

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.616 OF 2017

1. Sanjana Ramchandra
Chandelkar, aged 19 years, r/o
102A, Near Sai Temple, Indira
Nagar, Karaswada, Mapusa-Goa.
2. Humera Mujawar, aged 18 years,
r/o Adila's Palace FF2, Muslim
Wada, Bicholim – Goa
3. Vishnu Talwar, aged 20 years,
r/o St. Inez, Near Gomantak
Printing Press, P.M.C. Quarters,
Block No. 16, Panaji – Goa
4. Ritz Alfonso, aged 19 years, r/o
St. Inez, Near Gomantak
Printing Press, P.M.C. Quarters,
Block No. 16, Panaji – Goa
5. Diksha Masurkar
(C.B.S.E), aged 17 years, r/o 1st
Floor, Shiwam Apts.,
Vaishyawada, Sawantwadi
6. Sameer Velip, aged 19 years, r/o
52/3, Odnem Balli, Quepem –
Goa
7. Ankita Shetgaonkar, aged 19
years, r/o Opp. SFX High

Deleted as per Order dtd
14/11/2017

Deleted as per Order dtd
14/11/2017

Deleted as per Order dtd
14/11/2017

School, Mapusa-Goa

8. Sumedha Parwar Vag, aged 18 years, r/o H. No. 937, Acsona, Benaulim, Salcete – Goa
 9. Vaishnavi Shantaram Kerkar, aged 19 years, r/o H. No. 1317, Pisgal, Priol, Ponda Goa – 403401
 10. Pallavi Prakash Jadhav, aged 17 years, r/o H. No. B-14, IBM Colony, Fatorda, Margao, Goa
 11. Elfreda Maria Fernandes (CBSE), aged 18 years, r/o H. No. 358, Baga, Near St. Ann's Chapel, Calangute, Bardez, Goa
 12. Tanvi P. Kuttikar, aged 18 years, r/o H. No. 173, Kasarwada, Betoda, Ponda – Goa
 13. Sivani Singh, aged 19 years, r/o H. No. 466, Santa Cruz, Cabesa, Panaji – Goa
 14. Shreya Chari, aged 18 years, r/o H. No. 23 Cottamol, Cuncolim, Salcete, Goa.
 15. Sattesh Velip, aged 18 years, r/o H. No. 163, Paddi, Bareem, Quepem, Goa.
- Deleted as per Order dtd 14/11/2017
- Deleted as per Order dtd 14/11/2017
- Deleted as per Order dtd 14/11/2017

