, he would be justified in complaining that he has been discriminated against, although he is similarly situate as a student who has passed the Pre-University Science Examination. It would thus appear that no objection can possibly be taken against notional apportionment or assignment of three out of five credit marks on the basis of a student having passed the Board Examination at first attempt by securing 60% or more marks. Needless to reiterate in this connection that the equivalence having been accorded by the highest Academic body of the University for the purposes of giving admission to the F.Y.B. Sc. course of the University, no challenge can possibly succeed against such equivalence and that if the State Government is guided on the basis of such equivalence, it cannot possibly be held that it has acted discriminatorily or arbitrarily or unreasonably.

[16] It was then contended on behalf of the petitioner that the 10th standard examination which is the next lower examination to the Board Examination cannot be treated on a par with the S.S.C. (old or new) examination or equivalent examination of a statutory body and that, therefore, Rule 5.2(A) operates unfairly, as compared to Rule

5.2, in so far as Rule 5.2(A) provides for giving of the credit of five marks by taking into consideration the passing of such lower examination also at first attempt with certain percentage of marks. The argument in other words was that since S.S.C. (Old or New) examination or any equivalent examination of a statutory body cannot be equated with the examination next lower to the Board Examination, one of the conditions for earning of credit marks under Rule 5.2 and Rule 5.2(A) brought about imbalance giving more favourable treatment to the Board students.

[17] As regards this objection with regard to equivalence, the respondents rely upon the affidavit dated August 24, 1978 filed by Mr. N. V. Pujara, Secretary, Gujarat Secondary Education Board, who has in terms stated that Standard X examination, which is the next lower examination to the Board examination, is equivalent to the S.S.C. (Old) examination. It might be clarified at this stage that Mr. Pujara is qualified to speak on this subject not only because of his present position but also because prior to his appointment as the Secretary of the Gujarat Secondary Education Board, he was holding a Class I post in the Gujarat Education Service (Administrative Branch). He was the District Education Officer at various places. Prior to joining Government service, he had worked as a teacher Educator in the Secondary Teachers Training College at Aliabada and prior to that he had worked as Head-master in a Secondary School. In the course of Mr. Pujara's affidavit, reference has been made to the Gujarat Secondary Education Regulations, 1974 which came into force on and with effect from March 10, 1974. These Regulations have been framed under the Gujarat Secondary Education Act, 1972. Chapter V of the said Regulations deals with admissions, etc. into a registered school. Regulation 12 in the said Chapter lays down the conditions for admission of students to such schools. Clause (b) of Regulation 12(9) lays down the formula of equivalence of school classes for the purposes of admission of students from schools situate in other States and Union Territories in a registered school in this State. Sub-clause (iii) of clause (b), which is relevant, inter alia provides that "a student migrating from an eleven year Higher Secondary School to an eleven year high school shall be admitted to one class higher". The effect of this provision may be illustrated as follows : Suppose a student studying in a Higher Secondary School in another State has passed IX Standard examination and would, therefore, be pro noted to X Standard in such school, decides to migrate to this State, he would be admitted in the X[Standard in a registered High School in this State. Against this background, let us consider the question of equivalence of Standard X examination of the Board with S S.C. (Old) examination in our State. Having regard to the scheme of studies for which provision has been made by the Central Board of Secondary Education as per its prospectus, the

Higher Secondary stage consists of three years after eight years of previous schooling. In other words, Standards IX, X and XI are comprised in the higher Secondary stage. As against this, the course of study leading upto S.S.C. (Old) examination consisted of XI Standards comprised of Primary and Secondary stages but not of Higher Secondary stage. Having regard to sub-clause (iii) of Regulation 12(9)(b), so far as any recognised school in this State is concerned, a student migrating from an eleven year Higher Secondary School will have to be admitted to a recognised High School in this State in one class higher. On this basis, so far as equivalence is concerned, under the relevant Regulation, Standard X of Higher Secondary School is equated to Standard XI of the eleven year high school registered in this State. Standard XI in a recognised high school in this State at the material time would be the final year of the old S.S.C. course. This scheme of equivalence, therefore, shows that Xth Standard of Higher Secondary course has been equated with the Xth or final standard of the old S.S.C. course and in that manner, broadly speaking, there is equivalence between a student who has passed Xth Standard of the Higher Secondary course and old S.S.C. Examination of the Gujarat Secondary Education Board. In my opinion, therefore, it would not be correct to say that if the passing of the examination next lower to the Board examination, that is to say, the Xth Standard Examination, has been taken into consideration as one of the factors for the giving of credit marks under Rule 5.2 (A), a examination which is not equivalent has entered into consideration and in that manner an imbalance has been brought about or unfair treatment has been meted out. In fact, on the aforesaid basis of equivalence, no objection can possibly be taken against notional apportionment of two out of five credit marks on the basis of a student having passed Standard X examination at first attempt by securing 60% or more marks.

