

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 6284 of 2022**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PATEL YASH CHANDRAKANTBHAI S/O PATEL CHANDRAKANTBHAI  
 ISHWARBHAI  
 Versus  
 ADMISSION COMMITTEE FOR PROFESSIONAL UNDERGRADUATE  
 MEDICAL COURSES

Appearance:  
 MR UDIT N VYAS(9255) for the Petitioner(s) No. 1  
 MR. KM ANTANI(6547) for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 01/04/2022**

**ORAL JUDGMENT**

1. Heard learned advocate Mr. Udit N. Vyas for the petitioner and learned advocate Mr. K.M. Antani for the respondent.

2. Rule returnable forthwith. Learned advocate Mr. K. M. Antani waives service of notice of rule on behalf of the respondent.

3. By this writ petition under Article 226 of the Constitution of India the petitioner has prayed for the following reliefs:

"[a] That this Hon'ble Court be pleased to issue a writ of mandamus and or any other appropriate writ, order, or direction, declaring the Petitioner as eligible for being admitted to MBBS course on a Management Quota Seat as a candidate belonging to Socially and Economically Backward Class and thereupon, be pleased to direct the Respondent Committee to grant admission to the Petitioner in MBBS course on a Management Quota Seat in an institute of his choice in the order of merit;

[b] That pending admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to direct the Respondent Committee to grant admission to the Petitioner in MBBS course on a Management Quota Seat in an institute of his choice in the order of merit as a student belonging to Socially and Economically Backward Class, on such terms and conditions that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case; and

[c] That this Hon'ble Court be pleased to pass such other and further relief as the nature and circumstances of the case demand."

4. The brief facts of the case are that the petitioner who belongs to the Socially and Educationally Backward Class (SEBC) secured

48.8% in Higher Secondary Class (HSC) -12<sup>th</sup> Standard and therefore was eligible to be included in the merit list as per Rule 10 of the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 [for short 'the Rules, 2017'] read with Rule 4.

4.1) It is not in dispute that the petitioner has secured 86.987 percentile i.e. 394 marks out of 720 marks in the National Eligibility Cum Entrance Test [NEET] conducted for the academic year 2021-2022.

4.2) It is the case of the petitioner that as per the merit list prepared by the respondent - Admission Committee under the Rules 2017, the name of the petitioner appears at Serial No. 6958 in General Merit List and at Serial No. 2374 in SEBC merit list as declared on 16.01.2022.

4.3) The petitioner therefore, applied on the designated portal of the respondent- Admission Committee as per the prescribed procedure for being allotted a seat in the MBBS Course or any other professional medical course as per the merit list. The petitioner completed on-line choice filling formalities for the First Round of counselling on 29.01.2022.

4.4) Result of the First Round of counselling was declared on 01.02.2022 wherein the petitioner was allotted C.D. Pachchigar College of Homeopathic Medicine and Hospital, Surat on Government quota (SEBC Category).

4.5) It is the case of the petitioner that the petitioner had also preferred for being admitted on a Management Quota seat available at Zydus Medical college and Hospital, Dahod for MBBS course in priority to C.D. Pachchigar College of Homeopathic Medicine and Hospital, Surat on Government quota (SEBC Category). It is pointed out by the petitioner that as per the provisional allotment list published by the respondent Committee, the last candidate to be admitted on Management Quota seat at the Zydus Medical College and Hospital, Dahod for MBBS course had secured 392 marks at NEET 2021 and was at Serial No.7052 in the General Merit list as against the petitioner who has secured 394 marks in NEET 2021 and the petitioner was at serial no. 6958 in General merit list.

4.6) The petitioner has therefore preferred this petition with the prayer that the petitioner ought to have been allotted Management quota seat at Zydus Medical college and Hospital, Dahod for MBBS course as the request and prayer made by the petitioner before the respondent-Committee was negatived. The

respondent - Admission Committee denied the admission to the petitioner on Management quota on the ground that the petitioner did not secure 50% marks in 12<sup>th</sup> standard and therefore, the petitioner is not eligible for being admitted to Management quota seat for medical course.