16. Gowtham M.N.B., aged 19 years, r/o B-14, 3rd Floor, Coelho Residency, Moimollem, Vasco, Goa.

17. Omkar Naik, aged 17 years, r/o Near Ganesh Temple, New Vaddem, Vasco-da-Gama, Goa.

18. Sanobar Khan, aged 19 years, r/o Flat No. 208, Sattadhar Arcade Society, Peddem, Mapusa Goa

19. Priyanka Naik, aged 18 years, r/o H. No. 257/C, Taliegoa, Durgawdi

20. Jarvia Barbosa, aged 19 years, r/o H. No. 606, Gallio, Cortalim, Goa

21. Shalini Kepkar, aged 18 years, r/o H. No. 253, Birondi, Benaullim, Salcete, Goa

22. Shraddha Vollvoikar, aged 19 years, r/o H. No. 244, Poiyacha Waddo, Camurlim, Bardez, Goa

23. Parul Shirodkar, aged 17 years, r/o Shivaji Nagar, Kankavli, Sindhudurga

24. Shrungi Naik, aged 19 years, r/o

Deleted as per Order dtd 14/11/2017

Deleted as per Order dtd 14/11/2017

Manaswada, Kundaim, Goa

25. Mercy Fernandes, aged 19 years,
r/o F-3, Vailankanni Housing
Complex, Fatorda, Margao, Goa

26. Shahedin Khan, aged 17 years,
r/o LBS 25, Housing Board,
Mapusa, Goa

27. Pooja Karmalkar, aged 18 years,
r/o Indira Nagar, Chimbél,
Tiswadi, Goa

28. Preetam N. Rekdo, aged 19
years, r/o H. No. 90/3, Valkini
Colony No. 1, Uguem,
Sanguem, Goa

29. Subodh Chari, aged 18 years, r/o
H. No. 631(7), Dandewada,
Salcete, Goa

30. Pritha Chatterjee, aged 18 years,
r/o Naika Waddo, Calangute,
Goa

31. Nishat Langoti, aged 20 years,
r/o Muslim Wado, Bicholim,
Goa

32. Meryl Fernandes, aged 18 years,
r/o 2, Chitranjan Society, St.
Xavier's School Road,
Naranpura, Ahmedabad 380013

Deleted as per Order
dtd 14/11/2017

Deleted as per Order dtd
14/11/2017

Deleted as per Order dtd
14/11/2017

33. Gopal Parab, aged 18 years, r/o
Near Alorna Fort, Alorna,
Pernem, Goa
34. Vaibhav Parab, aged 18 years, r/o
Near Alorna Fort, Alorna,
Pernem, Goa
35. Maurice Almeida, aged 17 years,
r/o Cuddos Vaddo, Arpora,
Bardez, Goa
- Deleted as per Order dtd
14/11/2017
- ... Petitioners

Versus

1. State of Goa
through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
2. The Director,
Directorate of Technical
Education, DTE Building, Alto
Porvorim, Bardez, Goa.
- 3 Shaikh Assim
H. No. 201, Boa Ora 'A',
Mathais Ocean Park Residency,
Opp. Nio Colony,
Dona Paula- Goa.
- Amendment as per Order
dtd 26/07/2017
- 4 Divina Anvalbe Carvalho
aged 19 years, H. No. 749,
Colomb, Canacona, Goa.
- Amendment as per Order
dtd 05/09/2017

- 5 Schuane Beleza Souza
aged 19 years R/o 2/S-1,
Models Exotica, St. Inez, Panjim,
Goa – 403 001.
- 6 Akash Ashok Parwar,
major in age, r/o. H. No.874,
Raigini, Bandora, Ponda – Goa.
- 7 Clency Colaco
major in age, r/o. H. No. 69-a,
Belloy, Nuvem,
Salcete- Goa.
- 8 Apurva Gurudas Wadikar,
major in age, r/o H. No. 125,
Rassaim, Loutulim,
Salcete- goa.
- 9 Moswen Dourado
aged 18 years, H. No. 125,
Rassaim, Loutulim, Salcete- Goa.
- 10 Siddhi Anil Parvatkar
major in age, r/p. H. No. F-1,
Laxmi Niwas, B.B. Borkar Road,
Near AIR Quarters, Porvorim,
Bardez- Goa.
- 11 Swizel Fernandes
major in age, r/o. H. No. 581,
Veera- Bhat, Curtorim,
Salcete- Goa 403 709
- 12 Simran Harif Rayani
major in age, r/o. Amin Villa,
Near Raj Heritage,
Shantinagar, Ponda, Goa.
- 13 Tanesh Tukaram Tari,
major in age, r/o. H.
No.2/672/D, Pai Hospital Road,
Near Sai Engineering, Mercedes,

Amendment as per Order
dtd 05/09/2017

- Vaddem, Vasco- Goa.
- 14 Pranay Dinesh Korgaonkar
major in age, r/o. C/E, 55,
Ekta Nagar, Housing Board,
Mapusa, Bardez – Goa.
- Amendment as per Order
dtd 05/09/2017
- .. Respondents

Mr. Nitin Sardesai, Senior Advocate with Mr. Vibhav Rajiv Amonkar, Advocate for the Petitioners.

Mr. P. Dangui, Government Advocate for the Respondent No.1.

Mr. Ryan Menezes, Advocate for the Respondents No.4 to 6, 9 , 10, 11, 12 and 13.

***Coram : N.M. Jamdar &
Nutan D. Sardesai, JJ.***

Date : 14 November 2017.

