

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) No.96105 OF 2020

Ms.Vinita Umesh Singh)
Age: 22 years, Occ. Student)
Residing at B-408, Pramukh Gardens,)
Kilvani Road, Amli Silvassa,)
Dadra & Nagar Haveli) **..Petitioner**

Versus

1. The Administrator, Dadra & Nagar)
Haveli, Daman & Diu Secretariat,)
Silvassa)

2. Secretary of Education)
Union Territory of Dadra & Nagar)
Haveli, Daman & Diu, Secretariat,)
Silvassa)

3. Director of Health,)
Directorate of Medical & Health)
Services, Silvassa.)

4. The Dean,)
NAMO Medical Education & Research)
Institute, Silvassa) **..Respondents**

Mr.Pradeep Thorat with Ms.Aditi Naikare for Petitioner.

Mr.Hitendra Venegaonkar for Respondents.

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**CORAM : DIPANKAR DATTA CJ &
G.S.KULKARNI, J.**

RESERVED ON: DECEMBER 16, 2020.

PRONOUNCED ON : DECEMBER 17, 2020

Judgment : (Per G.S.Kulkarni, J.)

1. Rule returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. The petitioner, a domicile of Dadra & Nagar Haveli, is an aspirant for an admission to the MBBS course for the academic year 2020-21. She has appeared for the NEET-2020 examination and has secured a sufficiently high score of 502 marks out of 720 marks.

3. There is only one Government college in the Union Territory of Dadra & Nagar Haveli known as 'NAMO Medical Education and Research Institute at Silvassa' – Respondent no.4. It is established in the year 2019 and caters to the needs of such education for the Union Territories of Dadara & Nagar Haveli and Daman and Diu. Prior thereto the medical aspirants from both these Union Territories were availing limited number of seats from the all India quota.

4. For admissions to the MBBS course for the Academic year 2020-21 the Union Territory Administration of Dadra & Nagar Haveli and Daman & Diu has issued an '**Admission Prospectus 2020-21**'. The

relevant rules in the prospectus would be discussed in the later part of this judgment, suffice it to observe that the petitioner made an application for admission to the MBBS course for the academic year 2020-21 and has participated in the admission process.

5. The case of the petitioner is that although she has secured a high score at the NEET examination and although she qualifies the the eligibility criteria as prescribed in Rule 3 of the Admission Prospectus, she is unlikely to secure an admission in view of Rule 4(a) of the Admission Rules prescribing the 'First Priority'. This rule interalia provides that a candidate whose parents are domicile of the Union Territory and has studied from the VIII Standard to the XII Standard, from a recognized school in the Union Territory would qualify under the category of 'First Priority' for admission to the MBBS Course. The petitioner's objection is to the inclusion of VIII Standard in this 'First Priority' Rule. The petitioner says that she would not be fulfilling this condition as she has not studied VIII Standard from the Union Territory of Dadra & Nagar Haveli, but for the other standards namely the IX to XII Standards, she has studied from a recognized school in the Union Territory. The petitioner contends that such condition of a candidate requiring to pass VIII Standard from the Union Territory is wholly

arbitrary, unreasonable and a condition which is alien to the object being achieved. It is her case that by having such condition, merit of a student is completely sacrificed in the current pattern of education. There is no likelihood of the petitioner securing an admission, on the contrary several students having lesser marks than the petitioner in the NEET examination would get admission.

6. The petitioner has contended that she has studied upto the VIII Standard from Marothia English School, Navi Nagari, Dunga, Taluka Vapi, Dist. Valsad (Gujarat), however, for further education from the IX to XII Standards, she has studied in the Union Territory of Dadra & Nagar Haveli at Silvassa, in the schools, the details of which alongwith the necessary certificates are described in paragraph 4 of the petition.

7. The petitioner has contended that the Union Territory of Dadara & Nagar Haveli and Daman and Diu do not have their own board of Secondary and Higher Secondary Education, hence the schools in the Union Territory are affiliated to the Gujarat Secondary and Higher Secondary Education Board. She has passed her X Std. (SSC) and the XII Std. (HSC) from these schools at Silvassa which are in the

Union Territory of Dadra & Nagar Haveli and are also affiliated to the Gujarat Secondary and Higher Secondary Education Board.

8. The petitioner has contended that her parents too are domiciled in the Union Territory of Dadara Nagar Haveli. The petitioner's father has been issued a domicile certificate by the UT Administration. The petitioner has contended that in the year 2019 she appeared for the NEET (UG) examination aspiring to seek admission for the MBBS Course, conducted by the respondents. She was successful in the said NEET. She accordingly applied for an admission to the MBBS course being conducted by respondent no.4-College. Although the petitioner had good score, her application for admission was not considered by the respondents on the ground that she is not eligible for a first priority as she has not studied continuously from the VIII Standard to the XII Standard in a recognized school in the Union Territory of Dadra & Nagar Haveli and Daman & Diu. Her father accordingly made a representation dated 18 June 2019 to the Administrator, Dadra and Nagar Haveli requesting to relax the criteria of requirement of schooling in the Union Territory from 5 years to 4 years, so that petitioner can be considered for admission in the first priority. The representation however was not responded. Subsequently

on 20 July 2019 the petitioner's father lodged a complaint with the Prime Minister's office alleging that the admission policy was discriminatory in prescribing the first priority only to the students who had completed VIII to XII standard from the schools in the Union Territory. This complaint was also not entertained on the ground that admissions to the MBBS course were completed.

