BOMBEY HIGH COURT

Ashwin Prafulla Pimpalwar

Vs.

State of Maharashtra

W.P. No. 2469 of 1990 with W.P. Nos. 1306 and 1652 of 1991

(P.D. Desai, C.J., S.P. Kurdukar and K. Sukumaran, JJ.)

16.09.1991

JUDGMENT

K. Sukumaran, J.

1. A prelude to the cases before the Court : Admissions to Professional Colleges, Medical, Engineering or others generates, regularly and recurringly, an annual spurt of litigation. They raise quite often complex and complicated legal problems. Courts, particularly, the constitutional, have the duty and responsibility to resolve the controversies. This feature was adverted to in a recent judgment by the Apex Court (vide *Dr. Ku. Nilofar Insaf v. State of M.P. and others*[1].

2. The time constraint for rendering the decision is often adverted to by the Courts, for there cannot be a retrieval when the sands of time run off. It would be cruelty of a high order to expose indefinitely the flower of intelligent youth to a distressing situation of disconcerting unpredictability. The rush and hurry required for an expeditious decision, in turn, entails difficulties on part of Counsel, long arguments in Courts and serious consideration by the Judges. When numerous cases come before different Benches of the High Court (as in the present case - Bombay and Nagpur) and when different Benches reach irreconcilably opposite conclusions, the exigency of resolution of conflict arises. This Full Bench had to take up these cases in the above background. *Some General Remarks on Maharashtra Medical Education*

3. The State of Maharashtra has advanced considerably, among others, in the medical education. The Universities of Bombay, Nagpur, Marathwada, Shivaji and Pune are the universities much concerned with the medical education. The Municipal Corporation of Greater Bombay runs three medical colleges in the city of Bombay and many are run by the State itself in Maharashtra. Studies at graduate and post-graduate levels are undertaken by the students in those institutions.

4. Admission to the various courses is necessarily to be regulated by provisions properly brought

about and effectively published. If statutory rules do not occupy the field, executive instructions can do duty for the same. The State of Maharashtra does not have any statutory rules. Executive instructions, however, there are, governing admission to the

[1]1991(5) SLR 60 SC : 1992(1) SCT 169(SC)

various courses including post-graduate courses in Government-run medical colleges. These writ petitions directly concern such instructions termed as Government Resolutions (G.Rs. for short) relating to post-graduate courses in the Government Medical Colleges.

Brief resume of the Rules

5. It is necessary to have a brief resume of the provisions for admission in Government Medical Colleges, in their proper chronology; for as had been said long ago, chronology knows no calumny.

6. The records show that the first of the exercises in the evolution of the provisions for admission started in the year 1971, evidenced by Government Resolution (GR) UD PH and HD No. MCG/2541-Q dated 25.6.1971. It has undergone changes effected by the GRs on 28.9.1983, 7.4.1986 and 10.7.1989 as also by Government Addendum dated 1.8.1989, 9.8.1989 and GRs of 6.1.1990 and 7.1.1991.

7. The material provisions of the various Government Resolutions and the impact on the issues involved in these cases would be adverted to at a later stage. It may, however, be desirable to indicate that the provisions governing admission to the Medical Colleges had been the subject matter of earlier litigations, including one leading to the decision of the Supreme Court (in relation to one of the facets) in *The Greater Bombay Municipal Corporation v. Anjali Deokumar Thukral and others, reported in*[2] The decision mainly dealt with the question whether collegewise institutional preference given to the students of post-graduate courses was constitutionally valid. It was held to be violative of Article 14 of the Constitution of India and consequently invalid. The judgment has no direct impact upon the questions raised in the present petitions. Government had, however, necessarily to reframe the relevant provisions to remove the Constitutional infirmities in the light of that judgment. That was attempted by issuing the GR dated 10.7.1989. Soon thereafter, an Addendum appeared on 1.8.1989. Again a new GR was issued on 6.1.1990. That GR recites that Government received many representations from affected persons about the objectional impact of the new provisions in relation to the process of admissions, and grievances generated in the process. Immediately after a one year period, on 7.1.1991, another GR was also issued.

8. The GRs issued from time to time have been analysed in the various decisions handed down by different Benches, such as in W.P. No. 3519 of 1990 (O.S.), decided by Dudhat, J. on 17.12.1990; in Writ Petition No. 321 of 1991 and connected cases, decided on 15.2.1991 by Sujata Manohar and Patankar, JJ.; in Writ Petition No. 184 of 1991 and others (Nagpur Bench), decided on 15.2.1991 by Deshpande and Wahane, JJ.; and in Review Petition No. 1811 of 1991

and others (Nagpur Bench) decided on 12.4.1991 by S.M. Daud and Wahane, JJ. For the sake of continuity of narration and for highlighting the necessary background of the controversy, we may indicate the salient features of these GRs.

9. Under the 1971 GR, selection to the post-graduate courses was on the basis of marks obtained in the subject concerned at the Final M.B.B.S. University Examination. The specialties in medical subjects such as Surgery, Obstetrics and Gynaecology are referred to therein as illustrative subjects in this context. The aggregate marks secured are

[2] AIR 1989 SC 1194

irrelevant. Details regarding other aspects are not material for the decision of the controversy in these cases, and are, therefore, not given in greater detail. The decisive criterion under the 1971 GR, thus was, to put it loosely, 'the subject marks,' as opposed to the concept of 'aggregate marks.'

