

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.724 OF 2019**

- 1) Kum. Pujal V. Nayak
daughter of Shri Vijay Purushottam Nayak
Age 18 years, Student,
Resident of H. No. 233,
Kajumol-Saleri, Khola,
Canacona-Goa, 403 702;
 - 2) Kum. Annabelle Melanie Gomes
daughter of Dr. Aaron Francis Savio Rufin Gomes
age 18 years, Student,
resident of H. No. 99 J,
Beloy, Nuvem,
Margao, Goa 403 601.
- ... Petitioners.**

Versus

- 1) The Chief Secretary,
Government of Goa,
Goa Secretariat, Alto Porvorim,
Bardez, Goa – 403 521.
- 2) Directorate of Technical Education,
DTE building, Alto Porvorim,
Bardez, Goa – 403 521.
- 3) Goa Medical College and Hospital
Bambolim, Tiswadi-Goa.
- 4) Ministry of Human Resource Development
Shastri Bhavan, Dr. Rajendra Prasad Road,
New Delhi.

- 5) Directorate General of Health Service
Room No. 446-A
Nirman Bhawan
Maulana Azad Road
New Delhi – 110 011
- 6) National Testing Agency
C-20, 1A/8, Sector 62,
IITK Outreach Centre,
Noida-201 309.
- 7) Medical Council of India,
Pocket 14, Sector-8,
Dwarka Phase-1,
New Delhi – 110 077.
- 8) Ruchi Bipin Kumar Mishra,
C/o. Goa Medical College and Hospital
Bambolim, Tiswadi-Goa.
- 9) Esha Versobi Viegas,
C/o. Goa Medical College and Hospital
Bambolim, Tiswadi-Goa.
- 10) Siya Sitaram Kamat
C/o. Goa Medical College and Hospital
Bambolim, Tiswadi-Goa.
- 11) Goa University,
University constituted and incorporated
Under Goa University Act, 1984,
Through its Vice Chancellor,
Having office at,
Taleigao Plateau, Panaji-Goa.
- 12) Neha Tulshidas Narvekar

C/o. Goa Medical College and Hospital
Bambolim, Tiswadi-Goa,
r/o. H. No. 131, Gaonkar wada,
Narva, Bicholim-Goa, 403 504.

13)Rajnandini,
C/o. Goa Medical College and Hospital
Bambolim, Tiswadi-Goa,
r/o. H. No. 612,
Sushila Sea Winds, Phase 3B,
6th Floor, Near GSL,
Vaddem, Vasco Goa.

14) Afia Agha,
C/o. Goa Medical College and Hospital
Bambolim, Tiswadi-Goa,
r/o. H. No. 116/11/(16),
Jayce Nagar, Ponda-Goa, 403 401.

... Respondents.

Mr. S. G. Desai, Sr. Advocate with Mr. Showmik Pai Angle, Mr. Shirin Naik and Ms. Shalaka Shelke, Advocate for the Petitioners.

Mr. D. J. Pangam, Advocate General with Mr. Pravin Faldessai, Additional Government Advocate for Respondents No. 1 to 3.

Mr. Dattaprasad D. Lawande with Mr. Ram Kakkar, Mr. P. Dangui and Mr. A. Prabhudesai, Advocate for Respondents No. 12, 13 and 14.

Mr. V. A. Lawande with Mr. P. Redkar, Advocate for Respondent No. 10.

Mr. C. A. Coutinho, Advocate for Respondent No. 9.

Mr. Preetam Talaulikar, Advocate Under Legal Aid Scheme for Respondent No. 8.

Ms. A. A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate for Respondent No. 11.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

**Reserved on : 19th September, 2019
Pronounced on : 23rd September, 2019**

Judgment (Per M. S. Sonak, J)

Heard Mr. S. G. Desai, learned Senior Advocate for the Petitioners, Mr. D. Pangam, learned Advocate General for Respondent Nos.1 to 3, Mr. D. Lawande, learned counsel for Respondent Nos.12, 13 and 14, Mr. V. A. Lawande, learned counsel for Respondent No.10, Mr. C. A. Coutinho, learned counsel for Respondent No.9, Mr. P. Taulikar, learned counsel under Legal Aid Scheme for Respondent No.8 and Mrs. A. Agni, learned Senior Advocate for Respondent No.11.

2. The Petitioners seek appropriate directions to the Respondent No.2 to admit them to the first year degree course in Bachelor of Medicine and Bachelor of Surgery (MBBS) at the Goa Medical College for the academic year 2019-20, against the general category seats, if necessary, by striking down the admissions already granted to Respondent Nos.8, 9 and 10, in the general category or by adjusting the Respondent Nos.8, 9 and 10 in the seats, reserved for economically weaker section (EWS) category, by striking down the

admissions already granted to Respondent Nos.12, 13 and 14 in the EWS category.

3. The prospectus for professional degree course 2019-20 was published by the Directorate of Technical Education for the session 2019-20 some time in June, 2019. At the time of such publication, there was no reservation for the EWS category announced and consequently the prospectus, makes no specific reference to any reservation in favour of EWS category. In terms of the prospectus, the admission procedures for the MBBS course, would involve three rounds scheduled for 04.07.2019, 26.07.2019 and 08.08.2019. The rules of admission are contained in the prospectus including in particular, in Rule 4 of the prospectus, to which a detailed reference will be made in the course of this judgment and order.