9. The petitioner, apprehending that the respondents would continue the said policy in regard to the 'First Priority' and grant benefit to those students who have studied continuously from VIII till the XII Standards from the schools in the Union Territory, even for the academic Year 2020-21, made another representation dated 20 September 2020 to the Secretary (Health), UT Administration. In her representation she stated that the Union Territory does not have its own board and all the schools are affiliated to the Gujarat Board. She also stated that in the other States in India candidates seeking admission from the State quota are required to complete the X and XII Standard examinations from the State Board or any recognized Board and if this is to be considered, she has completed her entire education from the I to XII Standards from the Gujarat Board, hence she should be considered eligible in the 'First Priority'. In response to this letter, the

Dean of the Medical College informed the petitioner by its letter dated 4 November 2020 that the admission policy for the MBBS course is already notified and that all the students from the Union Territories of Dadra Nagar & Haveli and Daman & Diu are considered equal and there is no discrimination.

10. The petitioner contends that there are only 177 seats in the respondent's medical college out of which 73 seats are reserved for the candidates from Dadra & Nagar Haveli and 70 seats are reserved for the candidates from Daman & Diu. Out of the 73 seats, for the Dadra & Nagar Haveli candidates, only 29 seats are available for the general category to which the petitioner belongs. The petitioner has contended that in the year 2019, a candidate in the unreserved category having NEET score of 391 marks was granted admission in the First Year MBBS Course, only on the basis of the criteria of 'First Priority'. It is her case that despite her score of 502 marks in the NEET 2020, she would be deprived of an admission to the First Year MBBS course only on the ground that she has not studied the VIII Standard from the Union Territory. To support this contention, the petitioner has referred to the provisional allotment list for 'round I' of the 2019 admissions which according to the petitioner would show that the candidates who have

scored less than 385 marks have been admitted. The petitioner is thus before the Court assailing the validity of Rule 4(a) of the admission rules to the extent it restricts the 'First Priority' only to those students who have studied in any recognized school in the Union Territory in so far as it includes the VIII Standard.

11. It is the petitioner's case that to the extent the 'First Priority' Rule prescribes a candidate to study the VIII Standard from a school in the Union Territory, the same is illegal, discriminatory and violative of the petitioner's fundamental right guaranteed under Article 14 of the Constitution. It is her case that once the candidate fulfills the requisite eligibility criteria as prescribed in Rule 3 for admission to the MBBS course, the respondents cannot deprive the candidate of an admission by further restricting the eligibility so as to include a candidate who has not studied the VIII Standard from the Union Territory.

12. Learned Counsel for the petitioner has submitted that there is no rationale and logic to include a prescription that a candidate should school also in the 'VIII Standard'. It is submitted that a candidate having studied continuously from IX to XII Standards in a recognized school in the Union Territory and her parents being domicile

of Union Territory is sufficient compliance of the 'First Priority' Rule, hence, the petitioner is entitled for an admission. It is submitted that the petitioner's contention is legitimate and just, when a relaxation is already prescribed to those students from the Union Territories who have studied from Class I to X in the respective districts in the Union Territories and who were required to study the XI and XII standards from outside the Union Territory, due to non-availability of XI and XII Standards in their districts. According to the petitioner, such condition goes to show that the criteria of continuous education in Union Territory for five years (VIII to XII Standards) so as to include the VIII Standard, is unreasonable. It is submitted that the distinction sought to be created by the respondents, is not an intelligible differentia and does not have any rational nexus to the object being achieved by such distinction. It is thus submitted that this Court should declare the First Priority Clause - Rule 4(a) as arbitrary and unconstitutional and direct the respondents to consider the application of the petitioner for admission to First Year MBBS course in the 'First Priority'.

13. On 27 November 2020 this Court passed the following order:-

“1. The petitioner stands the risk of losing out on a seat for admission in the MBBS course merely because she did not study in any school in the Union Territory Administration for clearing 8th standard. The constitutional validity of such a requirement has been questioned in this writ petition.

2. To enable Mr. Venegaonkar, learned advocate representing the respondents to obtain instructions whether such requirement is mandatory and cannot be waived by the Administrator under any circumstances and to place before us the first merit list and the merit position of the petitioner as well as candidates similarly situate like her, we adjourn hearing of this petition till December 1, 2020. The writ petition shall be placed on board on such date as the first matter.