ORAL JUDGMENT (Per N.M. Jamdar, J):

Petitioners and Respondent No.3 to 14 are students, who, after passing Higher Secondary Examination in May 2017 had applied for the admission to the Medical courses. The Petition relates to the admission to the professional degree courses in Medicine and Health Sciences for the year 2017–2018. The Petitioners have filed this Writ Petition challenging the action of the Respondent-Authorities of not allowing the Petitioners to participate in the admission process for the medical courses. Respondent No.1 is the State of Goa. Respondent No.2 is the Director of Technical Education.

2. The Director of Technical Education, Goa- the Respondent No.2 issued a common Prospectus for admission to the first year professional degree courses for the year 2017- 2018. The Prospectus was also for the courses in Medicine, Dentistry, Engineering, Pharmacy Architecture, Homeopathy, Ayurveda and Allied Health Sciences. The Prospectus was uploaded on the website of the Respondents. The first date for receiving the application forms was 18 May 2017. The last date for receiving the forms was 26 May 2017. The admissions to the Medical courses were to be granted only on the basis of results in National Eligibility cum Entrance Test–NEET (UG) 2017 (hereinafter referred as 'NEET'). The Petitioners applied for admission after they received their results in NEET. When the Respondent –Authorities rejected their applications on the ground that the applications were submitted after 26 May 2017, the Petitioners approached this Court by way of present Writ Petition.

3. On 10 July 2017, the Division Bench (*Reis & Sardesai, JJ*) passed the following order:

“Heard Mr. Nitin Sardesai, learned Senior Advocate appearing for the Petitioners and Mr. P. Dangui, learned Addl. Government Advocate appearing for the Respondents.

2. Issue notice before admission to the Respondents, returnable on 14.07.2017.

3. Mr. Nitin Sardesai, learned Senior Advocate appearing for the Petitioners, points out that the cut off date to submit the applications for MBBS, BDS, BHMS (Homeopathy) and BAMS (Ayurvedic), was fixed as per the prospectus issued by the Respondent no. 2 as 26.05.2017. Learned Senior Advocate further submits that in terms of the prospectus and the application form, the applications had to be complete in all respects which included disclosing the marks obtained by candidates in the NEET examination. It is further pointed out that the results of NEET examination were declared only on 23.06.2017 and immediately thereafter the Petitioners approached the Respondent no.2 for applying to such course. Learned Senior Advocate further submits that considering the objectives of holding the qualifying examination and the ultimate selection process, there is no rational of fixing a cut off date before the NEET results are declared. The learned Senior Advocate also brought to our notice the powers reserved to the Respondent no. 2 to extend the cut off date considering the exigencies of the situation. Learned Senior Advocate further submits that all the Petitioners have already submitted their applications though such applications have not been processed by the Respondent no. 2. Learned Senior Advocate further submits that the Respondent no. 2 is expected to display the Merit List tomorrow and, as such, seeks for an ad-interim direction with that regard.

4. On the other hand, Shri P. Dangui, learned Addl. Government Advocate appearing for the Respondents,

has pointed out that though the cut off date was fixed on 26.05.2017, there were press releases by the Respondent no. 2 to the effect that the applications would be received even without disclosing the NEET results. Learned Addl. Government Advocate further pointed out that many candidates acting upon such press releases, have already applied for the respective course and their applications are under consideration. It is further pointed out that even incomplete application could have been accepted in case the Petitioners had a justification with that regard. Learned Addl. Government Advocate as such pointed out that the cut off date fixed by the Respondent no. 2 is in accordance with the directions issued.

5. Having heard the learned Counsel and on perusal of records, we find that the matter can be examined only after an appropriate reply is filed by the Respondents to the contentions raised in the above Petition. But, however, as it is pointed out that the selection process is due to begin tomorrow, we find it appropriate by an an-interim Order to direct the Respondent no. 2 to process the applications of the Petitioners along with other candidates and place the Petitioners on the provisional merit list on the basis of the evaluation until the returnable date. The ad-interim Orders herein shall be subject to further orders on the next date.”

The Division Bench directed the Respondents-Authorities to process the applications of the Petitioners with other candidates and place the Petitioners on the provisional merit list on the basis of the evaluation. By order dated 14 July 2017, the Division Bench (*Dr. Chellur, CJ & Reis,J*) continued the ad-interim order and permitted the

Respondents-Authorities to give admissions in terms of the provisional list already prepared making it subject to the result of the petition. The Respondents did not challenge these directions and permitted the petitioners to participate in the admission process.