4. In the round of admissions held on 04.07.2019, admittedly, there was no reservation for EWS category indicated and therefore, the select lists were prepared, without any regard to reservation for the EWS category or without any regard to increase in intake capacity, consequent upon firm decision to award reservation to EWS category. Therefore, in the round of admissions which was held on 04.07.2019, neither the Petitioners nor the Respondent Nos.8, 9 and 10, 12, 13 and 14 were admitted to the MBBS course, since, they did not achieve appropriate positions in the merit list in the general

category.

5. At this stage, it is necessary to note that in the merit list for general category, the relative position of the parties is as follows :-

No.79 – Ruchi Mishra (Respondent No.8);

No.84 – Esha Viegas (Respondent No.9);

No.93 – Siya Kamat (Respondent No.10);

No.103- Pujal Nayak (Petitioner No.1);

No.104- Annabelle Gomes (Petitioner No.2);

No.141- Neha Narvekar (Respondent No.12);

No.144-Rajnandini (Respondent No.13);

No.150- Afia Agha (Respondent No.14).

6. Further, there is no dispute that the two Petitioners, who appear at Sr. Nos.103 and 104 of the merit list in the general category, claim entitlement only against the seats for the general category. In contrast, the Respondent Nos.8, 9 and 10, who appear at merit positions 79, 84 and 93 in the merit list in the general category, claim admissions not only to the general category but also to the EWS category. Similar is the position of Respondent Nos.12, 13 and 14, who are at merit positions 141, 144 and 150 in the merit list in the general category, but claim admissions even against EWS category to which they belong.

7. In the round held on 04.07.2019 as noted earlier since, there were no reservation for EWS category announced or rather firmly announced, neither the Petitioners nor any of the Respondents secured any admissions to the MBBS course in the general category.

8. The learned Advocate General, placed on record the communication dated 01.07.2019, addressed by the Dean of the Academic Section of G.M.C., to the Director of Technical Education, directing the later not to admit any students for MBBS course under 10% EWS quota until the permission is obtained from the Ministry of Health and Family Welfare, New Delhi and Medical Council of India.

9. The aforesaid communication dated 01.07.2019, reads as follows :

*“MOST IMPORTANT
No.Acad/Misc/141/GMC/2019/113*

*Office of the Dean,
Academic Section,
Goa Medical College,
Bambolim, Goa.
Date:1st July 2019.*

*To,
The Director
Directorate of Technical Education
Porvorim, Goa.*

*Sub: Increase of MBBS seats to implement 10%
EWS quota for the academic year 2019-20.*

Sir,

This is to inform you that Public Health Department, Government of Goa vide their letter dated 26/06/2019 has forwarded the application for increase of MBBS seats from 150 to 200 to implement 10% EWS quota to Goa Medical College for the academic year 2019-20 copy of which is attached herewith and has also conveyed the approval for the same vide their letter No.1/4/2008-II/PHD/P.F./718 dated 26/06/2019(copy enclosed)

In this connection, you are hereby informed to admit only 128 students under State Quota in the first round of admission scheduled on 04/07/2019 and not to admit any students for MBBS course under 10% EWS quota until we get Letter of Permission from Ministry of Health Family Welfare, New Delhi/Medical Council of India, New Delhi. We will inform you immediately once we receive the same.

Thanking You,

*Your's faithfully,
Sd/-
Prof. Dr. S. M. Bandekar,
DEAN
Goa Medical College*

Encl:as above.

Copy to:The Under Secretary (Health), PHD, Secretariat, Porvorim, Goa.”

10. The learned Advocate General for the State of Goa explained that in pursuance of the Constitutional amendment and introduction of Article 15(6), the State, was desirous of extending the benefit of reservation under the EWS quota for admissions, inter alia to the MBBS course for the Academic Year 2019-20. However, this was

linked with the issue of increase in intake capacity so as to make effective this policy of reservation and not cause any undue prejudice to the general category candidates. He pointed out that the process in this regard substantially commenced, after the prospectus was published sometime in June, 2019. He pointed out that it is in these circumstances the aforesaid communication dated 01.07.2019 was addressed to the Director of Technical Education, since, the State was awaiting clearance from both the Ministry of Health and Family Welfare, New Delhi as well as the Medical Council of India. He pointed out that such clearance was necessary not merely for introducing reservation policy but also for increase in intake capacity. He therefore submits that though in terms of prospectus, the first round of admission was scheduled on 04.07.2019 in effect, the round of admissions held on said date cannot be regarded as the first round of admissions in respect of seats under the EWS reserved quota since, on the said date there was no formal EWS reservation quota to which the candidates could be admitted.

11. After the necessary clearance was obtained from the Ministry and MCI, some time after 04.07.2019 and before 26.07.2019, which was the date scheduled for next round of admissions according to the prospectus, Under Secretary (Health), addressed communication dated 22.07.2019 to the Director of Technical Education forwarding the proposed seat matrix regarding increase of

MBBS seats in order to implement EWS quota. To this was appended, a copy of communication dated 15.07.2019 addressed by the Dean, GMC to the Under Secretary (Health) as well as the actual chart of the seat matrix showing increase and distribution of MBBS seats in order to implement the EWS quota. All these materials indicate that at least the provisional decision was taken for making admissions to the increased MBBS seats in order to implement EWS quota just before commencement of round of admissions scheduled on 26.07.2019.