10. As indicated earlier, the GR had to be reshaped in the light of the decision in *Anjali Thukral's case*, in so far it became necessary to comply with the Supreme Court verdict. The decision did not comment on the criterion of admission made on the basis on 'subject marks'. The GR of 10.7.1989, was ushered in under those auspices. The institutional preference was done away with. There was, however, a drastic change also in relating to the criterion of selection. The criterion was changed as 'aggregate marks' obtained by the candidates at first, second and final M.B.B.S. examinations. This new provision, however, contained a proviso - proviso to Clause 8(a) - by which possible prejudice to the students seeking admission on the basis of continuity of earlier rules was put off in point of time. Notwithstanding the change in criterion, the 1971 GR was to continue to govern the admission to be effected in July 1989. As for January and July 1990 and 1991 admissions, the aggregate marks in the Final M.B.B.S. is the criterion. For 1992 admissions, the aggregate marks in 2nd and 3rd M.B.B.S Examinations is the criterion. The full effect of the GR was to be operative only from 1993, with the selection criterion fixed as aggregated marks of 1st, 2nd and final M.B.B.S. Examinations. However, those who would have got admission as per GR of 1971 have also been accommodated as regards admissions falling in January and July 1990 and 1991. The candidate so accommodated by way of additional admissions are referred to in the GR as 'left outs'.

11. Within 8 days thereafter, Government changed its mind and brought about an Addendum dated 9.8.1989. The proviso to clause 8(a) was recast. However, there was no change of criterion for admission in July 1989. Aggregate marks of final M.B.B.S. examination continued to be the criterion for the batches of January and July 1990 and January and July 1991. Additional admission of left outs is also provided for. However, as for 1992 selection, there has been a change. In place of the earlier aggregate marks for 2nd and 3rd M.B.B.S. Examinations, the aggregate marks of only the final M.B.B.S. Examination is to be the criterion. As for 1993 admission, the total of 2nd and final M.B.B.S. Examination is to be the criterion. The aggregate marks of 1st, 2nd and final M.B.B.S. Examination form the criterion only from the year 1994

onwards. In other words, the adoption of the criterion of the full complement of aggregate marks for 1st and 2nd as also final M.B.B.S. Examinations has been postponed till 1994.

12. Then came a material change under GR of 6.1.1990. The GR refers to the representations received by Government and the consideration of those with a view to revising the existing rules to remove certain ambiguities and anomalies existing therein. The criterion was kept intact. However, the advantage which had been extended to the 'left outs', was dispensed with. Thus, though the transition from 'subject marks' to 'aggregate marks' was made smooth, the feather bed furnished to the 'left outs.' came to be withdrawn. Those who had relied on that provision had to face a stiff reality of total deprivation of the earlier continued comfort.

13. There was another volte face during the pendency of this Writ Petition. Government issued another GR on 7.1.1991. It reverted to and revived the old criterion of 'subject marks'. This means that the students who secured higher aggregate marks in the final M.B.B.S. Examinations lost the benefit of assured seats. Those who scored higher in the concerned subjects could walk in and occupy the seats. The seats were unavailable to those who obtained lesser marks, inter se, in that particular subject, even when their overall performance excelled the candidates who fared better by the 'subject marks' criterion. Understandably, this too was assailed by the students affected by the change of criterion in writ petitions, being Writ Petition No. 321 of 1991 and others, instituted at Bombay, and in writ petitions, being Writ Petition No. 184 of 1991 and others, instituted at Nagpur. On the constitutional validity of the GR of 7.1.1991, divergent views happened to be taken by the Bombay and Nagpur Benches of this Court. *Essence of the two opposing view points.*

14. The Division Bench at Bombay, which heard and decided the batch of writ petitions (Writ Petition No. 321 of 1991 and others) filed at Bombay, entered the following findings in their judgment :

> (1) There was a uniform criterion of total marks all through from July 1989 up to July 1991. There was, therefore, throughout this period, a clear representation to all students who had appeared for final M.B.B.S. Examination held in October, November and December 1989 in different Universities that the criterion would be aggregate marks in the final M.B.B.S Examination.
> (2) Government had not bothered to consider the consequences of its own rules before framing Government Resolution of 10th July, 1989 or the Addendum of 9th August, 1989. The Government did not estimate the number of additional seats required to give effect to the new rules; they did not get the requisite permission of the Indian Medical Council; nor had they consulted the Universities for permission to create additional seats.
> (3) The realisation of the consequences arose due to the interim orders passed by the Court on 20th January, 1991 directing the Government to comply with the addendum dated 9th August, 1989. The students, who appeared for the final M.B.B.S. Examination

in October-November 1989 and did internship thereafter, were aware that as per the resolution dated 10th July, 1989 they would get admission on the basis of aggregate marks.

(4) Normally the Government would be held as bound by the representation made in the Government Resolutions.

(5) In view of the difficulties pointed out by the State Government in the implementation of the representation regarding creation of additional seats, for left outs, Government was relieved of the obligations of such representation.

(6) The main representation that the criterion for the admission for January 1991 would be on the basis of aggregate marks in the final M.B.B.S. Examination, was binding on the Government. It was not open to the Government to change that basis by Government Resolution dated 7th January, 1991 'long after the students concerned, appeared and passed the final M.B.B.S. Examination.'