5. Learned advocate Mr. Udit Vyas for the petitioner submitted that the Rules 2017 have been formulated for the admission to the medical courses wherein Rule 4 provides for eligibility for admission and Sub-rule(5) of Rule 4 prescribes minimum qualifying standard for MBBS, BDS, BAMS, BHMS BNAT courses. It was pointed out that for Management seats, the minimum qualifying standard for HSC or equivalent examination passed with Physics, Chemistry and Biology-theory and practical is same as for the Government seats and the minimum qualifying standard for Government seats for MBBS, BDS and BAMS, courses is 50% marks in HSC or equivalent examination for General category, 45% in General PH category 40% in Reserved category for SC, ST and SEBC including physically disabled category. It was further pointed out that by Amendment Rules 2020 also, the minimum qualifying criteria in Rule 4 is not changed for Management quota seats. However, by the Amendment of 2020, the criteria which is applicable to the Government quota and Management seat is also made applicable to NRI

seats which was earlier prescribing 50% minimum marks in the HSC for being qualified as the minimum qualification for admission in NRI seats.

5.1) It was therefore submitted that once the name of the petitioner appears in the merit list as per Rule 10 read with Rule 4 of the Rules 2017, the respondent - Admission Committee cannot deny the admission to the petitioner in Management quota on the ground that the petitioner secured less than 50% marks in HSC - 12<sup>th</sup> standard applying the criteria for Open General category, though the petitioner belongs to SEBC category.

5.2) It was therefore, prayed that respondent- Admission Committee be directed to consider the case of the petitioner for allotment of MBBS seat in the Management quota considering the merit of the petitioner in the merit list.

6. On the other hand, learned advocate Mr. K.M. Antani appearing for the respondent- Admission Committee submitted that if the interpretation as made by the petitioner is accepted, the Management quota seats which does not bifurcate between Open category and reserved category would result into creating reservation in the Management quota. It was submitted that as per

Rules 2017, in Management quota there is no reservation for SC,ST and SEBC quota.

6.1) It was therefore, submitted that the petitioner is rightly not considered for admission in the Management quota MBBS seat as the petitioner has secured less than 50% marks in 12<sup>th</sup> standard.

6.2) Learned advocate Mr. Antani submitted that there is an uniform practise adopted by the Admission Committee not to consider the students securing less than 50% marks for Management quota and therefore, the case of the petitioner has not been considered. Learned advocate Mr. Antani also referred to the reply given by the Admission Committee to the petitioner whereby it is informed to the petitioner that as the petitioner has less than 50% marks in the 12<sup>th</sup> standard and hence, the petitioner is not eligible for Management quota seat of medical college.

6.3) It was submitted that Rule 4 of Rules, 2017 cannot be interpreted in the manner the petitioner has interpreted because Rule 4 prescribes minimum qualifying standard for the admission in MBBS and other medical courses as it refers to the minimum qualifying standard for three categories i.e. for the Government seats, Management seats and NRI seats. It was submitted

that so far as Management seats are concerned for all candidates the same criteria as per the Government seats is prescribed meaning thereby that the Government seats prescribes 50% passing criteria in HSC or equivalent examination and relaxation given to the persons with disabilities or any other economically weaker section category or reserved category cannot be read into the criteria applicable for Management seats. It was therefore, submitted that the for the Management seats for all candidates, the same criteria as per the Government seats would mean the criteria applicable to General/EWS category i.e. minimum 50% marks in HSC or equivalent examination of 12<sup>th</sup> Standard would apply.

6.4) It was submitted that admittedly the petitioner has secured less than 50% marks in the 12<sup>th</sup> standard, the petitioner cannot be considered for admission for Management quota on the same criteria as that of the Government criteria because the Management quota does not bifurcate between Open category and Reserved category seats.

6.5) Learned advocate Mr. Antani in support of his submissions relied upon the following averments made in the affidavit in reply filed on behalf of the respondent :



"1. I say and submit that the present affidavit is being filled to oppose the present petition and grant of any relief much less an interim relief. I most respectfully state that I have gone through the contents of the petition and am not dealing the same parawise. I humbly urge, that save and except what has been stated hereunder, nothing be construed as an admission on the part of the deponent or any other State Respondent. I reserve my right to file any further, other and/or additional affidavit if, as and when so deemed necessary.

2. The petitioner in the captioned petition has assailed non grant of admission on Management Quota seat at Zydus Medical College and Hospital, Dahod for want of minimum eligibility required under Rule 4 (5) (a) of the Gujarat Professional Medical Institutions (Regulation of Admission) Rules, 2017 [referred to hereinafter as *the Rules, 2017 for the sake of brevity*].