12. In the aforesaid context, the learned Advocate General submitted that fresh round of admissions scheduled on 26.07.2019, was in effect, first round of admissions for filling up the increased MBBS seats in order to implement EWS quota.

13. In the round of 26.07.2019, Respondent Nos.8,9 and 10, who belong to EWS quota, were offered admissions and admitted against the EWS quota seats on the basis of their relative merit. Obviously, in this round of admissions as well, neither the Petitioners nor Respondent Nos.12, 13 and 14 managed to secure any admission to the MBBS seats, as their relative merit positions, both in the merit list for general category or merit list in the EWS category, did not entitle them for admissions. Admittedly, the Respondent Nos.8, 9 and 10 have better merit positions than the Petitioners in the general category merit list. Similarly, the Respondent Nos.8, 9 and 10 have

better positions than the Respondent Nos.12, 13 and 14, both in the merit list for general category as well as the merit list of EWS category.

14. The next round of admission was scheduled on 08.08.2019. On this date, the Respondent Nos.8, 9 and 10 were present and it is on this date, it is alleged that the Respondent Nos.8, 9 and 10 expressed desire that they be admitted against the general category, since, on account of increased intake capacity as well as subsequent vacancies, they were now eligible to be admitted on their own merit against the general category seats. It is further alleged that the Respondent Nos.8, 9 and 10 expressed apprehension that since there was a challenge to the reservation under the EWS quota pending before the Apex Court, they preferred to secure admissions in the general category, which admissions they were entitled to by virtue of their relative merit positions.

15. In the round of admissions held on 08.08.2019, therefore, the Respondent Nos.8, 9 and 10 were permitted vertical mobility and were admitted against the general category seats, to which, they were entitled to, by virtue of their relative merit positions. As a consequence, there were three vacancies in the seats reserved for EWS category which seats again on the basis of relative merit positions were allotted to Respondent Nos.12, 13 and 14 who admittedly belong to EWS category.

16. Now it is the case of the Petitioners that the Respondent Nos.1,2 and 3, grossly erred in permitting the Respondent Nos.8, 9 and 10 vertical mobility in the admission round held on 08.08.2019. It is the case of the Petitioners that since the Respondent Nos.8, 9 and 10 had secured admissions for the MBBS seats in the round on 26.07.2019, there was no question of even permitting the Respondent Nos.8, 9 and 10 to participate in the round held on 08.08.2019.

17. The Petitioners, through their Senior Counsel Mr. S. G. Desai urge that permitting the Respondent Nos.8, 9 and 10 to participate in the round held on 08.08.2019 or to avail the vertical mobility is contrary to the Rules of admissions set out very clearly in the prospectus. They point out, by relying upon the decision of the Full Bench of this Court in the case of ***Dr. Rakesh Ravi Vs The Dean, GMC, Bambolim and others*** (Writ Petition No.238 of 1997) decided on 03.10.1997, that in such matters the prospectus and Rules contained in the prospectus are sacrosanct and the State or Admission committee has no jurisdiction to deviate from such Rules in prospectus. The Petitioners urge that if the Respondent Nos.8, 9 and 10 were not to be permitted participation in the round held on 08.08.2019 or permitted the vertical mobility, there would be at least three additional vacancies in the general category and in terms of relative merit position of the Petitioners, it is the Petitioners who would be entitled to admissions against these vacancies.

18. The Petitioners urge that by arbitrarily and wrongfully permitting the Respondent Nos.8, 9 and 10 to participate in the round held on 08.08.2019 or by granting them vertical mobility, the Petitioners have been unjustly and unlawfully deprived of admissions to the vacant seats in the general category to which they were entitled on the basis of their relative merits.

19. Mr. Desai, learned Senior Counsel for the Petitioners, placed very strong reliance upon the decision of Constitution Bench of the Apex Court in the case of ***Union of India Vs Ramesh Ram and others*** (2010) 7 SCC 234 to urge that the merit reserved category candidates (MRC), upon securing a reserved post are not entitled to any vertical mobility or to insist upon a general category post. Mr. Desai submits that action of the Respondent Nos.1, 2 and 3 in the present case is clearly contrary to law laid down by the Constitution Bench in *Ramesh Ram* (supra).

20. Mr. Desai also pointed out that in terms of Rule 4.30(b) in the prospectus, a candidate once admitted to a particular seat in any category shall not be eligible to seek any admission to the same seat again under the same/any other category, in the same/subsequent rounds under the vertical mobility. Mr. Desai points out that there is some sort of exception carved out for the seats under the Tuition Fee Waiver Scheme and to the candidates belongs to SC, ST and OBC.

However, he submits that there is no exception carved out in favour of the candidates belonging to the EWS quota. He submits that the Respondent Nos.1, 2 and 3 have virtually read into the Rule 4.30(b) an exception in favour of the EWS quota, when in fact no such exception is in fact made in the Rule. He submits that the prospectus is sacrosanct and it is impermissible for the Respondent Nos.1, 2 and 3 to alter the prospectus in this manner and to create an additional exception when in fact such exception finds no place in Rule 4.30(b) of the prospectus.

21. Mr. Desai submits that this is a clear case of arbitrariness and unreasonableness. He submits that on account of such arbitrariness and unreasonableness that the Petitioners have been deprived of seats in general category even though the Petitioners, upon correct interpretation of the Rules of admission, are entitled to be so admitted. He submits that this is a fit case where the admissions of Respondent Nos.8,9 and 10 or in the alternate, admissions of Respondent Nos.12, 13 and 14 be struck down and the Petitioners be admitted to the first MBBS course in the Academic Year 2019-20.