3. Since admissions to the MBBS Course would commence from November 30, 2020 and we are satisfied that filling up all the seats might work out irreparable injury and prejudice to the petitioner, who has set up a prima-facie case as well as satisfied the other factors for grant of interim relief, we restrain the respondents from filling up one seat in the MBBS Course for Dadra & Nagar Haveli until further orders.

4. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.”

14. Thereafter in our order dated 1 December 2020 we recorded a statement as made by Mr.Venegaonkar, learned Counsel for the respondents that the final merit list would be published on 8 December 2020 and the same would be placed before the Court, once published.

15. At the next hearing of the petition on 11 December 2020, the merit list as prepared by the respondents was placed before us, when we passed the following order:-

“1. Mr.Venegaonkar, learned advocate for the respondents has placed before us the merit list prepared by the relevant department for admission in the MBBS course in NAMO Medical Education Research Institute, Silvassa.

2. We have perused the merit list as well as the comments that have been offered by the relevant department to contest the petitioner’s claim.

3. We find from the materials before us that if the petitioner is to be accommodated, there would be several other applicants who would have to be given similar benefit and this is likely to throw the entire system out of gear.

4. Mr.Thorat, learned advocate for the petitioner submits that paragraph 4(a) of the guidelines framed by the respondents is under challenge in this writ petition and therefore, this Court ought to declare the offending condition,requiring an applicant to pass even Class VIII from a school located in Dadra and Nagar Haveli and Daman and Diu, arbitrary and unreasonable.

5. The decision impugned in this writ petition is essentially a policy matter. Prima facie, we are not inclined to accept the contention on behalf of the petitioner having regard to the decision of the Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumar Sheth etc., reported in **AIR 1984 SC 1543**.

6. Mr.Thorat seeks time to consider the said decision and come better prepared.

7. List the writ petition for further consideration on Monday next (14th December, 2020) fairly “High on Board”.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.”

16. On the above conspectus the petitioner sought leave to amend the prayer as made in the petition and confine the petitioner's prayer only to the inclusion of VIII standard in Rule 4(a). We accordingly, passed the following order on 14 December 2020:-

“1. Leave to amend the prayers is granted. Amendment to be carried out forthwith.

2. We call upon the respondents to file a short affidavit explaining therein the logic behind insertion of the clause requiring a candidate, seeking admission to the MBBS course, to study Class VIII in any school within the Union Territory of Dadra & Nagar Haveli and Daman & Diu for being entitled to 'first priority'. Such affidavit shall be filed by Wednesday next (16th December,2020) with an advance copy to the learned advocate for the petitioner by Tuesday next (15th December,2020).

3. Place the writ petition on Wednesday next i.e. 16th December,2020.

4. This order will be digitally signed by the Private Secretary/Personal Assistant of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.”

17. On behalf of respondent no.4, a reply affidavit is filed by Mr.Deepak Howale, Dean of respondent no.4-college. The affidavit states that earlier criteria for selection of students against seats allotted

to the Union Territory of Daman & Diu and Dadra & Nagar Haveli (the Union Territories) as prescribed by the Government of India was prevailing for more than two decades, so that maximum benefits can be availed by the local domicile/permanent residents of the Union Territories. The citizens of Union Territory were aware about such policy as existing for several years. It is stated that respondent no.4 college being established at Silvassa (Union Territory of Dadra & Nagar Haveli) started functioning from the academic year 2019-20, hence the prevailing education policy as applicable for higher education was made applicable for admitting the students for medical course. It is stated that the policy makers while deciding on the point of institutional reservations, from time to time have taken into account the geographical, educational and financial condition of its own residential population. The reply affidavit states that the logic behind having continuous five years education from Standard VIII is based upon the educational categorization of the academic calendar which had prevailed for several years namely the following:-

- (i) Kindergarten-LKG and Senior KG
- (ii) Primary – Std. I to Std. IV
- (iii) Upper Primary- Std. V to Std VII

- (iv) Secondary – Std VIII to Std. X
- (v) Higher Secondary – Std. XI to Std XII

18. It is stated that the logic behind keeping the ‘First Priority’ category from VIII standard onward is to have the entire education of secondary and higher secondary within the Union Territory. It is stated that the students who opt for education upto VIII Standard in a particular school would normally get enrolled in the IX Standard in the same school, as the IX Standard is treated as registration for the X Standard which is a Board examination. It is stated that it has been observed that in a very rare situation a student changes the school during the VIII standard and therefore, the entire secondary calendar becomes important while taking into consideration framing a policy pertaining to continuous education in order to decide institutional reservation. It is stated that the petitioner falls in the said rare category of the students who changed the school in IX standard after having completed his VIII standard from outside the Union Territory. The policy does not take into consideration rare factors, but policy is always framed on the basis of taking into consideration the majority factors. Also under the Right to Education Act, 2009 (for short ‘**the 2009 Act**’), in the calendar the Upper Primary is from Standard V to Standard VIII,

hence, the policy makers decided to continue with the policy of having institutional reservation from the VIII standard itself.