Pertinently, it is the case of the petitioner, that the same having fulfilled the eligibility prescribed under Rule 4 (1)-(3), having secured 48.88% aggregate in concerned subject and having secured 392 marks at NEET 2021, was comprised in the merit list. It is his further case that as per his

category merit no. he was offered CD Pachchigar College of Homeopathic Medicine and Hospital at Surat, however since amongst his choice was also Zydus Medical College and Hospital at Dahod, he desired admission at the said college on a Management Quota Seat.

3. It is most respectfully submitted that the following facts deserve the consideration of this Hon'ble Court.

3.1 The Gujarat Professional Medical Educational Colleges or Institutions (Regulation of admission and Fixation of Fees), Act, 2007, (referred to hereinafter as the Act) was enacted *inter alia* to regulate admissions to Professional Medical Educational Colleges or Institutions of Gujarat. Through section 3 thereof it prescribed as under:

**SECTION 3: Admission in professional educational colleges or institutions**

(1) Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any court or any authority or in any agreement, all the admissions to the professional courses in the professional educational colleges or institutions shall be made in accordance with the provisions of this Act.

(2) Any admission made in contravention of the provisions of this Act shall be invalid.

3.2 Through Section 20 (1), the Act prescribed as under:

**SECTION 20: Power of State Government to make rules**

*(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*

3.3 It is in exercise of powers under Section 20 of the Act that the Rules, 2017 were promulgated on 23.06.2017. A copy of the extant Rules is annexed hereto and marked as **ANNEXURE R1.**

3.4 The Schedule of admission was notified and accordingly the 2 rounds of counselling were also held where the petitioner offered his choices. A copy of the schedule of admission is annexed hereto and marked as **ANNEXURE R2.**

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3.5 Rule 4 (5) of the Rules, 2017, are relevant for the purposes of adjudication of the dispute at hand and therefore it is emphasized that among interalia the other eligibility conditions 50% is required at HSC

in the concerned subject & NEET for Open category and 40% (at both levels of qualification i.e. NEET & HSC) is required for SEBC category (to which the petitioner belongs) for Government Quota Seats.

For Management quota, the rule prescribes the same thresholds as are applicable to Government Quota seats. At this stage however, it is to be understood, that by no stretch of imagination can the prescription made in the rule be so interpreted as to make applicable reservation and the attendant relaxations for reserved category in qualifying criteria to be applicable to Management Quota.

3.6 The petitioner, having secured 48.88% at HSC (which was above the minimum threshold of 40% for SEBC category) and having secured 394 (also above the minimum threshold for SEBC) at NEET became eligible for being comprised in the Merit List for admission.

At this stage it deserves to be noted that the petitioner's

inclusion in the merit list of admission could not be precluded since the same was fulfilling the minimum thresholds applicable to a SEBC category candidate, however his mere inclusion in the merit list based upon his meeting of thresholds applicable to SEBC category, cannot be understood as his eligibility for availing admission on Management Quota which have a different threshold applicable (sans the relaxations applicable to the reserved category).

3.7 Based upon the choices made by the petitioner in the counselling and his merit ranking the petitioner was offered institutes, a copy of the list of which is annexed hereto and marked as **ANNEXURE R3**.

3.8 The petitioner despite the institute(s) available based on merit to the same on Government Quota desired admission on Management Quota and particularly at Zydus Medical College and Hospital, Dahod, which was amongst the choices offered by the

petitioner.

3.9 Since the petitioner was not meeting the minimum threshold required at HSC (of 50%) applicable for Management Quota, the petitioner was denied admission in the Management Quota at Zydus Medical College and Hospital, Dahod.

4. The above facts when considered in the backdrop of law and the settled position thereof would indicate the following:

4.1 The petitioner's interpretation of Rule 4 (5) of the Rules, would not be tenable in law in as much as such interpretation of the Rules would tantamount to grant of relaxation to reserved category candidates on Management Quota seats, where private/self-finance institutes would have functional autonomy. Not only would such interpretation be unconstitutional (since constitution does not mandate private institutions to extend benefits to reserved

category candidates) but that the same would also be against the settled position of law (which saves the functional autonomy of self-finance insitutions barring the regulatory safeguards made applicable to them by judicial pronouncements. Thus, it cannot be understood that the minimum threshold of 40% (a relaxation of 10% over Open Category) applicable on Government Quota for SEBC candidates would also be applicable to Management Quota.

