

HIGH COURT OF GUJARAT (D.B.)**AMIT M PANCHAL****Versus
STATE****Date of Decision:** 19 January 2001**Citation:** 2001 LawSuit(Guj) 41**Hon'ble Judges:** [B C Patel](#), [Ravi R Tripathi](#)**Case Type:** Special Civil Application**Case No:** 6419 of 2000**Acts Referred:**[Medical Council Act, 1956 Sec 33](#)**Final Decision:** Petition allowed**Advocates:** [Suresh N Shelat](#), [Arun D Oza](#), [Kamal B Trivedi](#), [Dhaval C Dave](#), [Biren A Vaishnav](#), [Ashok C Gandhi](#), [Kalpesh Zaveri](#), [Mitul K Shelat](#), [C G Sharma](#), [K J Brahmbhatt](#), [S P Hasurkar](#), [P K Jani](#), [Nagesh Sud](#), [Ramnandan Singh](#), [R C Jani](#), [Harshad J Shah](#)**Cases Referred in (+): 13**

[1] In response to the public advertisement as per the order passed by the Court earlier several parties appeared before the court. Learned Additional Advocate General, Learned Government pleader and counsel for other institutes / colleges appeared before the Court. Learned counsel appearing for all the parties considering the nature of the matter and urgency requested the court to take up the matter for final disposal. Hence Rule. Accordingly the matter was heard for final disposal.

[2] This petition is filed under Article 226 of the Constitution of India as Public Interest Litigation, for seeking various directions as under :

(A) To direct the respondents to admit the students to the Non Resident Indian (hereinafter referred to as 'NRI') seats in the Professional Courses i.e. medicine, dentistry, pharmacy, physiotherapy, engineering, technical education including computer science, information technology and other Professional Courses in the State of Gujarat strictly according to Regulations.

(B) To direct the respondents to give admission as per the law laid down by the Apex Court in the case of Unni Krishnan J.P. & Ors. V. State of Andhra Pradesh & Ors., reported in (1993) 1 SCC 645.

(C) To quash and set aside the admissions granted to the students who were admitted to the various courses not on the basis of principle of merit but by depriving more meritorious students, and to direct the State Government to have centralised admission procedure for providing admissions to bright and meritorious students seeking admissions on NRI seats.

(D) To quash and set aside the letter dated 13/06/2000 at Annexure - D which is contrary to the Regulation and to direct the respondents to act in consonance with Regulations 2(i), 4 and 7(3)(iii) of the University Grants Commission (Regulation of Admission and Fees in Private Non-aided Professional Institutions) Regulations, 1997 (hereinafter referred to as the "Regulations").

(E) To direct the management / institute / college not to carry forward the NRI seats remaining vacant in the next year and further that the backlog seats of the previous academic year not to be carried forward to the subsequent year and not to grant admission on such vacant seats and to charge the fees from students who are not NRIs strictly as per the Regulations.

[3] The petition was filed in month of July, 2000. Various orders came to be passed by this Court from time to time. By an order dated 5/10/2000, this Court directed the State to issue Public Notice under Order-1, Rule-8 of the Code of Civil Procedure, 1908, on or before 10/10/2000 inviting attention of Public at large to the present proceedings. The Learned Government Pleader informed the court that the Public Notice has been published by the State on 8th, 9th and 10th of October, 2000, in English and Gujarati newspapers having wide circulation in the State of Gujarat. Thereafter, notices were issued to the University Grants Commission (For short referred as "UGC"), All India Council for Technical Education (for short referred as Council for Technical Education) and Medical Council of India (For short referred as "MCI") at the request of the State and the Court also issued notice to all Managements / Colleges / Institutes.

[4] On 19/10/2000, this Court passed the following order :

"All the Managements / Colleges / Institutes concerned in the matter shall place before this Court on or before 8/11/2000 the complete details of the applications received from students seeking admissions to the NRI category seats along with the proof of their being genuine NRIs and the marks obtained by them for getting admission to the First Year in the Professional Courses in the State of Gujarat. They

shall also produce the complete details of the students purporting to be NRIs and to whom admissions were given by the Managements / Colleges / Institutes on the NRI seats in the Professional Courses in pursuance of the Applications received from students seeking admission to the NRI category seats for the Academic Year 2000 - 2001 along with the details of fees charged by such Managements / Colleges / Institutes."