22. Mr. Desai also places reliance upon the Amendment Notification dated 18.05.2018 issued by the Medical Council of India to amend the Regulations on Graduate Medical Education, 1997. He points out that in terms of this amended Regulations, where the candidates are already admitted in one of the rounds, they are ineligible

for further counselling which means that they are eligible for participation in further rounds of admissions. He submits that by virtue of Entry 66, List I of Schedule VII to the Constitution of India, the MCI Regulations bind the State, Government or the State Admission Agencies.

23. Mr. Desai submits that in fact the Rules of admissions set out in the prospectus are quite consistent with MCI Regulations, even as amended. He submits that the manner in which the prospectus has been interpreted by the State Government or the State Government Admission Agencies, is quite inconsistent with the MCI Regulations. He submits that even the terms of the Rules of prospectus as correctly interpreted as also the MCI Regulations, it is quite clear that the Respondent Nos.8, 9 and 10 after having secured admissions in the round held on 26.07.2019 were further disentitled to even participate in the round of admissions scheduled on 08.08.2019, much less secure any admission to the general category seats, in the said round. On this basis also Mr. Desai urges that the Petitioners have been arbitrarily and unreasonably deprived the admissions to the MBBS course in the general category seats .

24. Mr. Desai points out that no sooner the illegality took place in the round held on 08.08.2019, the Petitioners have addressed a representation to the Respondents and waited for hardly four days, for

some response. This petition was instituted on 14.08.2019. Mr. Desai therefore submits that the Petitioners have approached this Court at the earliest instance and the defences of delay and laches raised by the Respondents are totally frivolous and deserve summary rejection.

25. Mr. Desai places heavy reliance upon the decision of the Apex Court in *Asha Vs Pt. B.D. Sharma University of Health Sciences & Ors* decided on 10.07.2012 in Civil Appeal No.5055 of 2012 to urge that the admissions can be granted even beyond the cutoff date prescribed by MCI, in order to redress gross injustice. He submits that this is a case of gross injustice inflicted upon the Petitioners and therefore, following the principles laid down in *Asha* (supra), this is a fit case where the Petitioners should be ordered to be admitted against the MBBS course, even though, the cutoff date may have expired on 31.08.2019.

26. Mr. D. Pangam, learned Advocate General for the State of Goa, Mr. D. Lawande, learned counsel for Respondent Nos.12, 13 and 14, Mr. V. A. Lawande, learned counsel for Respondent No.10, Mr. C. A. Coutinho, learned counsel for Respondent No.9, Mr. P. Talaulikar, learned counsel under Legal Aid Scheme for Respondent No.8, in unison, contest the contentions raised by Mr. Desai for and on behalf of the Petitioners.

27. At the outset, they point out that the relative merit positions of the Petitioners, i.e. the merit positions, 103 and 104 are much lower than the merit positions of Respondent Nos.8, 9 and 10 which are 79, 84 and 93. They point out that the Petitioners therefore seek admissions despite their relative lower position in the merit. They point out that such a situation can never be countenanced and no such relief should ever be granted by a writ Court exercising extraordinary and equitable jurisdiction. In any case, they point out that the circumstances referred to in *Asha* (supra) clearly are absent in the present case and in fact, following the principles laid down in *Asha* (supra) no case of extraordinary nature is made out to deviate from the timelines indicated by MCI for closure of the admission process. They point out that if, in the circumstances urged by and on behalf of the Petitioners , there is any deviation from the timelines specified by the MCI and reiterated by the Apex Court, there will be breach of the strict directions issued by the Apex Court in the case of ***Priya Gupta Vs State of Chhattisgarh and others (2012) 7 SCC 433.***

28. In any case, the learned counsel for the Respondents point out that in the peculiar facts of the present case, the first round of admissions at least in so far as increased seats consequent upon the implementation of reservation in the EWS quota, was the round held on 26.07.2019 and not the round held on 04.07.2019. They point out that in terms of MCI regulations relied upon by the Petitioners

themselves, ineligibility for further counselling applies after the second round and not after the first round. Therefore, they submit that there was no error whatsoever in permitting the Respondent Nos.8, 9 and 10 to take part in the round held on 08.08.2019, which, in the peculiar facts of the present case, was really the second round qua the increased seats consequent upon the implementation of reservation to EWS quota.

29. The learned counsel for the Respondents further point out that the Rule 4.30(b) in the prospectus makes it quite clear that the vertical mobility will apply for admission to any seat under the Tuition Free Waiver Scheme to the candidates belong to SC, ST and OBC category. They submit that there was no reference to EWS in this clause simply because when the prospectus was first published, there was no reference to any reservation in the EWS quota. They submit that just as Reservation Policy was introduced after the prospectus was published, even without making any amendment to the prospectus, in the same manner, reference to EWS is required to be read in clause 4.30(b) in the prospectus. They submit that such non reading would in fact introduce an arbitrary and discriminatory element in the admission process. Accordingly, they submit that even in terms of prospectus so construed, there was absolutely no error much less any unreasonableness or discrimination or arbitrariness involved in permitting the Respondent Nos.8, 9 and 10 to participate in the round held on 08.08.2019.