(7) The Government Resolution of 7th January, 1991 was a retrograde step and was, therefore, quashed.

15. It is evident that the Division Bench accepted the explanation of the Government by which it almost obliterated the second facet of Government Resolution dated 6th January, 1990 regarding the accommodation afforded to the 'left outs'. Under this judgment, the group belonging to 'aggregate marks' would have, therefore, preference in admission. On the other hand, those who secured higher marks in the subjects concerned would not get admission merely on that account.

The Nagpur View

16. In Writ Petition No. 184 of 1991 and connected cases, the Nagpur Bench reviewed the decisions relating to a change in the admission pattern in educational institutions. The decision in *C. Prabhu v. State of Maharashtra*[3], and *in Arati Bhaskar v. State of Maharashtra*[4] decided on 11.7.1985 were two of the decisions referred to by the Court in the course of its judgment. In the latter case, there were observations that a change of policy of vital nature would require adequate notice and publicity if it operates to the detriment of the students. Stress was laid on the time element for considering the crystallization of rights under the earlier provisions. It was held that the provisions which held the field at the time when they wrote the final M.B.B.S. Examinations in November 1989 could not be altered, depriving them of an access to admission by the enforcement of the new Rules. The Court ultimately directed the State to give admissions on the basis of the Addendum dated 9th August, 1989.

17. Thus, while the Bombay Bench directed admission to be made on the basis of Government Resolution of 1990 and quashed the Government Resolution of 1991, the Division Bench at Nagpur fixed their destiny with reference to the Addendum dated 9th August, 1989, with a positive direction to ignore the Government Resolutions of 1990 and 1991.

18. Dudhat, J. by judgment given on 17th December, 1990 in Writ Petition No. 2317 of 1990 had directed admissions on the subject marks criterion. The decision of the Nagpur Bench rendered by Deshpande and Wahane, JJ. was sought to be reviewed by Civil Application No. 811 of 1991 and others. The Review Petitions were dismissed by the Bench consisting of Daud and Wahane, JJ. by order dated 12th April, 1991. It was in the light of this conflict of views between the Bombay and Nagpur Benches that the reference to Full bench was made by order dated 11th July, 1991.

19. One basic assumption made by both the Benches is that on the basis of promissory estoppel, the State is precluded from altering the provisions. The Full Bench has necessarily to consider the applicability of the principles of promissory estoppel in respect of matters regulating admission to post- graduate courses in medical educational institutions.

20. It was contended before us that Government was precluded from effecting any sudden and swift change on the ground that such a change would offend the principles relating to legitimate expectations. This contention necessitates an examination of the scope and ambit of 'legitimate expectation' doctrine and a finding whether any violation of 'legitimate expectation' could be predicated in these cases.

[3]1986 Mah. LJ 907

[4] Writ Petition No. 1241 of 1985

21. There has been controversy as regards the legal character of the Government Resolutions, in view of the relevance of that aspect on other contentions.

22. As earlier Full Bench of this Court in *V.R. Potdar v. State of Maharashtra*[5], had made some observations about the legal character of the G.Rs dealing with admissions. It may be necessary to explain the observations contained therein.

23. The changes effected by the various GRs issued from 1989 as regards criterion for post-graduate admission were vigorously attacked on the ground of non-application of mind. The contention about the very validity of the amendment altering basically the 1971 criterion on the ground of non- application of mind therefore requires consideration.

24. In the light of the pleading in the case and the contentions urged, the following questions could be formulated for consideration by the Full Bench :

(1) Is the doctrine of promissory estoppel applicable to admissions to post-graduate courses in Medical Colleges ?

(2) Are the impugned GRs invalid on the ground of offending the principle of legitimate expectations ?

(3) What is the legal character of the GRs dealing with admissions to post-graduates courses in the Government Medical Colleges ?

(4) Are the GRs of 1989 and of the subsequent years invalid for non- application of mind?

Question No. 1 : Is the doctrine of promissory estoppel applicable to admissions in post-graduate courses in Medical Colleges ?

25. Time was when the Crown was held to be above Law. That concept was inapplicable to a democratic set up governed by the Constitution. This idea has its embryonic entity in the dissent of Wanchoo, J. in *Director of Rationing v. Corporation of Calcutta*[6], The learned Judge held : "in the conception of the Rule of Law, the State, no less than its citizens and others, is bound by the laws of the land. When the King as the embodiment of all power. ... has disappeared and in our Constitution, sovereign power has been distributed among various organs created thereby' there is neither justification nor necessity for continuing rule of construction based on the royal prerogative ... no one is exempt from the operation of a statute unless the statute expressly grants the exemption or the exemption arises by necessary implication." In the 9-Bench decision the above view of Wanchoo, J. was accepted as the law of the land. (See *Superintendent and Remeberancer of Legal Affairs, W.B. v. Corporation of Calcutta,*[7]*).*

26. The doctrine of promissory estoppel emerged still later. It is unnecessary to trace the developments in that field in England. It will be sufficient for our purpose to note the developments in recent times, which have crystallised into an enduring principle.