4. On 26 July 2017, the petition was adjourned at the request of the Respondents. By order dated 14 August 2017, the Division Bench (*Patel & Sardesai, JJ*) issued Rule in the Writ Petition. The petition was placed for Directions subsequently for fixing the date of hearing. On 21 August 2017, the Division Bench (*Patel & Sardesai, JJ*) passed an order as follows:

“In continuation of the ad interim Order dated 10th July, 2017, we permit the respondents Authorities to make admissions in terms of the provisional list already prepared and the same shall be subject to the result of the petition.

By consent, stand over to 17/07/2017.”

The Division Bench directed the Respondents to place on record the position as regards the intervenors and which of the Petitioners have been given admission and other particulars. The matter was accordingly adjourned on 5 September 2017. On 1 September 2017, the Respondent No.2 filed an affidavit placing on record the status as regards the admission to the Petitioners and other

candidates. The affidavit cum report indicated that out of 35 Petitioners, nine Petitioners were given admission. The Division Bench (*Patel & Sardesai, JJ*) allowed the intervention of the other candidates and notices were issued to the unrepresented added Respondents. When the Petition came up on 1 November 2017, the statement of the parties that all the Respondents are served was recorded and the matter was listed for directions for fixing a date of hearing, and the petition was taken for final disposal immediately thereafter.

5. It is an agreed position that, having allowed to participate in the admission process, nine Petitioners have been selected as per the merit list out of 35 Petitioners, and are undergoing their education. The Petitioners No.1, 3, 4, 6, 9, 22 and 28 have been given admission in M.B.B.S. Course, Petitioners No. 7 and 14 are given admission in BHMS Course. Mr. Sardesai, the learned Senior Advocate for the petitioners, states that since only nine petitioners having been selected are pursuing the petition, leave be granted to delete other Petitioners who are not included in the merit list. Leave granted. Amendment to be carried out forthwith. These nine petitioners are referred to as the Petitioners. As regards private Respondents, they all are served. Some have chosen not to appear. Some of the Respondents have filed an affidavit that they do not

intend to contest the petition. Thus, out of private Respondents, the petition is being contested by Respondents No.4, 5, 6, 9 and 10, through Mr. Menezes, the learned Advocate. Therefore, we will refer to Respondents No. 4, 5, 6, 9 and 10 as the private Respondents.

6. We have heard Mr. Nitin Sardesai, learned Senior Advocate for the Petitioners, Mr. P. Dangui, learned Government Advocate for the Respondent No.1 and Mr. Ryan Menezes, learned Advocate for the Respondents No.4 to 6, 9 , 10, 11, 12 and 13.

7. Mr. Sardesai, the learned Senior Advocate on behalf of the Petitioners, in short, contended: Reading of the Prospectus issued by the Respondent No.2 would indicate that certificate of having passed NEET examination was a requirement without which a form could not be processed. The various clauses of the Prospectus such as 3.04, 4.12, 4.14, 4.15, 4.19, 5.3 and the Form appended to the Prospectus led the Petitioners to believe that only upon the receipt of a certificate of having passed NEET examination and depending on the score of NEET examination, the petitioner would get the admissions. Any change or clarification regarding the admission process had to be communicated by the Respondent No.2 through an official Notification. As per the Prospectus, such Notification was

to be issued in four newspapers in the State of Goa - *Navhind Times*, *Herald*, *Gomantak* (Marathi) and *Tarun Bharat* (Marathi). No such Notification, putting the Petitioners to notice that they could apply without the results of NEET, was issued. The stand of the Respondent-authorities that they issued certain press notes, and that news item were published calling upon the students to apply without NEET results, are not official communications as contemplated under the Prospectus. Most of the States had initiated admission process after the result of NEET examination were published, however, in the State of Goa, the process was initiated before the results of the NEET examination, which led to the confusion. Considering this position where the Petitioners were not at fault in approaching after NEET results the Court directed the Respondent-Authorities to allow the Petitioners to participate in the process and now the Petitioners have been selected on their merit, have completed more than 55 days. If the petition is dismissed now, the private Respondents, given the guidelines issued by the Medical Council and the various decisions rendered, cannot get admission as they will not be able to fulfill a mandatory requirement of 75% attendance in the first term. It will be highly inequitable if the admission granted to the Petitioners is cancelled. The Petition, therefore, be allowed.