4.2 The parity being sought by the petitioner with students securing a lesser score than his/her own at NEET being offered admission at Zydu Medical College and Hospital, Dahod is also misconceived since amongst the 3 candidates highlighted at Page 32 of the Petition i.e. Bamrotiya Siddharth Nileshkumar (SEBC), Khushi Singh (OPEN) and Margin Mode (OPEN), none have less than 50% at HSC. A copy of the HSC marksheet of all the three candidates are annexed hereto and marked

as ANNEXURE R4, ANNEXURE R5 and ANNEXURE R6.

5. It is submitted that thus for the facts, circumstances and the position of law enumerated in the preceding paragraphs and for the arguments and contentions that may be adopted at the time of hearing of the present petition, it is humbly stated that the present petition is bereft of merits and therefore deserves to be dismissed in limine."

7. Having heard the learned advocates for the respective parties and having gone through the relevant rules of 2017, it appears that the respondent no.1- Admission Committee has misinterpreted Rule 4 and Rule 10 of the Rules 2017. Therefore, it would be germane to refer to the said Rules. Rule 4 of the Rules 2017 reads as under :

"4. Eligibility for Admission

A candidate who desires admission shall

(1) be a citizen of India:

Provided that a candidate whose parents are origin of India, and do not hold Indian citizenship and have applied for Indian citizenship, shall produce the proof of submission of such application to the Admission Committee before the date of counseling. Such candidates shall be



admitted provisionally subject to submission of the certificate of their having acquired the Indian citizenship on or before 31<sup>st</sup> July of next year, failing which their provisional admission shall be treated as cancelled without any notice

Provided further that candidates seeking admission on Non-Resident Indian seat shall be Non-Resident Indian or children or wards of a Non-Resident Indian.

(2) have completed 17 years of age on the 31<sup>st</sup> December of the Academic Year for which the admissions are being conducted:

(3) have passed the 10<sup>th</sup> and 12<sup>th</sup> qualifying examination with "B-group" or "AB-group" from

(i) The Gujarat Board; or

(ii) The Central Board of Secondary Education provided that the school in which the candidate has studied, is located in the State of Gujarat: or

(iii) The Council of Indian School Certificate Examinations Board, New Delhi, provided that the school in which the candidate has studied, is located in the State of Gujarat:

Provided that a candidate seeking admission on Non-Resident Indian seat must have passed the qualifying examination from anywhere with Physics, Chemistry and Biology.

(4) have qualified in NEET conducted in current academic year in case of MBBS, BDS, BAMS, BHMS, BNAT;

(5) Minimum qualifying standard for admission : No candidate shall be admitted in the professional medical educational courses unless he fulfills the eligibility

criteria including the minimum qualifying percentage/percentile as follows,

A. Minimum qualifying standard for MBBS, BDS, BAMS, BHMS BNAT Courses : Eligibility criteria in HSC examination and NEET of current academic years.

(a) For Government Seats

Course	Exam	General Category	Gen-PH category	Reserved (SC, ST, SEBC including Physically disabled categories)
MBBS, BDS and BAMS	HSC or Equivalent examination passed with Physics, Chemistry and Biology Theory and Practical in percentage	50%	45%	40%
BHMS & BNAT	HSC or Equivalent examination passed with Physics, Chemistry and Biology Theory and Practical	Pass	Pass	Pass
NEET	qualifying Percentile of the current academic year	50	45	40

(b) For Management seats:

Exam	All candidates
HSC or Equivalent examination passed with Physics, Chemistry and Biology Theory and Practical	Same criteria as for the Government seats

NEET qualifying Percentile (As per criteria laid down by the Government of India)

(C) For NRI Seats

Course	Exam	All candidates
MBBS, BDS, BAMS	HSC or Equivalent examination (Physics, Chemistry and Biology Theory and Practical) in percentage	50%
BHMS, BNAT	HSC or Equivalent examination passed with physics, chemistry and Biology theory and Practical	Pass
NEET qualifying Percentile (As per criteria laid down by the Government of India)		

B. Minimum qualifying standard for Other Courses:

(a) For Government Seats;