30. The learned counsel for the Respondents submit that the decision in the case of *Ramesh Ram* (supra) applies only in the context of service jurisprudence and was concerned with interpretation of Rule 16(2) of the Civil Services Examination Rules. They point out that the said decision is clearly inapplicable in the matters of admissions to educational institutions and they rely upon *Samta Aandolan Samiti and another Vs Union of India and others* (2014) 14 SCC 745 and *Tripurari Sharan and another Vs Ranjit Kumar Yadav and others* (2018) 2 SCC 656 in support of this distinction. They also rely upon *Ritesh R. Sah Vs Dr. Y. L. Yamul and others* (1996) 3 SCC 253 and *Manjit Singh Vs State of Punjab and another*, AIR 1997 Punjab & Haryana 318 to contend that where a candidate is entitled for admission both in the general category as well as the reserved category, then, such candidate, must be accommodated in the general category and not be forced to take admission in the reserved category.

31. Mrs. Agni, learned Senior Advocate appearing for the Goa University also substantially supported the contentions raised on behalf of the Respondents. She submitted that the University is also in favour of supporting the candidature of more meritorious students, which in the present case would be the Respondent Nos.8, 9 and 10 as compared to the Petitioners. She submits that since in the present case, merit has prevailed, extraordinary and equitable jurisdiction may not be exercised in favour of the Petitioners and that too, at the stage where the last date

for completion of admissions, as prescribed by the Medical Council of India has already expired.

32. Mr. Talaulikar, learned counsel for Respondent No.8 points out that the Petitioners have already secured admissions to the BDS course. He points out that the Respondents who have already been admitted to the MBBS course had also secured admissions to some other course, but have now surrendered the said admissions, consequent upon their admissions to the MBBS course. He points out that in these circumstances, it will be grossly inequitable to disturb the admissions, which even otherwise, are in accordance with law.

33. Accordingly, the learned counsel for all the Respondents submit that this petition may be dismissed and the admissions of the Respondents may not be disturbed.

34. The rival contentions now fall for our determination.

35. As noted earlier, though the first round of admissions was technically held on 04.07.2019, admittedly, on this date, there was no consideration towards the increased seats consequent upon the implementation of reservation policy for EWS quota. In fact, in the first round, there was express prohibition from dealing with this aspect, as is clear from the communication dated 01.07.2019 referred to in

paragraphs 8 and 9 of this judgment and order. Thus, the round of admissions which took place on 04.07.2019 was in reality, not the first round at least in so far as the increased seats consequent to the implementation of reservation policy for the EWS quota was concerned. Obviously, for these reasons, in the round which was held on 04.07.2019 neither the Petitioners nor any of the Respondents managed to secure admissions to the first MBBS course in the general category or in the EWS category.

36. The record indicates that clearance from the Ministry of Health and Family Welfare as well as the MCI for increased intake capacity and implementation of reservation policy for EWS quota was obtained a few days before 26.07.2019, which was the date on which the next round of admissions/counselling was scheduled. This is evident from the communication dated 22.07.2019, addressed by the Under Secretary (Health) to the Director of Technical Education and the communication dated 15.07.2019 addressed by the Dean, GMC to the Under Secretary (Health). Therefore, the first round, in so far as the admissions to the increased seats for the purpose of implementation of EWS quota was really held on 26.07.2019.

37. Mr. Desai, learned Senior Advocate for the Petitioners has relied upon MCI regulations of 2018 (Amendment) to submit that by virtue of Entry 66, List I, Schedule VII of the Constitution of India,

such regulations must prevail over any Rules made by the State Government in regard to admission to medical institutions. These regulations, in terms, provide that under any circumstances, the last date for admissions/joining will not be extended beyond 31.08.2019. These regulations also indicate that ineligibility of further counselling arises after the second round of counselling and not after the first round. Therefore, if the round held on 26.07.2019 is regarded as first round for the purpose of admissions to the increased seats for the purpose of implementation of EWS quota, then, there was absolutely no error on the part of the Respondent Nos.1, 2 and 3 in permitting the Respondent Nos.8, 9 and 10 to participate in the next round held on 08.08.2019.

38. According to us, in the peculiar facts and circumstances of the present case, when there has been an increase in seats after the publication of the prospectus and where the reservation policy for the EWS quota was also implemented after the publication of prospectus, the round held on 26.07.2019 is in fact required to be regarded as first round at least in so far as the admissions to the increased seats for the purpose of implementation of EWS quota is concerned. Thus construed, even in terms of the MCI regulations, the Respondent Nos.1, 2 and 3 were entirely justified in permitting the Respondent Nos.8, 9 and 10 to participate in the round held on 08.08.2019 and thereafter admit the Respondent Nos.8, 9 and 10 against the

vacant/increased seats in the general category, on the basis of their relative merit in the general category. Therefore, we cannot detect any violation of the MCI regulations, on the part of Respondent Nos.1, 2 and 3 or we cannot say that the admissions of the Respondent Nos.8, 9 and 10 against the general category is in any manner, in breach of MCI regulations, in the present case.

39. In the present case, we are really not required to go into the reasons which prompted the Respondent Nos.8, 9 and 10 to opt for admissions to the general category, even though, the Respondent Nos.8, 9 and 10 were easily entitled to secure admissions against the reserved EWS quota. The reasons, as pointed out by Mr. Desai are quite irrelevant in such a situation and only question to be determined is whether the admissions are consistent with the Rules in the prospectus and the MCI regulations. However, without taking into consideration such reasons for upholding the admissions of Respondent Nos.8,9 and 10, we note that there was nothing really unreasonable or sinister in the reasons cited by the Respondent Nos.8, 9 and 10 for opting to be admitted in the general category in preference to admission against the EWS quota.