8. Mr. P. Dangui, learned Government Advocate on behalf of Respondents No.1 and 2 contended: There is no arbitrariness in fixing the cut-off date, which was fixed as per the mandate of the Apex Court in the decision of *Ashish Ranjan & ors. v/s. Union of India and others*¹ and also the guidelines issued by the Medical Council. The Prospectus itself indicated that the students with incomplete form could apply and with abundant caution, wide publicity was given to the fact that such an incomplete application could be processed. More than 1000 students applied without having the NEET results before the cut-off date of 26 May 2017, and therefore it cannot be contended that the Petitioners that they had no knowledge. The Petitioners being negligent, cannot claim any equity and private Respondents who had applied in time have lost opportunity to get admissions to the medical courses, without there being any fault of theirs. There is no such requirement of issuance of notification as contended and even otherwise a press note was issued which was carried in various newspapers which indicated the candidates could apply irrespective of the declaration of the NEET results. The Petitioners, who have admittedly applied beyond cut-off date, cannot be allowed to continue at the cost of those who have applied before the cut-off date.

9. Mr. Ryan Menezes, the learned Counsel appearing for

¹ (2016) 7 SCC 389

the private Respondents, submitted: There is no ambiguity in the Prospectus issued by the Respondent-authorities as it was understood by the students , such as the private Respondents, that they could apply without obtaining NEET results. The Prospectus indicated that the cut-off date was not flexible, but the requirement of submission of documents and other criteria was flexible. The Private Respondents applied before the date, and they alone should be considered, keeping aside the application forms of the Petitioners, who applied after the cut-off date. The order passed by this Court directing the Respondent-authorities to admit the Petitioners was an ad-interim order and was made subject to the result of the petition. At that time the Private Respondents were not a party to the petition. The Petitioners were only placed on the provisional list, and if the Court finds that they have secured any undue advantage, the Court can always withdraw such advantage, and no equities can be extended to the Petitioners. There is no such mandate against Court to direct the authorities to admit the Private Respondents even at this stage, and there have been instances and decisions where admission have been granted to the students after the courses have commenced. The mandate against midstream admission is operative only against Authorities, and the Court can always grant such admission. The petition be dismissed and the resultant vacancies be allotted to the private Respondents, since they would be next in merit list.

10. We have considered the rival contentions. It is an admitted position that in the merit list, the Petitioners are above the private Respondents and thus they had been selected as per merit list. We are informed that the courses have commenced on 1 August 2017, and the Petitioners have completed 55 days out of the first term of 120 days. The question before us is therefore, whether we should remove the petitioners from the courses on the ground that they had supplied the form late or permit them to continue their studies on the basis of the unchallenged directions given by the Court and upon their selection as per their ranking in the merit list. If we proceed to remove the petitioners at this stage, the question is whether we can grant admission to the respondents, who, we are informed are next on the merit list. It is a rather unfortunate situation.

11. The Petitions by students aspiring for admissions for higher qualifications always pose dilemmas for the courts. Sometimes any order the Court passes, one set of students suffer. These Petitions, therefore, have to be handled with sensitivity. Simply because the earlier order is made subject to the result of the outcome of the petition, we simply cannot ignore the position as on today. Therefore in the preceding paragraphs, we have detailed the various

orders passed by different benches in this petition to emphasize and highlight the scope of the scrutiny and the stage at which the litigation is.