19. The respondents in the reply affidavit have also stated that initially before the medical college was established in Silvassa, seven seats from the Central Pool were allotted to the Union Territory Dadra & Nagar Haveli, and four seats to the Union Territory of Daman & Diu. As Dadra & Nagar Haveli has tribal population of 43% and Daman & Diu of 27% population of the OBCs, considering the migratory population, the criteria of domicile of Union Territory and education from VIII Standard to X Standard in a school located in the Union Territory was given first priority. This was done for the reason that most of the migratory population continued the education of their children in the parent state and only for securing a medical seat took admission for their children in the XI and XII Standard within the colleges situated in Union Territory. It is stated that the petitioner fits in the 'Second Priority' alongwith the other 42 candidates, hence she can be considered only in the second preference. It is stated that a provisional merit list is already prepared and the UT administration cannot make any change in the policy which would disturb the admission.

20. On the above backdrop, we have heard learned Counsel for the parties. Mr.Thorat, learned Counsel for the petitioner would submit that the impugned Rule/policy providing for the first priority in clause 4(a), to the extent it includes a candidate having passed VIII Standard from Union Territory is patently unreasonable and discriminatory. Mr.Thorat submits that such condition in no manner satisfies the test of equality, Article 14 of the Constitution would guarantee to the petitioner. This for the reason that there is a patent discrimination between candidates who are equally placed by virtue of their having cleared the NEET and having undertaken substantial study from the IX to the XII Standards from the Union Territory. Mr.Thorat submits that such classification as impugned also nullifies the basic requirement of merit which would be of paramount consideration for admission to the MBBS course. Mr.Thorat submits that it is thus an arbitrary policy to prescribe inclusion of VIII Standard in Rule 8(a). He submits that it is a settled principle of law that a policy decision can be tested on the ground of its unreasonableness. To support this submission reliance is placed on the decision of the Supreme Court in the **State of Rajasthan & Ors. Vs. Lata Arun, (2002) 6 SCC 252**. He has also referred to the eligibility criteria for State Quota as adopted in different States.

21. On the other hand Mr.Venegaonkar contesting the contentions as urged on behalf of the petitioner, has referred to the reply affidavit to contend that no interference is called for in the sound policy of the respondents in prescribing Rule 4(a). He submits that there is nothing illegal in the policy decision to incorporate the impugned condition. Mr.Venegaonkar has placed reliance on the decision of the Supreme Court in **Vasavi Engineering College Parents' Association vs. State of Telengana & Ors., (2019) 7 SCC 172**, to contend that judicial review can only be of a decision making process and not of the decision. Mr.Venegaonkar has also relied on the decision of the Supreme Court in **Delhi Development Board & Anr. Vs. Joint Action Committee, Allottee of SFS Flats and Ors. 2008 (2) SCC 672** to contend that policy decision can be subject to judicial review on the grounds of it being unconstitutional; the policy being *de hors* the statutory Regulations; if the deligatee has acted beyond its power of delegation, and if the executive policy is contrary to the statutory or larger policy. Mr.Venegaonkar hence would submit that the petition deserves to be dismissed.

22. In these circumstances the question which would arise for our consideration is as follows:-

“Whether the petitioner can be considered to be eligible for the First Year MBBS admission under the ‘First Priority’ as prescribed under Rule 4(a) or is required to be kept out of the said Rule merely because she has completed her VIII Standard from outside the Union Territory?”

Discussion and Conclusion

23. To appreciate the challenge as raised by the petitioner, it would be appropriate to extract Rule 4(a) which reads as under:-

“4. PRIORITY IN ADMISSION

For the seats earmarked for candidates of Dadra & Nagar Haveli and Daman and Diu, the candidates will be considered for admission in the following order of priority;

a) First priority:

Applicants whose parents/guardians (in case Father and Mother are not alive) are Domicile of the UT of Dadra & Nagar Haveli and Daman and Diu as the case may be and the applicant has studied continuously from Class 8th to 12th in any of the recognized schools of that UT.

“Students from the different districts in U.T. of Dadra & Nagar Haveli and Daman & Diu

who have studied from class 1 to 10th in the respective district in U.T of Dadra & Nagar Haveli and Daman & Diu and due to non-availability of 11th & 12th classes in the concerned board/stream in the respective district in U.T of Dadra & Nagar Haveli and Daman & Diu, will only be given relaxation in the above criteria.

The students will have to produce a certificate for non-availability of Class XI and XII from the Assistant Director of Education of the respective district in U.T of Dadra & Nagar Haveli and Daman & Diu”.

b) Second priority:

If the seats remain vacant after allotment of seats to candidates belonging to the first priority, they will be offered to candidates whose parents/guardian (in case Father and Mother are not alive) are Domicile of UTs of Dadra & Nagar Haveli and Daman and Diu as the case may be and candidate has studied in any recognized educational institution anywhere in the country or abroad.

c) Third priority:

If seats remain vacant after allotment of seats to candidates falling in first and second priority, they will be offered to candidates whose parents/guardian (in case Father and Mother are not alive) are employees (regular/on deputation/on transfer) of the UT Administration/Central Government/UT PSUs/Central PSUs and are posted in Dadra & Nagar Haveli and Daman & Diu as the case may be continuously for the past 5 years as on last date of application for admission and

the applicants have studied in a recognized school of Dadra & Nagar Haveli and Daman and Diu, as the case may be continuously from 10th to 12th standard.

d) Fourth priority:

If the seats remain vacant after allotment of seats to candidates falling in the First, Second and Third priority, they will be offered to other eligible candidates from any State/UT.”