Courses	Exam	General Category	Gen-Physically Category	Reserved (SC, ST, SEBC including Physically disabled) Categories
Bsc Nursing	HSC or Equivalent examination passed with Physics, Chemistry and Biology Theory and Practical and English in percentage	45%	45%	40%
BPT, BOP, BO,	HSC or Equivalent	Pass		

BASLP	examination passed with Physics, Chemistry and Biology-Theory and Practical	
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(b) For Management and NRI seats:-

Courses	Exam	All candidates
Bsc Nursing	HSC or Equivalent examination passed with Physics, Chemistry and Biology Theory and Practical and English in percentage	45%
BPT, BOP, BO, BASLP	HSC or Equivalent examination passed with Physics, Chemistry and Biology-Theory and Practical	Pass

(6) (a) Sons and daughters of All India Services Officers viz. Indian Administrative Service, Indian Police Service, Indian Forest Service etc. allotted to the Gujarat State and serving outside the Gujarat State on deputation, and

(b) Sons and daughters of Gujarat Government Employees, who have been posted outside the Gujarat State for the administrative reasons,

shall be treated at par with the candidates under sub-rule (1) provided they have passed the qualifying examination from the respective State Board and obtained qualifying marks under clause A and B of sub-rule (5) of rule 4. In such cases, his candidature shall be included in the Gujarat Board merit list referred to in clause (a)

of sub-rule (2) of rule 11. If such a candidate has passed the qualifying examination from the Central Board of Secondary Education or the Council of Indian School Certificate Examinations, New Delhi, his candidature shall be included in the merit list of respective Board referred to in clause (b) of said sub-rule (2) of rule 11

Notwithstanding anything contained in these rules, he will be eligible for management seat irrespective of the fact that such candidate has passed qualifying examination from a school located in the State or outside the State of Gujarat.

(7) A candidate who has,

(i) Studied under Jawahar Navodaya Vidyalaya Scheme up to Standard VIII in any of the schools located in the State of Gujarat, and

(ii) thereafter studied in any of the schools located outside the State of Gujarat under the said scheme, and

(iii) passed qualifying examination from a Navodaya Vidyalaya located outside Gujarat State and

(iv) have qualified in the NEET, conducted in the current academic year and obtained marks under clause A of sub-rule (5) of rule 4 shall be eligible for admission and his candidature shall be included in the merit list of MBBS, BDS, BAMS, BHMS and BNAT courses as under clause (a) of Rule 11 and for other Courses in the merit list of Central Board as prescribed in clause (b) of rule 11.

Explanation "Jawahar Navodaya Vidyalaya Scheme" means the Jawahar Navodava Vidyalava Scheme started during the year 1985-86 by the Government of India in accordance with

the National Policy of Education and managed by Navodaya Vidyalaya Samiti, an autonomous organization under the department of Education, Ministry of Human Resource Development.

(8) A candidate who has passed the qualifying examination after appearing in the supplementary examination conducted by the Board shall not be eligible for admission in the current academic year.

(9) A candidate who has secured admission under these rules in any year shall not be eligible for further admission to any course until the period within which he might have completed the course in which he has secured admission.

#### **5 Reservation of Seats: ,**

(1) Fifteen percent (15%) of total seats for admissions in each Government Medical and Dental College shall be reserved for candidates of All India Quota who are allotted for admission by the Director General of Health Services, Government of India, New Delhi

(2) After deduction of the seats referred to in sub-rule (1), the remaining available Government seats shall be reserved for the candidate of Gujarat origin and falling under the following categories, namely:

(a) Scheduled Castes : 7%

(b) Scheduled Tribes 15%

(c) Socially and Educationally Backward Classes: 27%

Explanation - The reservation of the seats shall not be applicable for those who have migrated from other States.

(3) Ten percent seats of total available Government seats in the Nursing Colleges shall be reserved for male candidates.

(4) A candidate seeking admission on reserved seat shall be required to produce 8 Certificate of Caste from which he originates:

Provided that the candidate belonging to Socially and Educationally Backward Class shall be required to produce a certificate to the effect of non-inclusion in Creamy Layer in addition to the caste certificate.

(5) No caste certificate shall be valid unless it is duly signed, stamped, and issued by the authority empowered by the State Government.

(6) No certificate regarding non-inclusion in Creamy Layer shall be valid unless it is duly Stamped, signed and issued by the authority empowered by the Government of Gujarat. The validity of such Certificate shall be as per the prevailing policy of the Government.