12. By the prayer clauses (b) and (c), the Petitioners sought direction that they may be permitted to participate in the admission process and they may be considered for admission process. By the order passed on 10 July 2017, the Division Bench (*Reis & Sardesai, JJ*), directed the Respondent State to consider the Petitioners in the admission process. The State did not challenge this direction and permitted the Petitioners to participate in the admission process, and the Petitioners were granted admission since they stood high on the merit list. In fact even according to Mr. Dangui, the learned Government Advocate, the prayer clauses (b) and (c) of the Petition stand granted, as mandamus was already issued and now what is under consideration is prayer clause (a) regarding the cut-off date. The argument of the State which is advanced today regarding inflexibility of the cut-off date was available on that date also and was advanced. The argument which was available today is no different than the one available on 10 July 2017. In spite of this position, the Court issued a mandamus which was complied with by the State by permitting the Petitioners to participate in the admission process. Even the ground of laches was

available, and the Court could have rejected the Petition on the first date itself on both these grounds. The State could have also challenged this direction issued by the Court, which it did not. Today, therefore, we are faced with the resultant situation of the Petitioners being selected as per merit and have almost completed half of their term. Even though the order dated 10 July 2017 was styled as an ad interim order, the mandamus issued on that date stood completed. It is not that there is any further inquiry to be undertaken regarding the eligibility of the Petitioners. For instance, the Courts sometimes grant provisional admissions pending scrutiny of caste status or scrutiny of documents. In such cases, subsequently if it is found that the candidates were ineligible their admissions sometimes are cancelled, or when the further scrutiny unveils a fraud. Such is not the present case. We cannot be oblivious to the factual position as on today that the Petitioners have secured admissions as per their placement in the merit list. It is in this context that we have examined the rival contentions to find out whether the case put up by the Petitioners is reasonably possible. Our discussion hereinafter is in these peculiar facts.

13. We have gone through the Prospectus. The Prospectus issued by the Respondents No.1 and 2 governing the admission for the professional courses for the academic year 2017-2018 contain a

schedule of admission also certain conditions. At Clause 3.04 states that all candidates desirous of seeking admission to the professional course in MBBS, BDS, BHMS and BAMS in the colleges in the State of Goa must appear and have a valid score in NEET. It stated that in this clause that the admission will be granted only on the basis of NEET results. The entire basis for admission for the courses in question was emphasised as merit list as per NEET results. The Prospectus left no manner of doubt and in fact emphasises as that the foundation of admission to the professional degree courses in Goa for the year 2017-18, was the NEET result. Rule 4 of the Prospectus dealt with Rules of admission. Clause 4.1 stated that all applicants seeking admission must comply with the Rule 3.04 and 3.05, i.e., they must have a valid score in NEET. The clause 4.12 stated that the application shall not be accepted after the last date as mentioned in the Prospectus and any request for granting an extension of time for submission of the form or admission would not be entertained. The clause 4.14 stated that incomplete applications shall not be accepted, they, however, may be accepted only on the last date of the submission of the form, for genuine reasons, subject to the condition that acknowledgment card should be issued only after complying with the deficiency. Clause 4.14 put the candidates to notice that all the applications received after expiry would be summarily rejected. Again in clause 4.19 it was stated that only those applicants who have

submitted their applications duly completed in all respect would be considered for admission to professional courses. Rule 5 of the Prospectus dealt with the eligibility, and the clause 5.3 reiterated that for Medicine, Dentistry, Homeopathy, and Ayurveda the applications must have valid score in NEET examination. The Annexure VI appended with the Prospectus was a form for admission for professional degree courses for NEET based courses. It mentioned that all the essential documents to be attached. One of the annexures was a copy of NEET result. The applicants were to give a declaration that they have enclosed self-attested copies in proper order with a declaration. These were the relevant conditions of the Prospectus in question. Rule 4 the Prospectus laid down that a notification relating to the admission shall be notified in newspapers in the State of Goa in *Navhind Times*, *Herald*, *Gomantak* and *Tarun Bharat* and the Director of Technical Education was authorised to release notification for the admission in the newspapers.

14. It is the case of the Petitioners that it was not clear from the Prospectus that the students could apply without there being a valid certificate of NEET examination and they were waiting for the results. The stand taken by the Respondent No.2 is that the Prospectus made it clear that the requirement of applying with certificate in NEET examination was not necessary and the

Petitioners could apply as several other students did.

15. It is the contention of Mr.Dangui that the Prospectus clearly stated that in-complete form could be accepted and several other students applied on that basis without NEET results. When we are considering this argument , we have to test it as a stand of the State. Merely because some students applied for admissions cannot *ipso facto* lead to the conclusion that the steps taken by the State Government were valid steps. The scrutiny of the correctness of steps the State has to take as per law and good governance, would be independent of the actions of a particular set of students. It is in this context we have examined the Prospectus and the stand of the State.