27. The first of the series of decisions which enunciated the doctrine is *Union of India v. Anglo-Afghan Agencies*[8], There had been almost steady application of that doctrine in

[5]1982 Mh. LJ 779 [7] AIR 1967 SCC 997

[6] AIR 1960 SC 1355 [8] AIR 1968 SC 718

subsequent decisions, except for transient dissent in *Jit Ram v. State of Haryana*[9], Other decisions that need only be generally alluded to are : *Century Spinning and Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council*[10] and *M/s Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh*[11]. Some later decisions are *The Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd*[12]*.,* and *Express Newspapers Pvt. Ltd. v. Union of India*[13].

28. It is, however, to be noticed that before the operation of the doctrine of estoppel/promissory estoppel, the essential conditions will have to be satisfied. One of the essential requirements is that 'one party by his word or conduct made to the other makes a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future ... having regard to the dealings which have taken place between the parties.' Effecting an export after elaborate organizational arrangements made in that behalf in an Export Promotion Scheme, or setting up a factory on the basis of assurance of exemption from levy of octroi or sales tax and like, are some such examples. The course of dealings constituting the representation unequivocally made in exercise of statutory or executive powers and the alteration of the position acting on the faith of such representation is clearly established in such cases.

29. It is difficult to posit such a situation in relation to a student prosecuting his studies in the

Medical College. He will strive for coming out in the best colours in the ensuring examination. That is irrespective of the availability or otherwise of further educational prospects. If the Government of the day decides for justifiable reasons to discontinue or suspend Post-Graduate Courses in the institutions run by it, no student prosecuting studies in those institutions could legitimately say that he had, by studying in or writing M.B.B.S. Examination from those institutions, altered his condition to his prejudice with the consequent result that the Government is precluded from doing away with the Post-Graduate Study facilities which were obtaining at the time of his admission to or when he was studying for the medical course.

30. Again, it cannot be denied that the Government has the necessary competence and authority to lay down the rules regulating admission to educational institutions run by it. The Government knows best the prevailing conditions, the requirements in relation to the running of the institutions, the conduct of the examinations, the standards to be provided therein and other relevant aspects. No doubt, it could entrust consideration of many of these matters to expert bodies including Universities and be guided by their views. Prospectus giving information about details which have to be adverted to by those seeking admission in such institutions are sometimes issued by the Government periodically, even annually. Admissions are made on the basis of the provisions contained in the Prospectus in force at the time of admissions. See *Principal, King George's Medical College, Lukhnow v. Dr. Vishan Kumar Agarwal and another*[14], Any change made in the Prospectus after the admission is given would not, however, be applicable to admissions already made. This has been considered elaborately by a decision of the Kerala High Court reported in *Verghese v. Director of Medical Education*[15]. A reference has been made in the aforesaid decision to a decision in *Principal, K.G. Medical College v. V.K. Agarwal, (1984)1 SCC 416* (supra).

[9] AIR 1980 SC 1285 [11] AIR 1979 SC 621 [13] AIR 1986 SC 872
[10] AIR 1971 SC 1021 [12] AIR 1983 SC 848 [14](1984)1 SCC page 416
[15]1989 K.L.T. page 673

These decisions necessarily imply that Prospectus issued by the Government is not unalterable on subsequent occasions if circumstances justify the same.

31. The extreme position that a Prospectus once issued by the Government cannot be altered at all at a subsequent stage has not been canvassed by anyone so far. It would not be correct to lay down such an absolute rule. The Government which has the competence to issue rules or regulations, has, as a corollary, powers to amend or alter or even repeal and reissue such rules and regulations.

32. Does the rule of promissory estoppel operate so that the admission rules once issued could not be altered subsequently by the Government? It is assumed in some decisions that a student preparing for the qualifying examination on the basis of the prospectus relating to post-graduate courses prevailing at that particular point of time is entitled to continue to receive benefits or advantages arising therefrom and consequently no change can be made to his prejudice. It is difficult to accept such a broad proposition. Students entering educational institutions with the

ultimate aim of completing their scholastic career at the peak are expected to strive for academic excellence, and accordingly, it cannot be assumed that a student would only look at a GR operating at or about the time when he intensifies the preparation for the qualifying examination and regulating admission to post- graduate courses. Then again, a student is indeed expected to do his best throughout his scholastic career. The heights are reached not by a sudden flight. They are reached by those who toil upwards in the night while their companions slept. (The borrowing from the lines of Longfellow is acknowledged). In a highly competitive examination there is a neck to neck race even among those who spare no pains or time to achieve the coveted goal. Quite often imponderable factors or fortuitous circumstances may affect the fate. Under such circumstances, it would be unrealistic to posit a theory of promissory estoppel based on the elusive concept of the preparation time for the qualifying examination.

33. Again, the time for intensification of preparation for the examination may vary from individual to individual. Could there be different operative norms for the different students? Are the authorities to undertake a hunt for the time of intensification for preparation of the majority of students? The answers could be suggestive of the fragile character of the assumption. Education, viewed from any angle - orient or occident - has a vibrant content. The Indian traditions gave emphasis alike on the teacher and on the student. The teacher's role in maintaining the tempo and discipline of an educational institution had been emphasized by the Supreme Court of America and the House of Lords in England. The changes in concepts and systems which Indian history witnessed from 1816 are impressive by any standards. Advances in science and technology overtook even the quickest of minds. The speedy changes in the field of electronics, with PCs, Xerox and Fax, are almost stunning. They are almost set to jet speed in higher studies and sophisticated science subjects. The medical science is not static but elastic and dynamic, new theories are propounded for diagnosing disease and curing them. New super-specialties are fast coming to the fore. Quick changes require appropriate and immediate adjustments lest there should be a sudden shift in the centre of gravity affecting the very stability of the system. Altered situations need alternations in the rules, in a set up governed by the Rule of Law. In the sphere of higher educations in professional courses, a static and stagnant continuity of Rules once formulated would be totally inappropriate and dangerously counter-productive. A theory of promissory estoppel cannot be countenanced in such situations.