24. It is not in dispute that the petitioner qualifies the eligibility criteria as prescribed in Rule 3 namely 'the Eligibility Criteria' in its entirety. Rule 3 reads as under:-

“3. ELIGIBILITY CRITERIA

A candidate who desires admission shall -

- 1) A citizen of India.
- 2) A Domicile of UT of Dadra & Nagar Haveli and Daman and Diu in case candidate intends to take benefit of reservation for SC/ST/OBC/PWD/EWS/Wards of Ex. Serviceman/Defence personnel.
- 3) Have completed 17 years of age on 31st December of the Academic year for which the admissions are being conducted.
- 4) Have passed the 10th and 12th qualifying examination from
 - i. The Gujarat Board; or
 - ii. The Central Board of Secondary Education
 - iii. The Central Board of Indian School Certificate Examinations Board, New Delhi;
 - iv. The International School Board (International Baccalaureate and Cambridge)

- v. The National Institute of Open Schooling.
 - vi. Studied under Jawahar Navodaya Vidyalaya.
 - Vii. The boards of respective States.
- 5) Have qualified in NEET conducted in current academic year.
- 6) Possesses minimum prescribed qualifying standard in HSC examination and NEET of the current academic year, as decided by the respective Council/the Central Government and also fulfills the eligibility criteria under this policy.

Minimum qualifying standard prescribed for HSC or equivalent examination are as under:

Exam	General Category/EWS	Gen-PH category	Reserved (SC,ST, SEBC including Physically disabled) categories
HSC or Equivalent examination passed with Physics, Chemistry and Biology Theory and Practical , in percentage	50%	45%	40%

- 7) The candidate should not have been convicted of any criminal offence and shall declare pending criminal cases, if any, at the time of admission.
- 8) The candidate appearing for NEET, for admission should have cleared the criteria for admission as decided by the National Medical Commission/Ministry of Health & Family Welfare, New Delhi, Government of India.
- 9) The candidate seeking admission against a particular category seats must meet the additional eligibility criteria of respective category.”

Thus the basic eligibility as prescribed by the above Rule that the petitioner is a citizen of India; she is a domicile of Union Territory of Dadra & Nagar Haveli; she has passed X and XII Standard Examinations from Gujarat Board and has qualified in the NEET examination

conducted in current academic year; she possessing the minimum prescribed Standard in the HSC examination (50% minimum marks), is eminently possessed by the petitioner. What is significant is that the eligibility criteria also accepts candidates who have passed X and XII Standard examinations from the Gujarat Board meaning thereby that the candidates who have passed the VIII to XII Standards from schools affiliated to the Gujarat Board located within the Union Territory who would be academically at par with a candidate having passed the VIII Standard also from the Gujarat Board, however, from a school outside the Union Territory.

25. It is also not in dispute that the petitioner has secured high marks in the NEET examination namely a score of 502 out of 702. Considering the provisional merit list for Dadra & Nagar Haveli in the 'First Priority' (Common merit list), it is clear that 18 candidates whose NEET score is below the petitioner who have scored marks between 495 to 430 much below the petitioner would secure admission to the First Year MBBS Course. The only disqualification for the petitioner is that she is being kept out by applying Rule 4(a) namely the 'First Priority' clause on the ground that she has not studied the VIII Standard from the Union Territory of Dadra & Nagar Haveli. The petitioner is being

deprived of an admission although she being a domicile of the Union Territory Dadra & Nagar Haveli, her parents also being domicile of the Union Territory Dadra & Nagar Haveli, by rigorously applying Rule 4(a).

26. We would first examine as to what is the object sought to be achieved by Rule 4(a), when it prescribes that a candidate should not only pass the IX to XII Standards that is “4 years” of education from the Union Territory but also pass the VIII standard, which is considered to be a class of upper primary now under the 2009 Act. To our mind, the object appears to be to make MBBS seats available to candidates having a domicile of the Union Territory, as also of his/her parents, and who has sufficiently studied within the Union Territory. This sufficiency is being determined by prescribing an additional condition of a candidate having studied from the VIII Standard to the XII Standard. However, the question is whether there is any strong rationale in including the VIII Standard along with the IX, X, XI and XII Standards. In our opinion, considered from any angle there does not appear to be any justifiable reason and/or any reasonable rationale to include a condition of the candidate having studied the VIII Standard in the Union Territory to be regarded as an inflexible and a rigid standard to

be maintained as a condition to fall in the 'First Priority'. This becomes quite apparent for more than one reason.