(7) If a candidate fails to submit the certificates as required under sub-rule (4) within the Stipulated time, his candidature shall be considered for admission under unreserved category.

(8) If a candidate of reserved category gets admission on unreserved seat in order of merit, he may be given admission on the unreserved seat according to his preference.

(9) The admission of a candidate of a reserved category on a reserved seat shall be valid subject to the verification of caste certificate by the authority empowered by the State Government in this behalf. In case the caste certificate is found invalid on verification, he shall not have right to claim his admission on reserved seat and if he has been already granted admission, such

admission shall be cancelled.

(10) After granting admission to all the candidates of reserved categories on reserved Seats, the reserved Category seats remaining vacant shall be transferred to the unreserved category seats,

**(6) Reservation for Physically Disabled:**

Three per cent of the available seats in Government and Grant-in-aid institution in each category shall be reserved, for loco-motor disabled candidates of the respective category provided that a candidate having "loco-motor disability of lower limbs between 50% to 70% (upper limbs being normal)" shall be eligible to apply for admission in accordance with the guideline/regulations of the Council, provided the candidate shall require to produce the certificate obtained in the proforma prescribed in the application form. The certificate shall be obtained from the Medical Board constituted for this purpose by the State Government. The Certificate shall contain extent of disability and suitability of such candidate for undertaking the course. If any seat remains vacant, the second preference shall be given to a candidate having loco-motor disability of lower limbs between 40% to less than 50%.

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The admission on aforesaid reserved seats shall be subject to the furnishing of certificate duly issued by competent authority empowered by the State Government in this behalf."

8. Rule 4 was amended by the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) (Amendment) Rules 2020 as under :



"4. In the said rules, in rule 4,

(a) for sub-rule (4), the following sub-rule shall be substituted, namely:

"(4) have qualified in NEET conducted in current academic year in case of Professional Medical Educational Courses;"

(b) for sub-rule (5), the following sub-rule shall be substituted, namely:

"(5) No candidate shall be admitted in the Professional Medical Educational Courses in Government Seats, Management Seats and NRI seats unless he possesses minimum qualifying standard in HSC examination and NEET of current academic year, as may be determined by the respective Council / the Central Government and fulfills other eligibility criteria under these rules.

Minimum qualifying standard for Professional Medical Educational Courses: Eligibility criteria in HSC examination and NEET of current academic year.

(a) For Government Seats

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

(b) For Management seats:

Exam	All candidates
HSC or Equivalent examination (Physics, Chemistry and Biology/Biotechnology Theory and Practical) in percentage	Same criteria as for the Government seats
NEET qualifying Percentile (As per criteria laid down by the Government of India)	

(C) For NRI Seats

Exam	All candidates
HSC or Equivalent examination (Physics, Chemistry and Biology/ Biotechnology Theory and Practical) in percentage	Same criteria as for the Government Seats.
NEET qualifying Percentile (As per criteria laid down by the Government of India)	

9. Rule 10 of the Rules 2017 reads as under :

"10. Preparation of Merit List for admission:

The merit list of the candidates who have applied for admission in the prescribed form within the prescribed time limit and who are found eligible for admission under these rules shall be prepared in the following manner, namely :

(1) For MBBS, BDS, BAMS, BHMS and BNAT courses:

(a) Merit list shall be prepared on the basis of All India Overall rank of the candidates who found eligible in NEET of current academic year

(b) A separate list of minority students seeking admission in the respective minority

institution in order of merit shall be prepared by the Admission Committee. The minority status of the candidate shall be checked /verified by the Competent Authority of the college. The minority quota seats, if any, in institution run by minorities will be filled up by minority students only.

(2) For other courses:

(a) (i) In case of candidates who have passed qualifying examination from the Gujarat Board (marks as given in Board mark-sheet, i.e. total marks obtained in the four semesters will be taken as total marks) or Central Board or ISCE Board, marks obtained in theory of the Physics, Biology and Chemistry subjects after converting it into 100, shall be the merit marks.

In case of candidates who have passed standard 12th qualifying examination from the Gujarat Board on or before March, 2013 marks obtained in theory of the Physics, Biology and Chemistry subjects after converting it into 100 ie percentage in theory marks of Physics, Biology and Chemistry subjects, shall be the merit marks.