34. The problem may be viewed from another angle. Can it be said that a student, who enters an educational institution, has a vested right to prepare for and write the succeeding higher examinations on the basis of the prevalent rules/directions and to claim advantage and benefits arising therefrom? If so, will a student forfeit such a right due to an accidental circumstance, beyond his control, preventing him from appearing at the qualifying examinations before the change is brought about? The answer would obviously be in the negative. Framing the same question but timing it to a later stage, could a student claim that his prospects of admission to a professional course which he may choose to follow should be governed by the Prospectus in force at the time when he wrote the S.S.C. Examination? Here again, a variety of factors could

affect the further prosecution of studies. If one or some students for some genuine reasons beyond their control are unable to write their examination, the Government in principle may be obliged simultaneously to hold different examinations for different group of students. To hold that till all the students who had appeared for the S.S.C. Examination at a particular time should have the opportunity to secure admission to a professional course on the basis of prospectus in existence when he wrote the S.S.C. Examination would equally be anomalous. The concept of a sort of vested right would be inappropriate in such circumstances.

35. Consider, again, some actualities of life. It may be that the Government may feel that an amendment is needed even after the prospectus is published. Suppose, for example, a diploma or a degree or the study in a particular educational institution is treated as equivalent for the qualification provided in the prospectus. If subsequently the Government receives reliable evidence that the institution is either non-existent or a fraudulent one, cannot the prospectus be amended by deleting the equivalence accorded to such diploma or degree? There cannot be, on principle, any such prohibition for the Government to introduce such a change.

36. At this juncture we may advert to the observations in similar strain in some of the earlier decisions in this topic. In Writ Petition No. 1241 of 1985 decided on 11th July 1985, this Court observed :

> ".... if a change in the system is predicated upon experience gained by the working of the system in the past, no one would come in the way of change and government cannot be faulted for introducing a different norm for regulating admissions ...."

In. *Swati v. The State of Maharashtra*[16] decided on 7th November, 1985, it was observed by a Division Bench of this Court as follows :

> "Even if technically speaking, the rules of admission published in the year are applicable to that particular year, it may not amount to promissory estoppel because they apply to the prospective academic year. But we find without hesitation that in equity, if a rule has been in vogue since many academic years

[16] Writ Petition No. 2065 of 1985 Kum

> consecutively, to change it so as to affect retrospectively would take the case into one of equitable estoppel ....."

37. In *Sandip Y. Shilahar v. State of Maharashtra* [17]another Division Bench of this Court, while dismissing in limine the petition seeking admission to the medical course, observed :

> "The rule is not a rule of eligibility. The rules relate to concession. There is no representation that the rule will not be changed at any time. Further assuming that there was some representation, the petitioner has not changed his position to his prejudice. In view of this, the principle of promissory estoppel cannot apply to such a position."

We agree and endorse the views so expressed.

38. These and other cases were referred to in *Charudatta v. State of Maharashtra*[18], The Division Bench observed :

> "The view of this Court has been consistently that the rules amount to representation and no contrary view has been taken by the learned Judges in the above order."

We are unable to agree with the learned Judges' appreciation of the earlier cases or with that general assertion, either on principle or on precedent.

39. In a decision of the Gujarat High Court in *Kumari Jayashree Chandrachud Dixit v. State*[19], which was rendered by one of us (P.D. Desai, C.J. Desai, J. as he then was), many factors which have a bearing in regulating the admission to professional courses were considered. The following extract from the decision will parade the prominent among the principles laid down therein :

> "Now, it might be clarified at the outset that though the State Government has every right to frame rules regulating admission to Government Colleges based on certain rational policy and to amend them, if occasion arises to remove any defect or lacuna, it would be always desirable to formulate and finalise such rules with precision well in advance and to make the rule relating to admission known to the intending applicants at a point of time reasonably anterior to the last date of admission. In a society governed by the rule of law, certain basic principle must be observed. One of such principles is that enactments or orders governing public rights and duties must be open and adequately published and that they should be relatively stable. If such an enactment or order is to guide the people, they must be able to find out what it is and it would not be changed too often. An ambiguous, vague, obscure or imprecise enactment or order is likely to misguide or confuse those who are to be guided by it and too frequent changes would make it well-nigh difficult, if not impossible, for the people to make long-term planning and decisions unpredicatble and such a decision is the anti-thesis of a decision taken in accordance with the rule of law . This principle would govern the framing of Rules