16. It is informed to us that the date on which the NEET examination results were originally scheduled was 8 June 2017 and it was postponed to 23 June 2017. The entire admission process was made dependent on the valid score in NEET. In several places, the Prospectus indicated that incomplete form would not be accepted. Since it is the case of the Respondent no.2 that the certificate of NEET examination is not necessary, we called upon Mr. Dangui to show us from the Prospectus as to where it is specifically stated so in the Prospectus. We have gone through the Prospectus with his assistance, but we did not find any such positive assertion that it is

not necessary to annex the certificate of having passed NEET along with the application. It is the contention of Mr. Dangui and Mr. Menezes that though such specific statement does not occur in the Prospectus, once it is stated that any incomplete application would be entertained that would be good enough indication. It was also contended that other essential documents such as GCET admit card, income Certificate, Certificate of Date of Birth was included in the form, and therefore it was not necessary to specifically state for each of these conditions that they can be relaxed. We are unable to accept this contention. The NEET results were the sole foundation on which all admission would be granted. That condition cannot be equated to the photographs, certificate of residence, the documents of relaxations, etc. The result of NEET was the most important condition as it would govern the process of granting admission. Any relaxation the single most requirement cannot be left to interference.

17. Furthermore, we have to keep in mind the nature of the Prospectus and the class who would be the reader of the Prospectus. The Prospectus was not targeted at the experts in Interpretation of Statutes. Prospectus contained a set of conditions for the guidance of the students. It is well known that, after the results of Higher Secondary examinations are declared, there is a scramble for admissions in various courses. In a short time span students have to

take their career-defining decisions. In such stressful scenario, when a state of confusion prevails in the mind of the young applicants and their guardians, any representation made by the State must be clear and unambiguous. Unclear representations, matters left to inferences only add to the confusion. We have heard the arguments advanced by the learned Counsel for the parties on almost two sessions where it was sought to be impressed upon us by resorting to various interpretations that the Prospectus indicated that certificate of NEET was not necessary. Nothing stopped the Respondent No.2 to specifically state so in bold letters in one line that the students can submit Applications without NEET results, to remove any ambiguity whatsoever. This has not been done. We fail to understand why the stand of the Government on an important matter should be left inferences, more particularly when it deals with the careers of young students. The stand taken by the Respondent No.2, that other students drew an inference, is not a correct stand to be taken by a responsible authority, who was duty bound to issue clear communications on its own.

18. In this backdrop, the Rule which postulates that all notifications in respect of the admissions should be notified in newspapers in the State of Goa, assumes importance. The rule specified four newspapers, and the Director of Technical Education

was authorized to release the notification. There is a sanctity to this condition, which ensures transparency and also brings out a certainty regarding the regular channel of communication. It was sought to be contended by Mr. Dangui that various newspapers reports were published in the newspapers such as *Times of India*, *Navhind Times*, *Herald* and *Tarun Bharat* which carried a news item regarding a statement made by Respondent No.2 that students need not wait for NEET results to apply for the courses. We have seen these newspaper reports. They are nothing but news items curated by the newspaper editors. It is rightly contended by Mr. Sardesai that the news in the newspapers is not a direct communication from the authorities and the tenor and the contents are subject to editing by the newspaper editing team. The State cannot possibly argue that the news items are a substitute to the official notifications. We are not prepared to accept this stand of the Government that the newspaper report should suffice and can act as a substitute notification under the Rule 4. On a query to Mr. Dangui whether all official communications of the State are done through a press release and news items, he clarified that it is not so. He contended that a fresh notification was not required and that a press note has been released. We do not agree with the contention that it was not necessary to issue a notification. The Prospectus mandated an issuance of an official notification in respect of admission process in

the designated newspapers. A clarification which specifically relaxed the most important condition, ought to have been issued in the same manner. If the Respondent Nos.1 and 2 had ventured to complete the admission process based on NEET results even before NEET results, it could have easily foreseen the confusion, and ought to have been more careful.