[5] This Court passed the following order on 27/11/2000;

"Despite the Public Notice and an intimation given by letter dated 13/11/2000 by the State Government, the concerned Managements / Colleges / Institutes have not bothered to appear before the Court and have not filed any information as required by the order dated 19th October, 2000, a copy of which was sent along with the aforesaid letter dated 13/11/2000."

[6] Mr. A. D. Oza, Learned Government Pleader and Mr. Shelat, Learned Additional Advocate General appearing for the State and University respectively, stated that two or three Managements / Colleges / Institutes have forwarded some information by post to them, however, it was pointed out to them that the material ought to have been placed before the Court by the each institute on affidavit. The registry was directed to issue process to the following Managements / Colleges / Institutes mentioned in the list dated 9th November, 2000 submitted by the petitioner, calling upon them to appear in person either through the Principal or Director or Managing Trustee, and to submit the details on oath as required under order dated 19/10/2000. No. 5 M. K. Shah Dental College, Waghodia, Vadodara, No. 6 R. C. Gandhi Dental College, Vadodara, No. 7 V. S. Hospital Physiotherapy College, V. S. Hospital, Ellisbridge, Ahmedabad. No. 8 Co-operative Bank Physiotherapy College, Anand, No. 11 Sarvajnik College of Engineering and Technology, Surat No. 12 V. V. P. Engineering College, Rajkot, No. 14 Shri Sad Vidhya Mandir Institute of Technology, Bharuch, No. 18 C. K. Pithawala College of Engineering Technology, Surat, No. 19 Sakalchand Patel College of Engineering , Visnagar, Mehsana, No. 20 Dharamsinh Desai Institute of Technology, Nadiad, No. 21 Shri M. M. Gopani Polytechnic Institute, Kinara Taluka Ranpur, Dist. Ahmedabad. No. 24 Vivekanand Institute of Hotel and Tourism Management, Rajkot, No. 25 K. B. Institute of Pharmacy Education and Research, Gandhinagar, No. 27 Anand Pharmacy College, Anand, No. 28 Sarvajnik College of Pharmacy, Mehsana, No. 29 Shri B. M. college of Pharmacy, Vapi, No. 30 Royal College of Pharmacy, Vapi, No. 31 Maliba Pharmacy College, Bardoli, and No. 32 Sanskar Kelavani Trust, Pipalia, Waghodia, Baroda.

[7] The Court also directed that the officer who is responsible to the Institute shall personally remain present before the Court. The Court was required to pass this order

as despite the public notice and the letter written by the Government, these Managements / Colleges / Institutes did not remain present before the Court. The Managements / Colleges / Institutes which appeared were also directed to comply with the directions issued on 19/10/2000 within a period of one week from the date of passing the order.

[8] The Court further directed that the process shall be served by the office of the Government Pleader and for enabling the office of the government pleader to comply with the order, the court directed the Registry to hand over the process to the office of the Government Pleader within 24 hours. The Court adjourned the proceedings to 6th December, 2000 with a direction to continue the interim relief granted earlier.

[9] On 13th December, 2000, the Court passed an order pointing out that the orders, affidavits are not filed by some respondents. In the matter of education, when the Court gives direction, it becomes bounden duty of the concerned respondents to place on record all necessary details. Adverse inference can be drawn, and for non compliance of the order, appropriate proceedings can be initiated. Some of the Advocates having Affidavits ready with them without paging requested for time. As a last opportunity, Court adjourned the matter to the next date.

[10] Some of the respondents have appeared through their respective counsel and have filed affidavits and some of them have produced the details as required. Some of the Managements / Colleges / Institutes appeared and also filed their affidavits along with certain details. On behalf of the State, one S. C. Snehi, Secretary Education Department (Higher and Technical Education) Gujarat has filed an affidavit on 11/10/2000. Mr. Arvind Agarwal, Commissioner of Higher Education, Gujarat State filed an affidavit on 17/10/2000, Mr. D. T. Kapadia, In - charge Director of Technical Education, Gujarat State also filed an affidavit. One M. P. Jadia, Registrar, Gujarat University has filed an affidavit. 29 Managements / Colleges / Institutes filed their Affidavits in pursuance of the order dated 19th October, 2000.