40. The Respondent Nos.8, 9 and 10, it is alleged, had reasoned that there is a challenge pending before the Apex Court in the context of reservation to the EWS quota and therefore would prefer

admissions in general category on the basis of their relative merit. Besides, the Respondent Nos.8,9 and 10 were of the opinion that if they can secure admissions on their own merits in the general category, then, they prefer to be admitted in general category so that some other candidates from the EWS quota can get benefit of the reservation policy. According to us, although this may not be the basis for sustaining the admissions of Respondent Nos.8,9 and 10 in the general category, we cannot say that the aforesaid reasons, allegedly given by the Respondent Nos.8, 9 and 10, smack of any malafides, arbitrariness or sinister motives as were sought to be unfairly attributed to them. These reasons, according to us, were quite legitimate and there was no question of any malafides or malice involved.

41. Rule 4.30 of the Rule of admission as set out in the prospectus reads as follows :

“4.30 (a) An applicant listed in the merit list shall be eligible for all rounds of admission, irrespective of whether he/she has attended / availed admission in the earlier rounds or not. If the candidate has taken admission and cancelled the same for whatsoever reasons, he/she shall forfeit his/her claim for that allotted seat (i.e course and institution) in same/ further rounds of admission.

(b) A candidate once admitted to a particular seat (i.e course and institution) under any category shall not be eligible to seek admission to the same seat (i.e. same course and same institution) again under same/ any other category (for applicants eligible for more than one category), in same / subsequent admission rounds, under vertical mobility. The provision of rule 4.31 (b) shall not apply for the

purpose of taking admission to any seat under Tuition Fee Waiver Scheme, and to candidates belonging to SC, ST and OBC.”

42. In the context of present matter, what is really relevant is Rule 4.30(b). This Rule, in its first part provides that a candidate once admitted to a particular seat under any category shall not be eligible to seek admission to the same seat (i.e. same course and same institution) again under same/ any other category (for applicants eligible for more than one category), in same/subsequent admission rounds, under vertical mobility.

43. The second part of Rule 4.30(b) however provides that the first part will not apply for the purpose of taking admission to any seat under Tuition Fee Waiver Scheme and to candidates belonging to SC, ST and OBC. There is a slight ambiguity in this part of the Rule, inasmuch as it refers to Rule 4.31(b). However, all the learned counsel for the parties substantially agreed that reference to Rule 4.31(b) is virtually an inadvertent typographical error and the correct reference is to Rule 4.30(b) itself. From the context, this position is quite obvious.

44. The main argument of Mr. Desai based upon Rule 4.30(b) is that the exception to the bar against the vertical mobility applies only to seats under the Tuition Fee Waiver Scheme and candidates belonging to SC, ST and OBC. He submits that since there is no reference to “EWS”, the bar of vertical mobility will apply with full force to the

candidates belonging to EWS. He submits that in the present case, the Respondent Nos.1, 2 and 3 have virtually read the expression “EWS” along with the SC, ST and OBC in Rule 4.30(b) which according to him is clearly impermissible and amounts to reading into said Rule something which simply does not exist therein. According to us, the contention of Mr. Desai cannot be accepted for several reasons.

45. In the first place, since his contention is based upon the sacroscancy of the prospectus, Mr. Desai should have explained why the Petitioners do not object to the introduction of reservation for EWS category despite there being no formal amendment to the prospectus permitting the implementation of such reservation policy. In answer, Mr. Desai submits that the implementation of reservation policy in favour of EWS category was in obedience to constitutional mandate or constitutional command in Article 15(6) of the Constitution.

46. Article 15(6) of the Constitution imposes no constitutional mandate or constitutional command. All that Article 15(6) of the Constitution provides that nothing in Article 15 or Article 19(1)(g) or Article 29(2) of the Constitution, shall prevent the State from making any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) of Article 15 in so far as such special provisions relate to their admission to educational institutions including private educational

institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Article 30(1) which in the case of reservation would be in addition to the existing reservations and subject to a maximum of 10% of the total seats in each category.

47. The aforesaid means that the provisions in Article 15(6) of the Constitution are only enabling provisions. They impose no constitutional mandate or command as such to provide for any reservation in favour of EWS. The provisions in Article 15(6) of the Constitution cannot therefore be read or construed as imposing some mandate or command upon the State to provide for reservation to the EWS category. The provisions only do not prevent the State from providing such reservations notwithstanding anything contained in the rest part of Article 15 or Article 19(1)(g) of the Constitution. The provisions in Article 15(6) of the Constitution are therefore, only enabling in nature. Therefore, the contention that Article 15(6) imposes a constitutional command or a constitutional mandate upon the State to provide for reservations to the EWS category, deserves no acceptance.