(ii) The candidates who have passed qualifying examination from central Board including JNV or, as the case may be, the Council of Indian School Certificate Examinations, New Delhi, marks obtained in theory of the Physics, Biology and Chemistry subjects after converting it to 100, shall be the merit marks:

Provided that seat distribution between different boards shall be as under.

The available government seats shall be distributed between candidates or the Gujarat Board and other Boards on pro-rata

basis, taking into consideration the number of candidates passed from the Gujarat Board, Central Boards and the Council of Indian School Certificate Examinations, New Delhi in the relevant academic year:

Provided that where any seat remains vacant in the category of Central Board or, as the case may be, the Council of Indian School Certificate Examinations, New Delhi, the same shall be filled in from the candidates of merit list of Gujarat Board.

(b) The Admission Committee shall prepare and publish different merit lists as follows, namely:

(i) The first merit list shall include the candidates who have passed the qualifying examination from the Gujarat Board. Merit list of reserved category candidates shall be prepared separately; and

(ii) The second merit list shall consist of merit list of the candidates who have passed the qualifying examination from the Central Board; New Delhi. Merit list of reserved category candidates shall be prepared separately.

(iii) The Third merit list shall consist of merit list of the candidates who have passed the qualifying examination from the Council of Indian School Certificate Examinations, New Delhi. Merit list of reserved category candidates shall be prepared separately.

(c) The criteria for deciding merit order in case of candidates having equal merit marks shall be in the following sequence, namely:

(i) The candidate who has obtained higher grand total in the mark sheet.

(ii) The candidate who obtained higher marks in theory subject of Biology in qualifying

examination

(iii) The candidate who obtained higher marks in theory subject of Chemistry in qualifying examination

(iv) The candidate who obtained higher marks in theory subject of Physics in qualifying examination

(v) The candidate who obtained higher marks in English subject in qualifying examination.

(vi) The candidate who obtained higher grand total in Secondary School Certificate Examination (Standard 10), and

(vii) Date of Birth (Candidate who is older in age shall be given priority)"

10. Similarly Rule 11 of the Rules 2017 provides for admission procedure and reads as under :

"11. Admission Procedure.

Admission shall be given online in the following manner:

(i) The admission committee shall prepare merit lists under rule 10 for the eligible candidates who have applied under rule 8.

(ii) The merit lists shall be displayed on the web-site of the Admission Committee and by such other means, as the Committee may consider convenient.

(iii) The Admission Committee shall publish the schedule of online counseling programme on its web-site, by advertisement in the prominent newspapers widely circulated in the State, and by such other means, as it may consider necessary.

(iv) The candidate shall be required to indicate his order of choices of courses and colleges of institutions, online. Allotment of seats shall be made on the basis of merit, category of the candidate and availability of seats. The allotment of seats shall be published on the web-site of the committee. The candidates are required to obtain the print out of the information letter and bank fee receipt copies from the web-site.

(v) The candidate shall be required to pay such fee as determined by the Fee Regulatory Committee. The admission allotted to the candidate shall be **confirmed** on payment of tuition fees of the concerned college. In case, the candidate fails to pay the tuition fees within the prescribed time limit, the admission offered to him shall be treated as **cancelled**. Such candidate shall not be eligible to get admission in the same course in the same institute in the successive rounds of counseling.

(vi) The candidate belonging to reserved category may be allowed to get admission on unreserved seat as per his merit number in the unreserved category. The admission shall be granted to such candidate in unreserved category, only if he is eligible to get admission, in the higher **order** of preference of courses than that in the reserved category.

(vii) The candidate seeking admission to the professional medical educational course shall require to produce a Certificate of Physical fitness to undergo such course in the prescribed form obtained from a registered medical practitioner along with the undertaking. The candidate shall submit the certificate to the Dean/Principal of the **respective** college or institution, at the time of joining where he has been offered admission. The admission of a candidate shall be confirmed subject to the production of certificate of his physical fitness.

(viii) In case, where considerable number of seats fall vacant, and it appears to the Admission Committee to fill the vacant seats, it may conduct the admission process for readjustment (reshuffling). The candidate can reshuffle seats/ choice options during process of readjustment (reshuffling). In such readjustment (reshuffling) of seats, the candidate who opts to participate in reshuffling process, shall be considered for such admission. The candidate may either give option for upgradation of choices already given or submit new choices. The candidates shall not be offered admission on the seats available to him in previous allotment process. If the candidate gets admission on the basis of upgradation or new choice, then his earlier admission shall be treated as cancelled.

ix In case of contingencies the Committee may decide such mode of admission as it may deem fit."