27. The first and foremost reason being that the exclusion of the VIII Standard from the category of first preference as contained in Rule 4(a) would not in any manner alter and/or change the object which is sought to be achieved by the rule namely to have a candidate who is domicile of the Union Territory and who has sufficiently studied in such higher classes within the Union Territory. This more so, when the academic requirements in no manner stand diluted when the student has studied the VIII Standard within the same Board. In the present case the petitioner not only studied the IX, X, XI and XII from the school affiliated to the Gujarat Board situated in the Union Territory, but also has studied the VIII Standard from the very same Board, however not within the Union Territory. Would this bring about any primal difference between such similarly placed candidates, on the academic front ?

28. A candidate who has passed the X and XII Standards from the Gujarat Board, is considered eligible as per Rule 3 of the admission rules. It is thus quite unreasonable and arbitrary to have a condition

prescribing that the candidate should pass the VIII Standard examination from the Union Territory. No material of any substance is pointed out to us which would draw a reasonable nexus to attach a special importance to include the prescription of a candidate to have studied the VIII Standard from the Union Territory. None of the reasons to have such condition as set out in the reply affidavit appeal to us to attribute any rationale to the inclusion of a candidate to have studied the VIII Standard from the Union Territory. In fact as clearly seen from a plain reading of Rule 4(a) it prescribes dual conditions namely to achieve the object of a domicile of the Union Territory should be entitled for an admission to the MBBS course namely that a candidate should possess the eligibility so prescribed in the said Rule, in addition to this his or her parents should be domicile of the Union Territory and over and above this the candidate should have studied for a reasonable period from schools within the Union Territory that is VIII to XII Standards.

29. The condition of 'First Priority' in Rule 4(a) is required to be interpreted so as to read into it reasonableness and flexibility without disturbing its object and purpose. Our observations would also stand supported by the eligibility criteria being followed in different

States prescribing the requirement of the candidate having passed either the X Standard or the X and XII Standards from the concerned States as clear from the following information as placed on record by Mr.Thorat:-

ELIGIBILITY CRITERIA FOR STATE QUOTA IN DIFFERENT STATES

Sr. No.	State	Eligibility Criteria
1.	Maharashtra	10 th
2.	Gujarat	10 th and 12 th
3.	NCT Delhi	11 th and 12 th
4.	Chattisgarh	12 th
5.	Madhya Pradesh	12 th
6.	Karnataka	11 th and 12 th
7.	U.T. of Chandigarh	10 th to 12 th No further priority lists
8.	U.T. of Andaman Nicobar Islands	11 th and 12 th No further priority lists

30. In our opinion when Rule 4(a) includes that a candidate should have studied VIII Standard from the Union Territory, in a given case with all the other basic requirements being fulfilled, merely because a candidate has not studied the VIII Standard from the Union Territory, but who has otherwise studied the IX, X, XI and XII

Standards, from the Union Territory to remain disqualified in the First Priority, would certainly bring about a discrimination between similarly placed candidates. Added to this is a concern when such candidate is more meritorious in the NEET score than those who fulfill the VIII Standard to the XII Standard criteria. Such candidate would lose a valuable seat, on account of such unreasonable condition. Thus in our opinion inclusion of the VIII standard in the 'First Preference' as prescribed under Rule 4(a) is required to be read and applied in a manner, that it would prevent arbitrariness and illegality, so as to bring about more reasonableness than unreasonableness. Candidates who are similarly situated do not suffer patent discrimination in admission to such an important course.

31. There is yet another reason as to why the inclusion of the VIII Standard in the 'First Priority' as prescribed by Rule 4(a) does not have any logic and a reasonable nexus to the object sought to be achieved. The reason is available from a plain reading of Rule 4(a) which permits relaxation in respect of those students who have studied outside the Union Territory in the XI and XII Standards on account of non-availability of such education within the Union Territory. If a relaxation of two years and that too for the substantive studies of the XI

and XII Standards to be completed outside the Union Territory is permissible, then as to how merely a student studying the VIII Standard outside the Union Territory can be said to be a reasonable inclusion in Rule 4(a)? Surely a different object is not achieved by granting such a relaxation in favour of candidates who have studied the XI and XII Standards outside the Union Territory for the reason of non-availability of such classes with the Union Territory. If this be so then there is no reason, why such a relaxation cannot be considered and granted to a student like the petitioner who has studied the VIII Standard from outside the Union Territory, when she is eligible under all the other conditions for the admission to the MBBS course. The same logic as applicable to such students who have studied their XI and XII Standards from outside the Union Territory, becomes applicable to a student who has undertaken the VIII Standard from a school outside the Union Territory. By applying such norms such student can be brought at par so as to include him/her in the 'First Priority' prescribed under Rule 4(a). No doubt the efficacy of 'first preference' as provided in Rule 4(a) can be maintained by prescribing a reasonable period of studies within the Union Territory without obliterating its basic character and the object it canvasses. This apart, in our opinion, such conditions which are conditions imposed to select candidates who are domicile of a

particular State or Union Territory, cannot be regarded as conditions of any substantive academic significance from the merit point of view, for the reason that merit of the candidates is now considered not on the basis of the academic performance of a candidate in the VIII, IX, X, XI and XII Standards but on the basis of a national competitive examination namely the NEET, which is held throughout the country. The qualifying examination namely the XII Standard Board examination is relevant only for considering candidate's performance of securing the prescribed minimum marks in the said Science stream. In our opinion even this facet is quite vital when we consider the reasonableness of a restriction imposed by conditions like Rule 4(a) which are in addition to the eligibility condition for granting preference to the candidates in selecting them for the MBBS course.