48. If, according to the Petitioners, there could have been no objection to the State implementing the reservation policy for EWS quota, without formally amending the prospectus or rules in the prospectus, we are really unable to appreciate why the State and its

Agencies were precluded from permitting the vertical mobility to the candidates belonging to EWS quota, alongwith the candidates belonging to SC, ST and OBC quota, merely because there was no formal amendment to the prospectus. In fact we agree with the contention of the learned Advocate General and the other learned counsel for the Respondents that non extension of benefit of vertical mobility, only to the candidates belonging to EWS quota while granting such benefit of vertical mobility to other reserved category candidates belonging to SC, ST and OBC quota, might have introduced an element of arbitrariness and discrimination in the admissions process. From out of the interpretations possible or the courses open to the State, there is nothing wrong in the State adopting an interpretation or a course of action which is consistent with the constitutional norm of equality and non arbitrariness. Therefore, we see nothing wrong in extending benefits of vertical mobility to the candidates belonging to EWS quota along with the candidates belonging to SC, ST and OBC categories, in the peculiar facts and circumstances of the present case.

49. The observations in the case of *Rakesh Ravi* (supra) that the prospectus is sacrosanct when it comes to admissions to educational institutions were made in the context entirely different from the context which arises in the present case. If such observations are to be read in the manner in which Mr. Desai would like us to read the same, then,

there is no answer to the question as to how even the reservation policy for EWS category was implemented in the present case, without there being any formal amendment to the prospectus. The Petitioners stand by the implementation of the reservation policy without any formal amendment in the prospectus, simply because in the absence of such reservation, the Petitioners stand no chance to even claim for any admission to the MBBS course as against the general category seats. Thus, when it comes to implementation of the reservation policy for EWS category without any formal amendment in the prospectus, the Petitioners wish to forget the observations in *Rakesh Ravi* (supra) that the prospectus is what is sacrosanct. However, when it comes to the issue of vertical mobility being granted to the candidates belonging to EWS, the Petitioners insist that the prospectus is sacrosanct and in absence of formal amendment to clause 4.30(b), no vertical mobility ought to have been extended to the EWS candidates. Apart from the fact that the observations in *Rakesh Ravi* (supra) are sought to be read *de hors* the context, such contradictory approach, obviously cannot be countenanced in extraordinary and equitable proceedings under Article 226 of the Constitution of India.

50. The principle in *Ramesh Ram* (Supra) is clearly restricted to the interpretation of service Rules which fell for interpretation in the said case. The principle cannot, by any stretch be extended to admissions in educational institutions. This is quite clear from the

holistic reading of the decision in *Ramesh Ram* (supra).

51. In fact, in *Samta Aandolan Samiti* (supra), which was a case relating to admissions in educational institution, reliance was sought to be placed upon *Ramesh Ram* (supra) and the same, was distinguished by observing that *Ramesh Ram*'s case applies to service matters and not to admission in educational institutions.

52. Similarly, in *Tripurari Sharan* (supra), the aforesaid position was made further clear by reference to the decision in the case of ***Ritesh Sah Vs Dr. Y. L. Yamul and others***, (1996) 3 SCC 25. In *Tripurari Sharan*, the Apex Court noted that the Constitution Bench in *Ramesh Ram* (supra) has made a distinction between two types of selections i.e. selection to medical colleges through a common entrance test, and selection to posts in services through the UPSC examination. The Apex court then proceeded to hold that the Constitution Bench in *Ramesh Ram* (supra) has virtually but impliedly approved *Ritesh Sah* (supra) in so far as the procedures to be adopted in cases of admissions to medical colleges through a common entrance examination is concerned. The Apex Court then concluded that in view of the above, the principles laid down in *Ramesh Ram* (supra) will not be applicable to the cases pertaining the admission to medical colleges. Accordingly, it is very clear that the reliance placed by the Petitioners on *Ramesh Ram* (supra) is quite misplaced.

53. *Ritesh Sah* (supra), *Samta Aandolan Samiti* (supra), *Tripurari Sharan* (supra) support the proposition that the students who are entitled to be admitted on the basis of merit though belonging to the reserved category cannot be considered to be admitted against the seats reserved for reserved category. But at the same time, the provisions should be so made that it will not work out to disadvantage of such candidates and they may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

54. To the same effect are the observations of the Punjab and Haryana High Court in the case of *Manjit Singh* (supra).

55. According to us, the approach of the Respondent Nos.1, 2 and 3 in the present matter is entirely consistent with the law laid down by the Apex Court in the case of *Ritesh Sah* (supra), *Samta Aandolan Samiti* (supra), *Tripurari Sharan* (supra) and *Manjit Singh* (supra). Therefore, we see no good ground to interfere with the action of the Respondent Nos.1, 2 and 3 in the matter of admission of Respondent Nos. 8, 9 and 10 against the general category seats, on the basis of their relative merits, even though the Respondent Nos.8, 9 and 10 may belong to EWS category. Accordingly, there is no good case made out to interfere with the admission of Respondent Nos.8, 9 and 10 in the facts and circumstances of the present case.

56. In *Priya Gupta* (supra) the Apex Court, has held that adherence to the time schedule prescribed for completion of admission by medical colleges is virtually mandatory. The Apex court has in fact reiterated its earlier observations in ***Mridul Dhar Vs Union of India***, (2005) 2 SCC 65. In the context of deviations from the schedule prescribed by MCI for completion of the admission process, the Apex Court has made strong observations in paragraphs 44 and 45 which read as follows :-

“44. The consistent effort of this Court to direct corrective measures and adherence to law is not only being thwarted by motivated action on the part of the authorities concerned, but there has also been a manifold increase in arbitrary admissions. Repeated defaults have resulted in generating more and more litigation with the passage of

time. This Court, thus, now views this matter with greater emphasis on directions that should be made to curb incidents of disobedience.

45. The maxim Boni iudicis est causas litium dirimere places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied stricto sensu and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above- stated principles.”