[17] Writ Petition No. 3042 of 1985 [19](1979)XX Guj. LR 614

[18]1986 Mh. L.J. 907

> for admission to the Government Medical Colleges because those institutions are run out of public funds and the Government in framing its policy in regard to the admission to those Colleges must act with some predictability. Frequent changes made in the rules are likely to introduce uncertainty and, as experience has shown, result in plethora of litigation. The State Government would be well-advised, therefore, to consider all the relevant questions relating to its policy in the matter of admission to Government Colleges well in advance of the start of the academic year and to formulate rules based on

such policy and made such rules known to the intending applicants by giving to it suitable publicity. No departure should ordinarily be make once such rules are published unless for compelling reasons it is necessary to do so in order to meet exigencies of the situation ... it would be desirable for the State Government to give to these rules some permanency after taking into account all relevant facts and circumstances. Besides, it would be desirable to get the rules examined by an independent Committee of experts which might consist not only of government officials but also outsiders such as the Deans of the Medical Feculty of the Universities and representatives of the Indian Medical Council. Once such rules are framed, they should ordinarily be not amenable to change straightway by exercise of executive powers. Any such amendment, even in necessary, should only be made in consultation with such Committee. It would also be desirable to have the rules examined by the Legal Department of the State government in order to ensure against possible litigation as also to cast them in suitable precise verbal formula so that interpretation of the rules on account of unhappy or equivocal expression does not raise problems not only for the students but also for the Court ...."

The principles mentioned above have our full approval. The manner in which a change in the Rules granting admission to professional courses has to be brought about, with extreme circumspection and adequate notice to the persons seeking admission to the Court, had been stressed therein.

40. In the light of the above discussion, we have no hesitation to hold that the doctrine of promissory estopple would not have application in relation to admission to post-graduate courses for higher specialised studies in Medical Colleges run by or under the control of Government.

Question No. 2 : Are the impugned GRs. invalid on the ground of offending the principle of legitimate expectations ?

41. The doctrine of legitimate expectations has been increasingly invoked in recent times in England and in India. It may appear strange in the Indian setting with its priceless philosophy : 'Do the duty; seek not the fruits' that such a concept has relevance. However, such philosophical values have no place when a citizen seeks legal remedy to enforce his legal rights.

42. Those who evolved the concept were cautious enough to contain it within controllable limits. An expectation is not just another wish, the content and character of which is illustrated by the aphorism starting with the words : "If wishes were horses." Some may have 'Great Expectations', as demonstrated by the title of the fiction by that great literary man, well learned in law as well - Charles Dickens. The collecation of 'legitimate expectation' is pregnant with meaning. Expectations, therefore, should be legitimate.

43. Theoretical aspects of that concept have been highlighted by legal academics and in some recent decisions. Professor H.W.R. Wade in his classic treatise on Administrative Law (Sixth

Edition) has extracted at pages 520-521 the following passage from the speech of Lord Bridge in Re Westminister CC, (1986) AC 668 at 692 :

> "The Courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation."

The learned author also referred to the decision of the Privy Council in *Attorney-General of Hong Kong v. Ng. Yuen Shiu*[20], in which it was held that : "when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implemetnation does not interfere with its statutory duty." At page 522, the learned author observed :

"Legitimate expectation,' which means reasonable expectation, can equally well be invoked in many situations where fairness and good administration justify the right to be heard. There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the license or other benefit which is being sought. But the result is the same in either case : absence of legitimate expectation will absolve the public authority from affording a hearing."

At page 423, the learned author pointed out :

> "Inconsistency of policy may also amount to an abuse of discretion, particularly when undertakings or statements of intent are disregarded unfairly or contrary to the citizen's legitimate expectation."

44. One of the recent decisions on the topic is that of the European Economic Community court in *R. V. Ministry of Agriculture, Fisheries and Food,* (1991)1 All England Reporter 41 at page 68. Recently, this Court also had occasion to discuss the principle, and apply it, against the Reserve Bank of India. (See *Det Norske Veritas v. Reserve Bank of India*[21], The discussions therein are illuminative.

45. Is that principle attracted, having regard to the factual aspects and the circumstances available here? We have indicated earlier, while discussing the doctrine of promissory estoppel, some of the peculiar features of academic pursuits. They are not to be equated with commercial activities or trade dealings, which raise questions of immediate and easily exigible profits and other advantages. In particular, prosecuting a post-graduate professional course could not be linked with a narrow and selfish desire for promotion of private interest. The very concept of a profession is the anti- thesis of activities of of lesser calibre. Merely because of a promulgation of a particular rule or order by the Government authorities, a student, particularly aspiring for a post-graduate degree, and that too in a professional course, cannot with grace or legal force

contend that he could

[20](1983)2 AC 629

[21]1989 Mh. LJ. 107

have a legitimate expectation in the continuity of that advantage or benefit arising from the order which held the field at a particular time despite an overriding or even a reasonable need of change. When viewed from the point of view of the duty of a Government to effect appropriate changes, whether it be in the matter of legislation, pure and simple, or in relation to its executive instructions, if and when circumstances warrant the same, such a restriction would be to make societies stagnant and the Government non-functional.

46. There is yet another reason for us to discountenance the applicability of the legitimate expectation theory to the current situation. We have elsewhere come to the conclusion that the orders of 1989 and the subsequent ones, are invalid in law for reasons such as non-application of mind. No citizen can then found a claim of legitimate expectation on such a fragile phenomenon or unsubstantial facade.