11. On perusal of the above Rules it is apparent that eligibility for admission as prescribed in Rule 4 and more particularly, sub-rule(5) of Rule 4 of Rules 2017 stipulates minimum qualifying standard for MBBS and other professional courses which is bifurcated in three categories, Government seats, Management seats and NRI seats.

12. As per the amendment Rules, 2020 criteria prescribed for Government seats are to be applied to all candidates of management seats and NRI seats. Prior to amendment, for NRI seats, minimum qualifying standard was of 50% in the HSC i.e. 12<sup>th</sup> Standard for MBBS,

BDS and BAMS courses. By the amendment of Rule 2020, the same criteria is applied as per the government seats for all candidates to NRI seats also. Thus, on harmonious reading of the sub-rule (5) of Rule 4 of the Rules, 2017, minimum qualifying standard for government seats for all three categories i.e. general category, general PWD category and reserved category would also be applicable for the management seats as well as the NRI seats for the academic year 2021-22.

13. Rule 10 of the Rules, 2017 provides for preparation of merit list for admission. Clause (a) of sub-rule(1) of Rule 10 of the Rules, 2017 provides for merit list to be prepared on the basis of All India Overall Rank of the candidates who are found eligible in NEET of current academic year whereas clause (b) provides for separate list of minority students seeking admission in respective minority institution. Sub-rule (2) of Rule 10 provides of other courses. Sub-clause(b) of sub-rule (2) of Rule 10 of the Rules, 2017 provides that the Admission Committee shall prepare and publish different merit list for the candidates who have passed the qualifying examination in Gujarat Board being the first merit list, second merit list of the candidates who have passed the



qualifying examination for Central Board and a third merit list shall consist of the candidates who have passed qualifying examination from the Counsel of Indian School Certificate Examination whereas clause (c) of sub-rule 2 of Rule 10 provides for the criteria for deciding the merit order in case of candidates having equal merit marks. Thus, Rule 10 of Rules 2017 provides a detailed procedure as to how the merit list is to be prepared by the Admission Committee which will govern the admission procedure as prescribed in Rule 11 of the Rules, 2017. Once the petitioner's name is included in the merit list prepared as per the Rule 4 of the Rules 2017, then the Admission Committee could not have refused to consider the petitioner for admission to Management Quota seat again applying the criteria of passing 12<sup>th</sup> standard with minimum 50% marks which is not prescribed in sub-rule (5) of Rule 4 of Rules, 2017. It appears that the Admission Committee is reading something more than what is prescribed in Rules by denying the admission to the petitioner on the ground that for admission to the management quota of MBBS seat as the petitioner has not secured 50% marks, he cannot be considered ignoring sub-rule (5) of Rule 4 of Rules, 2017. The minimum qualifying standard for the MBBS and other courses as prescribed in sub-rule (5)

of Rule 4 of rules 2017 clearly states that for all candidates same criteria as applicable to Government seat is to be applied for management seats and NRI seats, meaning thereby that criteria prescribed for government seats in general category, general PWD category and reserved category would apply *mutatis mutandis* to the management quota and NRI quota also. The Admission Committee has therefore committed an error for not considering the case of the petitioner for management quota though the serial number of the petitioner is higher in the merit list than other students.

14. In view of the foregoing reasons, the petition is allowed. The impugned action of the respondent-Admission Committee for not considering the case of the petitioner for management quota on the ground that the petitioner did not secure 50% marks in 12<sup>th</sup> standard is not tenable in law. The respondent-Admission Committee is therefore directed to consider the case of the petitioner for management quota seats for MBBS course applying the same criteria as per the government seats as per sub-rule (5) of Rule 4 of Rules, 2017. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service today is permitted.

15. At this juncture, learned advocate Mr. Antani prays for stay of implementation of this order. However, the request was vehemently objected by learned advocate Mr. Vyas as the choice filling option would be over on 4<sup>th</sup> April, 2022 and the seat allocation would be over on 5<sup>th</sup> April, 2022 relying upon the advertisement for third round issued by the respondent-Admission Committee for the said purpose.

16. In view of the above, prayer for stay of this order cannot be accepted and the hence, the same is rejected.

JYOTI V. JANI

**(BHARGAV D. KARIA, J)**