[18] Having regard to the foregoing discussion, in my opinion, there is no justification in the grievance of the petitioner that unequals have been treated as equals by the enactment of Rule 5.2(A) by giving credit of five marks to students who passed the Board Examination as also the next lower examination as against assignment of similar credit marks under Rule 5.2 to students who passed the S.S C. (old or new) examination and the Pre-University Science Examination. In fact, it could have been legitimately urged on behalf of the concerned respondents, had provision not been made in Rule 5.2(A) for giving of credit marks to them, that they have been discriminated against although they were similarly situated as the petitioners.

[19] When confronted with this position, it was the contention of the petitioner that no credit marks can be given under Rule 5.2(A) which is inoperative on the face of it

because one of the conditions laid down therein, namely, the passing of "the next lower examination of the said Board..." was impossible of fulfilment. The argument, in other words, was that the Board held only the All India Higher Secondary Examination at the end of Standard XI and that 113113 of the lower examinations including Standard X examination were held by the Board and that, therefore, the last part of the condition imposed by Rule 5.2(A) was incapable of being satisfied and consequently no credit marks can be claimed or assigned under the said Rule. In support of this submission, reliance was placed on the prospectus of the All India Higher Secondary Examination, 1977 published under the authority of the Board. At page 17 of the prospectus, under the heading "Schema of Studies" it is mentioned that the duration of the Higher Secondary stage shall be three years after eight years of previous schooling. The subjects which every candidate is required to offer are then set out under two different headings, namely, Compulsory Subjects and Elective Subjects. At pages 22 to 26 of the prospectus are to be found the provisions regarding the internal and external examinations. So far as the internal examination is concerned, it is stated that in order to distribute the work-load throughout the period of study, methods of external and internal assessment would be utilised. The examination at the end of Classes IX and X is required to be internal. As per the procedure for evaluation, the question-papers for the internal examinations for the above mentioned higher secondary classes are required to be supplied by the Board but the examination has to be conducted by the heads of schools concerned on the dates fixed by the Board. The assessment of answer books has also to be arranged by the heads of institutions themselves. A copy of the result after its declaration is required to be forwarded by the heads of institutions to the Secretary of the Board within two weeks of the examination. The answer-books are required to be preserved for a period of six months from the date of commencement of examination and during the said period the answer books would be open to scrutiny by the Officers/Inspectors appointed by the Board. No student can be promoted to class XI unless he has qualified in all the subjects of the internal examination unless otherwise specified. The subjects in which the examination has to be offered at the end of 9th and 10th Standards are prescribed by the Board. So far as external examination is concerned, it is to be held at the end of Class XI in the subjects specified. The number of papers in each subject and allotment of maximum marks as also the minimum marks required to be declared successful are also set out in the prospectus. It is not in dispute that the examination at the end of XIth Standard is conducted by the Board and that the results of the said examination are also declared by the Board. The argument in the context of the aforesaid scheme of examination was that the examination next lower to the Board Examination could not be said to be the examination of the Board in as much

as it was only internal examination conducted by the heads of the schools concerned and the assessment of answer-books in such examination was to be arranged by them and even the results had to be declared by them. Tills submission made on behalf of the petitioner cannot be accepted. When Rule 5.2(A) speaks of "the next lower examination of the said Board" (underlining supplied) what is intended is that the; chorionic elimination should have been held by or under the auspices of the Board. It is not necessary that the examination should have been actually conjugated by the Board and that the Board should have been associated with all the stages of the conduct of the examination. Even if the concerned examination is held under the auspices of the Board and the Board retains overall control over the conduct of such examination, the examination could be legitimately said to be the examination of the Board. It cannot be doubted that the examination at the end of the Xth Standard, which is the examination next lower to the final Board examination (XIth Standard), is held under the auspices of the Board. The distribution of the work-load throughout the period of study at the Higher Secondary level and the method of assessment are prescribed by the Board. The curricula for the examinations for different Standards at the higher secondary level (Standards IX, X and XI) are also prescribed by the Board. The question papers for internal examination in the Xth Standard are supplied by the Board. The dates for holding the examination are also fixed by the Board. Though the assessment has to be arranged by the heads of institutions, the Board his the power through its officers and Inspectors to scrutinize the answer-books. The result of the examination, though it is to be declared by the heads of institutions, is required to be forwarded to the Secretary of the Board within two weeks of the examination. All these provisions would show that the Board retains overall control over the internal examinations held for the lower standards of the Higher Secondary stage and that, therefore, those examinations could be said to be the examinations of the Board. The argument that the examination at Standard X is not the examination of the Board and that, therefore, Rule 5.2(A) enacts a condition impossible of fulfilment and the said Rule is, therefore, inoperative cannot be accepted.