32. The Court cannot shut its eyes that in the present situation as asserted by the petitioner, merit is a casualty. It is a settled principle of law that the meritorious students ought not to be deprived of educational opportunities. It is for this very purpose, an entrance test, namely, NEET is conducted so that there is a uniform comparative merit of the students, assessed for limited number of seats in the medical faculty. In our opinion, the meritorious position of the petitioner

cannot be disregarded in the present circumstances. The petitioner, in our opinion, is not differently placed than those students who had their schooling from VIII Standard to XII Standard in the Union Territory. This more particularly when such candidates have ultimately pursued their education of 4 to 5 years in the Union Territory and all of whom are domicile of the Union Territory, they all have become eligible for admission to the MBBS Course. The petitioner is a more meritorious student than the others who are falling in the first preference category. The respondents have also conceded in their reply affidavit that this is a peculiar case and there are hardly any instances where a student may undertake VIII Standard outside the Union Territory and have further education from IX to XII Standards from the Union Territory. The statement as made in this regard in the reply affidavit needs to be noted which reads thus:-

“Thus, it has been observed that in a very rare situation a student changes his school during the VIII Standard and therefore, this entire secondary calendar becomes important while taking into consideration for framing a policy pertaining to continuous education in order to decide institutional reservation. The present petitioner falls in that rare category of students who change school in IX Standard after completing one year of Secondary education outside UT. The policy does not take into consideration the rare factors, but the policy is always framed on the basis of taking into consideration majority factors.”

33. If this be the case of such remote occurrence and possibility, it ought not to weigh against the petitioner. This also taking into consideration that Rule 4(a) also carves out an exception in respect of the situations who have undertaken XI and XII Standards outside the Union Territory on account of non-availability of such education in a particular district. This exception as made in Rule 4(a) echoes the object of bringing peculiar situations at par. Applying the logic as also the intention with which such an exception is made, in our opinion, the petitioner also deserves to be considered in this peculiar situation in the first priority so as to fall under Rule 4(a).

34. We are certainly aware that when it comes to framing of educational standards, it is within the wisdom of the education authorities and their expertise. The Court would also be loath to interfere, in academic matters. The Court would also not have any expertise to substitute any policy in exercise of its jurisdiction of a judicial review, in regard to a State action. These are settled principles of law. However, when the policy is unreasonable, discriminatory and in breach of the equality guaranteed by the Constitution, the Court necessarily has to step in by exercising its powers of judicial review,

protect the fundamental rights of the aggrieved persons. When a policy is unreasonable, the Court would certainly not be powerless to exercise such constitutional jurisdiction as held by the Supreme Court in **State of Maharashtra & Ors. vs. Lata Arun** (supra). The Court held that it would be within the power of the Court to examine whether the policy decision or the administrative order is based on a fair, rational and reasonable ground and as to whether the decision has been taken on consideration of relevant aspects of the matter.

35. Adverting to the above principles, in our opinion, although Rule 4(a) provides for a first priority to candidates who are domicile of Union Territories, however, a reasonable fair play in the joints is required to be recognized to deal with peculiar situations, without being destructive of the basic object sought to be achieved by providing for the first priority and at the same time, make Rule 4(a) workable by recognizing, that it does not crush the legitimate rights of meritorious candidates who are placed in peculiar situations as in the present case. Such an interpretation of Rule 4(a) would not only save its basic purpose but also prevent it from being rendered unconstitutional. It is well settled that it would be permissible for the Court to read down the rule so as to eliminate any illegality it may possess and make the same

workable. In this context we may usefully refer to the decision of the Supreme Court in **State of Rajasthan vs. Sanyam Lodha, (2011) 13 SCC 262** wherein the Court observed thus:

“12. It is true that any provision of an enactment can be read down so as to erase the obnoxious or unconstitutional element in it or to bring it in conformity with the object of such enactment. Similarly a rule forming part of executive instructions can also be read down to save it from invalidity or to bring it in conformity with the avowed policy of the government. When courts find a rule to be defective or violative of the constitutional or statutory provision, they tend to save the rule, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declare it as unconstitutional or invalid.....”