47. On an evaluation of the totality of circumstances, such as the nature of the persons involing the theory, the character and content of the rights claimed, and the larger aspects and repercussions having impact on matters of public life, we are of the view that the impugned Government order cannot be annulled as offending the theory of 'legitimate expectation'.

Question No. 3 : What is the legal character of the G.Rs. dealing with admissions to post-graduate courses in the Government Medical colleges ?

48. The legal character of an instrument issued by the Government has sometimes, presented difficulties to Courts. The position which obtains now is not as obscure, as in earlier times. An illustration in earlier case is that of the Full Bench in *Chandrakant Sakharam Karkhanis v. State of Maharashtra*[22], In sharp contrast is the conclusion reached about another set of Circulars in *Conservator of Forests, Yavatmal Circle v. Shamrao Ramkrushna Deshmukh*[23],

49. In the present case, the G.Rs. cannot be traced to any statute at all. The preamble loudly proclaims that the G.Rs. have been issued in exercise of Article 166 of the Constitution. Neither the form nor the formalities give the slightest indication about their being statutory rules.

50. The difference between administrative instructions on the one hand and statutory rules on the other had been established by a catena of decisions of the Supreme Court starting from *Abdulla Rowther v. S.T.A. Tribunal*[24], *Kumari Regina v. A.H.E. School*[25], *J.R. Raghupathy v. State of A.P*[26].,

51. The true import of these rulings was presumably not properly or effectively brought to the notice of the Full Bench of this Court when it heard and decided the case in *V.R. Potdar v. State of Maharashtra*[27], and observed :

"... rules governing admission to the Government Medical Colleges run at the public expense can by no stretch of imagination be held to be mere guidelines or

[22]AIR 1977 Bom 193 [24] AIR 1959 SC 896 [26] AIR 1988 SC 1681
[23]1990 Mh. LJ 702 [25] AIR 1971 SC 1920 [27]1982 Mh.L.J. 779

executive instructions ... these rules cannot be held to be mere guidelines or having no statutory force."

The conclusion in that case about the extant rules relating to medical admission being conformed to by the Government is impecable. That, however, is not for the reasons that executive orders or administrative instructions get transmuted to the position of statutory rules.

52. It has been well established by now that administrative instructions can also confer rights or impose duties. That was how the Supreme Court observed in *Anglo-Afghan Agencies* (supra) that the Government was bound by the representation in Export Promotion Scheme even if the Scheme is exectuive in character. The Government was bound to follow faithfully the norms prescribed by it, even if they are adminstrative instructions or executive orders. The aspect has been emphasised again in *Sukhdev Singh v. Bhagatram*[28],Mark those words of Mathew, J. : "Even assuming that the regulations have no force of law ..."

Question No. 4 : Are the G.Rs. of 1989 and of the subsequent years invalid for non-application of mind ?

53. We now proceed to consider the last of the questions - Whether the impugned G.Rs. are invalid for non-application of mind ?

54. At the outset, it is to be noted that the 'subject marks rule' held the field from 1971 onwards. Switching off to 'aggregate marks' would, no doubt, be permissible if the Government had adverted to the relevent materials and come to the proper conlusion on that aspect. We are aware that in the region of policy, it is only for the Government to consider the various matters and take a decision Courts do not ordinarily have any role in the decision taking process. The recent pronouncements of the Supreme Court make the position abundantly clear. (See *M/s Shri Sitaram Sugar Co. Ltd. v. Union of India*[29], Reference may also be made to the earlier decisions in *The State of Maharashtra v. Lok Shikshan Sanstha*[30], *Bennett Coleman and Co. Ltd. v. Union of India*[31], *K. Nagaraj v. State of Andhra Pradesh*[32], and *Asif Hameed v. State of J and K*[33],

55. That in relation to policy matters the Courts would not ordinarily interfere with the Government decision does not, however, mean that the Government can act arbitrarily. That would be totally destructive of the Rule of Law and the Constitutional Scheme and the peculiar position of the Government in a constitutional set up. Arbitrary decisions would be inconsistent with Article 14 of the Constitution. The minimum that is, therefore, necessary is adverting to the relevant material, eschewing all irrelevant considerations and a proper exercise of mind. More serious thought process is required, and clearer indication of application of mind is mandated,

when the change is striking, and the impact is massive, affecting a considerable segment of the society or an important aspect of life. In the present case, therefore, a change should have been, as indicated in the Gujarat case, preceded by views expressed by expert bodies like Medical Council, competent authorities like the University, or suggestions and views of a committee or a commission

[28]1975(1) SLR 605 : 1975 SLWR 207 SC
[29] AIR 1990 SC 1277
[30](1971)2 SCC 410
[31] AIR 1973 SC 106
[32]1985(2) SLR 337
[33]1989(3) SLR 735

appointed in that behalf, and the like.

56. The learned Advocate-General furnished to us materials which, in his submission, had furnished the background material for effecting the changes. Some of the Government files were made available to us for perusal. The documents were not produced along with a proper counter-affidavit by a competent person. Even then, we considered these materials as furnished on behalf of the State. We, however, have to express our firm opinion that the materials do not indicate the necessary application of mind needed for bringing about such sweeping changes as had been made by the 1989 G.R. We indicate below the materials and information gatherable from the papers presented for our perusal.