[20] The next ground of challenge is that since Rule 5.2(A) was enacted after the last date for filing applications for admission had expired, it could not have been validly enacted, more so because it altered the position as existing on such date and in that manner affected and altered settled rights by retrospective operation. Now, it might be clarified at the outset that though the State Government has every right to frame rules regulating admission to Government Colleges based on certain rational policy and to amend them, if occasion arises, to remove any defect or lacuna, it would be always desirable to formulate and finalise such rules with precision well in advance and to make

the rules relating to admission known to the intending applicants at a point of time reasonably anterior to the last date of admission. In a society governed by the rule of law, certain basic principles must be observed. One of such principles is that enactments or orders governing public rights and duties must be open and adequately published and that they should be relatively stable. If such an enactment or order is to guide the people, they must be able to find out what it is and it should not be changed too often. An ambiguous, vague, obscure or imprecise enactment or order is likely to misguide or confuse those who are to be guided by it and too frequent changes would make it well-nigh difficult, if not impossible, for the people to make long-term planning and decisions (See Joseph Raz on "The Rule of Law and its Virtue", *The Law Quarterly Review*, Vol. 93, page 195). Indeed, F.A. Hayek's definition of the rule of law is :

".....this means that Government in all its actions is bound by rules fixed and announced beforehand-rules which make it possible to foresee with fair certainty how the authority will use its powers in given circumstances and to plan one's individual affairs on the basis of this knowledge" (See "The Road to Serfdom," p 54).

In this connection, it would be worthwhile to recall the observations made by the Supreme Court in *Jaisinghani v. Union of India*, A.I.R. 1967 S.C. 1427 at page 43). It was there pointed out that the absence of arbitrary power is the most essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the savoring enemy of caprice, Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. It would appear from the above observations that predictability even of the administrative decision is one of the essentials of

rule of law which is the high policy of the Constitution embodied in Article 14. This principle would govern the framing of Rules for admission to the Government Medical Colleges because those institutions are run out of public funds and the Government in framing its policy in regard to the admission to those Colleges must act with some predictability. Frequent changes made in the rules are likely to introduce uncertainty and, as experience has shown, result in plethora of litigation. The State Government would be well-advised, therefore, to consider all the relevant questions relating to its policy in the matter of admission to Government Colleges well in advance of the start of the academic year and to formulate rules based on such policy and make such rules known to the intending applicants by giving to it suitable publicity. No departure should ordinarily be made once such rules are published unless for compelling reasons it is necessary to do so in order to meet exigencies of the situation. Experience has shown that the rules are not framed after taking into account all possible contingencies, with the result that, on the one hand, the aggrieved students have to resort to the Court of law for seeking redress and, on the other, the State Government itself is faced with many administrative and other problems arising on account of such litigation. Not only that, but even students who are not parties to the litigation are also sometimes put to considerable hardship on account of interim orders which are required to be made during the pendency of the litigation. To avoid such situation recurring from year to year, as has been the experience so far, it would be desirable for the State Government to give to these rules some permanency after taking into account all relevant facts and circumstances. Besides, it would be desirable to get the rules examined by an independent Committee of experts which might consist not only of Government officers but also outsiders such as the Deans of the Medical Faculty of the Universities and representatives of the Indian Medical Council. Once such rules are framed, they should ordinarily be not amenable to change straightway by exercise of executive powers. Any such amendment, even if necessary, should only be made in consultation with such Committee. It would also be desirable to have the rules examined by the Legal Department of the State Government in order to ensure against possible litigation as also to cast them in suitable precise verbal formula so that interpretation of the rules on account of unhappy or equivocal expression does not raise problem? not only for the students but also for the Court. This Court has had to deal expeditiously with many matters relating to

admission to Government Colleges in the past decade and the inconvenience that it has caused not only to this Court but also to the Government and students is something which could have been avoided had these measures been taken earlier. It is hoped that the views herein expressed by this Court will not fall on deaf ears and that by the time the next academic year arrives, the State Government will have done all that is within its powers to implement the suggestions.