(emphasis supplied)

57. However, in *Asha* (supra), one of the issues which arose was whether cutoff date of 30th September of relevant academic year, is the date, which admits of any exceptions ?

58. In paragraph 36(b) of *Asha* (supra), the aforesaid question was answered in the following terms:-

“b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September of the relevant academic year [in terms of the

decision of this Court in Priya Gupta (supra)]. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.”

(emphasis supplied)

59. The aforesaid means that the time schedules prescribed by the MCI may be departed only in very rare and exceptional cases of *unequivocal discrimination or arbitrariness or pressing emergency*. The Apex Court has also held that such power may preferably be exercised by the courts and that too in the *rarest of rare cases* and where the *ends of justice would be subverted* or the *process of law would stand frustrated*. Further, the Apex Court has held that even in such a situation, the Court has to be satisfied that the conditions in the case of *Priya Gupta (supra)* and *Asha (supra)* are found to be *unexceptionally satisfied* and the *reasons therefore are recorded* by the court of competent jurisdiction.

60. In the present case, the Petitioners have failed to demonstrate that there has been any error in the approach of the Respondents or that the admissions of Respondent Nos.8, 9 and 10 to the general category are vitiated by arbitrariness or unreasonableness. Even if the Petitioners were able to establish some kind of technical breach (which they were not), considering the expressions used by the Apex Court in paragraph 36(b) of *Asha* (supra), we do not think that this is a case which would warrant deviation from the time schedule prescribed by MCI for completion of admission process. This is certainly not some rare and exceptional case of unequivocal discrimination or arbitrariness or pressing emergency. This is also not some rarest of rare case where the ends of justice would be subverted or the process of law would stand frustrated if the Petitioners are denied admissions after the deadline of 31st August prescribed by the MCI. Therefore, though Mr. Desai may be right in his contention that there is no delay or laches on the part of the Petitioners, this is certainly not a case which warrants any deviation from time schedule prescribed by the MCI, particularly since the Petitioners have even otherwise, failed to make out any good case on merits.

61. In the peculiar facts of the present case, in fact, we are quite satisfied that the view and approach of the Respondent Nos.1, 2 and 3 promotes substantial justice where relative academic merit of Respondent Nos.8,9 and 10 is given preference over technical or at

times, hyper technical considerations raised by the Petitioners. Therefore, we agree with the submission made by Mrs. Agni, the learned Senior Advocate for the Goa University, that this is really not a matter where the constitutional court, exercising extraordinary and equitable jurisdiction, must interfere at the behest of the Petitioners.

62. It is well settled in catena of decisions that the jurisdiction which the High Court exercises under Article 226 of the Constitution is to advance justice and not to thwart it. Therefore, in the exercise of such extraordinary and equitable jurisdiction, the High Court must not be on the look out to merely pick out any error of law through an academic angle or detect some legal flaw with electronic precision, but rather the focus must be on finding out whether injustice is the result of erroneous interpretation of law. The Apex Court has gone to the extent of observing that if justice became the by-product of an erroneous interpretation of law, the High Court, exercising extraordinary and equitable jurisdiction under Article 226 of the Constitution, is not expected to erase such justice in the name of correcting the error of law. The jurisdiction under Article 226 of the Constitution is essentially discretionary, though founded on legal inquiry. In the exercise of such discretionary jurisdiction therefore, it is open to the High Court to either grant or withhold relief in furtherance of the cause of substantial justice. (See *Roshan Deen Vs Preet Lal*, 2002 (1) SCC 100; *State of Maharashtra Vs Prabhu*, 1994 (2) SCC 481; *M. P. Mittal Vs State*

of Haryana, 1984(4) SCC 371; *Shiv Shankar Dal Mills Vs State of Haryana*, 1980 (2) SCC 437).

63. Applying the aforesaid well settled principles to the facts of the present case, we are satisfied that there is no case made out to upset the admissions granted to Respondent Nos.8,9 and 10 or for that matter the Respondent Nos.12, 13 and 14 on the grounds urged by the Petitioners or even otherwise. In this case, the issue of implementation of the reservation policy for EWS quota and the consequent increase in intake capacity arose only after the publication of the prospectus. In this case, the reservation policy for EWS quota was implemented as an executive measure without any formal amendment to the prospectus. In this case, the Respondent Nos.8, 9 and 10 whose admissions, the Petitioners seek to upset, are more meritorious than the Petitioners in the general category itself. In *Ritesh Sah* (supra), *Samta Aandolan Samiti* (supra), *Tripurari Sharan* (supra), the Apex Court has clearly held that candidates who are eligible to be considered both, under general category and reserved category, must be admitted to the general category if their merit positions, so permit. Such candidates cannot be forced to take admissions only to the reserved category against their wishes. If all such considerations, together with others referred to in this judgment and order are taken into account, then, we do not think that the extraordinary and equitable jurisdiction under Article 226 of the Constitution can be exercised to upset the admissions already granted

to Respondent Nos.8, 9 and 10 who are undoubtedly more meritorious than the Petitioners, both in the general category as well as in the reserved category of EWS.

64. Therefore, upon overall consideration of the aforesaid circumstances and for all the reasons indicated by us in our judgment and order, we dismiss this petition.

65. In the facts and circumstances of the present case however, we leave the parties to bear their own costs.

NUTAN D. SARDESSAI, J

M. S. SONAK, J

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