19. We have perused the press note which has brought to our notice. The title says '*GCET (Goa Common Entrance Test)- 2017 results declared*'. The first paragraph is about Engineering, Pharmacy, Nursing, and Paramedical. Right at the bottom in one line, it is stated that the candidates may note that Form B1 and B2 can be given irrespective of NEET results. It is not unreasonable for the students to contend that since the heading of the note referred to the Engineering courses GCET, which is not one of the requirements of MBBS, the petitioner did not follow the press note. It was sought to be contended by Mr. Menezes that for some of the courses of homeopathy and Ayurveda, GCET examination are necessary. Again we fail to understand as to why it should be left to the students to decipher the communications of the State. As to why a clear stipulation that the most important condition was being relaxed was not highlighted, either through Prospectus or notification under Rule 4, we have not received any clear and cogent answer from the State,

except that it is not necessary. It is not an unreasonable stand to take, as has been taken by the Petitioners, that the petitioners were following these four newspapers in which a clear notice was not issued about relaxing the condition. It cannot be said that the petitioners were grossly negligent. Their stand that they were of the view that they could not apply without NEET results, cannot be considered as impossible. If the NEET results were the basis of the admissions, how can the students who applied after they got NEET results, be termed as negligent by the State.

20. By the order dated 10 July 2017, the Petitioners participated in the process and have secured admission on their merit. The Apex Court in the case of *Asha v/s. Pt. B.D. Sharma University of Health Sciences and others*² has emphasised the basic principles that the merit, fairness, and transparency are the ethos for admission to professional courses. It will be a travesty of the scheme formulated by the Court and duly notified by the States, if the rule of merit is defeated by inefficiency, inaccuracy or improper methods of admission. The Apex Court has emphasised that a consistent view is taken that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is an abuse of the process of law.

2 (2012) 7 SCC 389

21. Once we find that it cannot be stated that there is no ambiguity whatsoever in the Prospectus and clear and cogent communication was not issued, the arguments advanced by the Petitioners are possible to be advanced in the circumstances. We cannot casually set aside the admissions granted to the petitioner on merit. In the facts and circumstances of the present case, therefore, we find that insistence of the State to reject the application of the petitioner based on cut-off date even today is oppressive.

22. In the case of *Asha*, the Apex Court has held that if the position where the student is not at fault and pursued rights and remedies as expeditiously as possible, the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. It is contended that the Petitioners did not apply in time and they were at fault. Since we have already held that the communication issued by the Respondent-State was not clear and cogent and there was a possibility of confusion and that the notification was not issued through the official channel, we cannot conclusively hold that the Petitioners were entirely to blame. The Petitioners thereafter have been permitted to participate and have been found to be meritorious students.

23. As far as the contention of the private Respondents that

the private Respondents can be given admission even today, that contingency would arise only if we cancel the admissions of the petitioners. However, we are inclined to hold that the petitioners cannot be termed as negligent merely because they expected clear official communication from the State.

24. Ultimately, the jurisdiction under Article 226 of the Constitution of India is to render justice considering the equities of the case. We have to be extremely cautious in dealing with students who are admittedly meritorious. We do not find in this case that the conduct of the Petitioners has been so grave that their admissions given on merit, be canceled. Had it been a case of fraud or ineligibility of the petitioners, which we have discovered, we could have proceeded to issue an appropriate writ. However no such case is put against the petitioners.

25. We are therefore inclined to continue the position which has resulted from the order dated 10 July 2017 whereby the Petitioners have been granted admissions to the respective courses as per the merit list. Out of the 11 Respondents, only Five Respondents are contesting, and Six Respondents perhaps joined some other courses. Taking over all view of the matter, we dispose of the Writ Petition by holding that the insistence of the

Respondent-State on the cut-off date by rejecting the applications of the Petitioners, in the facts of the case, was oppressive and resulted in grave injustice to the Petitioners. The admissions given to the Petitioners to the respective courses, are valid. The Petitioners are entitled to continue and complete the courses in which they have been admitted, as per the procedure.

26. The Rule is made absolute in the above terms. No order as to costs.

Nutan D. Sardesai, J.

N.M. Jamdar, J.