[21] So far as the contention that Rule 5.2(A) is retrospective in its operation is concerned, I am afraid, the argument is somewhat misconceived. It is true that this Rule was enacted after the last date for applications for admission to the Government Medical Colleges had expired. However, that circumstance by itself would not make it retrospective in operation. It requires to be noted that at the point of time when the State Government appears to have taken the decision to introduce Rule 5.2(A) on or about June 21, 1978, intimations were not given individually to any of the applicants with regard to their admission nor had anyone of such applicants paid fees and was enrolled as a student. In other words, admissions had not been finalized when Rule 5.2(A) was enacted. The Rule would, therefore, operate prospectively, that is to say, at the time finalizing the selection which was yet to arrive. Therefore, the rule cannot be said to operate retrospectively, nor could it be said that it operates in such a manner as to affect or alter settled rights. Till admissions are given, no rights are acquired. Even assuming, however, that the rule is retrospective in operation and it takes away the right to be considered for admission on the basis of the policy declared before the last date of submission of application forms, the question still is whether the State Government could have enacted such a rule in the facts and circumstances of this case. Rule 15 undoubtedly reserves to the Government the right to introduce any new rule or to make change in any of the existing rules at any time without prior notice. That provision in the Rules by itself may not, however, absolve the Government from the necessity of justifying the subsequent introduction of any Rule if the challenge is that the very investment of such power is contrary to the rule of law or that, in any case, the exercise of such power in the instant case is ultra vires.

[22] Against this background, let us consider the question of the validity of the Rule. In this connection, it requires to be borne in mind, in the first place, that by the enactment of Rule 5.2(A), the basic criteria for eligibility for admission such as the qualifying examination are not changed. None of the students who had applied for admission on

the basis of the existing eligibility criteria will be denied admission on account of the subsequent change, nor is any other class of students who was not otherwise eligible for admission given an opportunity to apply for admission. All that is provided by the enactment of Rule 5.2(A) is that in determining the merit order of the students who had already applied, credit of five marks shall be given not only to a class of students who is covered by Rule 5 2 but also to another category of students who were similarly situate. It cannot, therefore, be said that by subsequent enactment of Rule 5.2(A) such a basic change is introduced that it would have the effect of disqualifying or enabling students foal applying for admission. In the next place, as earlier pointed out, Rule 5 2 conferred the benefit of credit marks only on a section of the students. It left out many other similarly situate students who had passed equivalent examinations prior to the qualifying examination and obtained high marks at such examinations at first attempt. In such a situation, Rule 5.2 standing by itself would have been possibly exposed to a challenge based on the ground of discrimination. It is legitimate to assume that the State Government having been informed of this position it acted in good faith to make suitable provision in the Rules so as to shut out any such challenge and to give fair and equal treatment to all students similarly situate. In such circumstances, even if an amendment in the Rules is made which operates retrospectively in such a limited field, no exception can possibly be taken. In my opinion, having regard to these circumstances, so far as the present case is concerned, it cannot be successfully contended that retrospective operation, if any, of the impugned Rule violates the basic concept of the rule of law and that in that manner it violates Article 14. Under the circumstances, in my opinion, even the third challenge has no merit.

[23] That takes me to the last ground of challenge which, in my opinion, is the weakest. The contention was that Rule 5.2(A) was enacted male fide in order primarily to favour the fourth respondent who happens to be the daughter of a highly placed State Government Officer. Support for this argument is sought from the affidavit of the fourth respondent in which she has set out the facts relating to her having made an application to the State Government and followed up the same by seeking a personal interview with the Minister of Education. I do not think that from this circumstance alone any male fide exercise of power can be spelt out. It is true that the father of the fourth respondent is an officer of the State Government. It is significant to note, however, that the Rule does not create an exception for or, to put it differently, does not confer benefit only upon the fourth respondent. It covers cases of many other students who are similarly situate. Merely because the fourth respondent is the daughter of an officer of the State Government, she cannot be denied the right to approach the competent authority to

seek redress for her legitimate grievance and if any step is taken by the competent authority in pursuance of such representation, it cannot be straightway assumed that such action is founded merely on a desire to favour one individual. I am satisfied, on the facts and in the circumstances of the case, that the challenge as to the male fide exercise of powers is not made out.

[24] In the result, the Writ Petition fails and is dismissed. Rule discharged with no order as to costs.

Petition dismissed.