36. This apart, in the scheme of medical admissions to bring the candidates at par on merit, the NEET examination is now prescribed as noted above. Hence, the score of a candidate in the NEET examination certainly plays a significant role, as the selection apart from the other permissible selection criteria is on the basis of NEET score. Needless to observe that the candidates in the First Priority for their merit, are undoubtedly considered on the basis of their respective NEET scores. In balancing such rights between the candidates *inter se*, the Court cannot be unmindful of the need to recognize merit even in the scheme of Rule 3 and Rule 4 of the Admission Rules prescribed by the respondents.

37. About 3 decades and 6 years ago in **Pradeep Jain vs. Union of India, (1984) 3 SCC 654**, commenting on the equal opportunity and the rights guaranteed under Article 14 of the Constitution in the context of medical admissions, the Court made the following observations:

“10. But, as the position stands today, there is considerable paucity of seats in medical colleges to satisfy the increasing demand of students for admission and some principle has, there fore, to be evolved for making selection of students for admission to the medical colleges and such principle has to be in conformity with the requirement of Article 14. Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in *Jagdish Saran v. Union of India* "this has burning relevance to our times when the country is gradually being 'broken up into fragments by narrow domestic walls' by surrender to narrow parochial loyalties". What is fundamental, as an enduring value of our polity is guarantee to each of equal opportunity to unfold the full potential of his personality.

.... Moreover it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote sub-standard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by whole-sale sacrifice of talent at the thresh-hold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.”

38. Again in **Khalid Hussain (Minor) vs. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors., AIR 1987 SC 2074**, which is also more than three decades ago, Justice A.P. Sen speaking for the Bench commented on merit of the candidates in the following words:

“..... All of them being more or less equal, the best method is to go by marks obtained at the qualifying examination. In such a case, the selection must necessarily depend upon their academic merits.”

39. The position is not different today as seen in catena of judgments [**re:PA. Inamdar & Ors vs. State Of Maharashtra & Ors., (2005) 6 SCC 537** and **Christian Medical College Vellore Association vs. Union of India & Ors., (2020) 8 SCC 705**].

40. In **Meenakshi Malik vs. University of Delhi, (1989) 3 SCC 112**, the Supreme Court relaxed the rigour of the condition prescribing that the last two years of education should be received in a school in Delhi and that there should be no insistence on the fulfillment of that condition, in the case of students of parents who are transferred to a foreign country by the Government and who are therefore required to leave India along with them. The Court in paragraphs 4 and 5 observed as under :-

“4. Rules are intended to be reasonable, and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves. We are of opinion that the condition in the prescription of qualifications for admission to a medical college in Delhi providing that the last two years of education should be in a school in Delhi should be construed as not applicable to students who have to leave India with their parents on the parent being posted to a foreign country by the Government.

5. Accordingly, the denial of admission to the petitioner to a seat in one of the Medical Colleges in Delhi must be held to be unreasonable. It is not disputed that if the condition of schooling for the last two years in a school in Delhi is removed from the way, the petitioner would be entitled to admission in a Medical College in Delhi. In the circumstances, the petitioner is entitled to an order directing the respondents to admit her to one of the Medical Colleges in Delhi.”

41. Now in regard to the decisions as relied on behalf of the respondents, there cannot be two opinions in regard to the principle of law as reiterated in **Vasavi Engineering College Parents Association** (*supra*) that judicial review, as is well-known, lies against the decision making process and not the merits of the decision itself. In the present case, we are concerned with the decision making process and the rationale in providing the first priority rule [Rule 4(a)], and whether such a rule can have a straight jacket application so as to whittle down

not only the legitimate merit of more or less equally placed candidate like the petitioner but offend the equality rights guaranteed under Article 14.

42. Reliance on behalf of the respondents in **Delhi Development Authority and Anr. vs. Joint Action Committee, Allottee of SFS Flats and Ors.** (supra) would also not assist the respondents to canvass a proposition that a judicial review is not warranted in the present case. Moreover, in paragraph 64 of the said decision, the Supreme Court has observed that an executive order termed as a policy decision is not beyond the pale of judicial review. It was held that the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the Court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. That interference therewith on the part of the superior Court would not be without jurisdiction as it will be subject to judicial review. It was also held that a policy decision is subject to judicial review if it is unconstitutional or if the execution of the policy is contrary to the statutory provisions or a larger policy.

43. As a sequel to the above deliberation, we are of the considered view that in the peculiar facts and circumstances of the case,

it would amount to negating the right of the petitioner, guaranteed under Article 14 of the Constitution, in the petitioner being not granted admission to the MBBS course for the academic year 2020-21 and by keeping her outside the ambit of the 'First Priority' as prescribed under Rule 4(a). Also a holistic reading of Rule 4(a) conjointly with the relaxation it already permits would certainly make a way for such inclusion of the petitioner.

44. We are hence inclined to allow the petition by the following order:

- (i) The respondents are directed to admit the petitioner to the first year MBBS course for the academic year 2020-21 by considering her in the 'First Priority' as prescribed under Rule 4(a).
- (ii) Rule is made absolute in the above terms. No costs.

45. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

G.S.KULKARNI, J.

CHIEF JUSTICE