57. On 24th March, 1987, the Director of Medical Education informed the Government that he has constituted a Committee to frame rules for admission to the post-graduate courses. It is stated : "The Committee has discussed number of points which they came across at the time of admissions". The draft rules submitted by the Committee were forwarded to the Government along with the letter. No report as such of the Committee is seen in the files. There is no indication at all of the reasons for bringing about a change in the criterion. The minimum thought process required to bring about a drastic change in the criterion are not reflected anywhere, either in the notes or delibrations of the Committee or the views expressed in the Directorate of Medical Education. We looked in vain to trace the source of this idea of change, in the materials made available to us by the learned Advocate-General.

58. The situation is not different even when matters reached the Mantralaya. The draft of the proposed new Rules is seen to have been submitted along with a note dated 31st May, 1989. The new Rules, it is stated, were submitted by the Joint Director, Medical Education and Research. The significant sentence in that note reads :

> "The rules now proposed are in no way different from the rules proposed earlier in principle but are worded slightly differently."

In the note of the Principal Secretary, there is are ference to a representation made by the Maharashtra Association of Resident Doctors. However, the is no advertence to any aspect concerning a change of criterion from "subject marks" to "aggregate marks".

59. The materials do not indicate that any such facts or views were available to, or the needed exercises undertaken before the Government at the time when it altered the 1971 rules in 1989.

60. The files produced only indicate some casual observations about a change in relation to criteria for Post-Graduate admission. The preamble of G.R. of 1989 refers to the Supreme Court decision in Anjali Thukral's case as a reason for issue of the new Government Resolution. That case did not have any bearing at all in relation to the change in criteria for Post-Graduate admissions.

61. There is no material at all to show that the Government had, at the highest level, considered these matters in all its aspects. The learned Advocate General placed before us the Rules of Business which would permit the Secretary to issue such revised rules. Having regard to the substantial change it had effected and the importance which the issue involved, the change of view at the level of the Government would have merited a consideration at the higher levels of the Cabinet or at least that of the Ministers concerned. That too has been absent.

62. In the light of the above discussion, we are clearly of the view that the necessary application of mind and consideration of materials required in such a situation is totally absent in the present case. On that basis, the Government Resolution of 1989 is liable to be declared as invalid.

63. The further changes of 1990 and 1991 appear also to be linked with directive from Courts in the then prevalent situations. Those orders also will have the vice of absence of a proper application of mind needed for a drastic change of an endurable character in relation to an important administrative aspect. They too are therefore liable to be declared as invalid.

64. We may, in this context, make it clear that the Government has certainly the freedom to evolve new rules in a manner it considers best to suit the candidates seeking post-graduate medical education and the requirements of the institutions which are to undertake that work, in the light of the guidelines indicated in paragraph 39 (supra). Till such time as a valid decision is made by the Government effecting the necessary change in the system, the rules of 1971 will have to hold field. We declare so.

65. The decision as above which we have reached cannot certainly affect the rights of such of those petitions who had in their favour a final and binding decision from the Nagpur Bench of the court in Writ Petition No. 184 of 1991. Nor will it adversely affect those who had already secured admission and prosecuted for a comparatively long period their serious studies in a post-graduate professional course. The judgment will not in any way disturb the rights, if any, acquired by them under the aforesaid judgment. The Government was a party to the judgment. It has become final. The review petition has also been dismissed. Those who derived benefits under a judgment inter parts are entitled to retain them. They cannot be scuttled by a side wind as it were, by the pronouncement of the Full Bench in these cases, subsequently made.

OPERATIVE PORTION OF THE JUDGMENT

K. Sukumaran, J.

66. For the foregoing reasons, we dispose of the writ petitions by the following final order :

(1) The selection of candidates for admission to the post-graduate medical courses in colleges run by or under the control of the State Government shall be regulated in accordance with the prescription in that behalf contained in the Rules for the Selection of Candidates for Admission to the Post-Graduate Course notified vide Government resolution UDPH & HD No. MCG/2571/24516-Q dated 25th June, 1971, subject to the deletion of institutional preference provided under Rule 5 which has been declared unconstitutional by the Supreme Court in *Greater Bombay Municipal Corporation v. Thukral Anjali*[34],

(2) Accordingly, the grant of admission to the Writ petitioner(s) in each of the Writ Petitions, namely, Writ Petition No. 2469 of 1990, Writ Petition No. 1306 of 1991 and Writ Petition No., 1652 of 1991, in the post-graduate medical course in the respective subjects will be regulated by the Government Resolution UDPH & HD No. MCG/2571/24516-Q dated 25th June 1971, subject to the deletion aforesaid and subject also to what follows :

(i) In Writ Petition No. 1306 of 1991 and Writ Petition No. 1652 of 1991 other point(s) are involved and, therefore, the said cases will be placed before the Division Bench for final hearing and disposal in accordance with law and in light of the directions aforesaid.

(ii) The directions hereinabove given will not affect the admissions already granted to the Writ Petitioners in Writ Petition No. 321 of 1991 and companion matters, decided by Smt. Sujata Manohar and P.S. Patankar, JJ. on 15th February, 1991, or the rights acquired by the Writ Petitioners in writ petition No. 184 of 1991 and companion matters decided by Deshpande and Wahane, JJ. on 15th February, 1991.

(3) The parties are directed to bear their own costs.

Order accordingly.

[34] AIR 1989 SC 1194