[11] We heard the petitioner, learned Additional Advocate General, learned Government Pleader appearing for the State of Gujarat and learned advocates appearing for other parties for the Managements / Colleges / Institutes.

[12] The petitioner, appearing as party in person raised the contentions :

(A) The respondents have granted admissions contrary to the principles laid down by the Apex Court. Commercialization of education cannot be permitted under any circumstances. Admissions to NRI seats in the State of Gujarat led to commercialization of education.

(B) The respondents while granting admissions on NRI seats to the professional courses ought to have followed the principles laid down by the Apex Court in Unni Krishnan's case (Supra). The principles laid down by the Apex Court are required to be followed by the respondents and other Colleges / Managements / Institutes while granting admissions to Students on the NRI seats. With a view to eliminate discretion which can be exercised by the management arbitrarily a direction is required to be given to have admissions through an independent committee. The levy of capitation fees is not permissible under the Regulations. Mr. Panchal drew our attention to paragraphs - 195, 196, 205 to 212 and 223 in Unni Krishnan's case (Supra) in support of his submissions.

(C) In the State of Gujarat in professional courses the central admission committee (hereinafter referred to as "committee") grants admissions to students either on free seats or on payment seats. This committee is formed for the purpose of granting admissions in all professional courses and that is the only competent body authorised to grant admission to the students in professional courses after the results of the 12th Standard Examinations conducted by the Gujarat Higher Secondary Education Board are declared. The Committee prepares the Merit List of the students - both for Free Seats and Payment Seats, and admissions are granted in the order of merit. However, in the case of NRI Seats the University has by letters dated 13th and 20th June, 2000 (Annexure D & E) informed the concerned Managements / Colleges / Institutes that as per the decision taken by the University, the NRI / NRI Sponsored / Indian Citizen Category Seats are to be filled by the affiliated Colleges / Managements / Institutes and these Seats are not to be filled by the Centralised Admission System. The University has also by the said letters permitted every college / institute to admit the students not only up to the maximum percentage of the sanctioned intake capacity of the institution, but also on the carried forward seats of the previous year. The Managements / Colleges / Institutes thus were permitted to admit students more than the sanctioned strength of the current academic year. This was contrary to the statutory regulation and hence, not permissible. Principle of merit was given go by and by exercising their discretion arbitrarily by charging fees for admission at a much higher rate and contrary to the Regulations the University permitted commercialisation and the State has not taken action in the matter. This has resulted in gross injustice to the meritorious students.

(D) The managements of colleges and Institutes failed in their duties in selecting meritorious students and concentrated only in collection of fees on the ground of running the institutes. Most of the Managements / Colleges / Institutes did not give proper publicity of the available seats to the students and without publishing an

Advertisement / Public Notice in the newspaper admitted the students in the category of NRI seats. Without public advertisement, it cannot be said that all students were given a fair chance to compete and to get admission in the professional course of their choice and in the order of merit. Even in payment seats on the basis of merits students are admitted and there was no reason why the same criteria should not be applied while granting admissions to students on the NRI seats. By not following the principle of merits while granting admissions the same has resulted in discrimination and the act of management was thus contrary to the principle of merit laid down in Unni Krishnan's Case (supra). The University authorised the managements of the Institutes to grant admissions. The University did not prescribe any procedure to be followed while granting admissions so as to indicate that there was transparency and there was no exercise of arbitrary discretion in granting admissions. If a committee is constituted similar to that which is constituted by the Government while granting admissions to students on free seats or on payment seats, is authorised to scan admission forms and to grant admissions on merits the management of the Institute is not going to suffer as the students admitted on such seats are going to pay the fees as prescribed. This would not cause any heart burning to the students as merits will be seen while granting admissions. In most Managements / colleges / Institutes, on perusal of record, it is revealed that a very small percentage of genuine NRI students were admitted. [Except in case of one Institute, we did not find any publicity given in the newspaper published abroad so as to invite genuine NRI students.] In absence of the genuine NRI students admissions were granted to the students on the NRI seats can not be permitted. Students admitted are found to be less meritorious and others were not offered even. It was submitted that admissions to professional courses must be according to the merits and any admission granted to the professional courses to a student who is ranking much below must be deprecated. The method adopted by the Institute for granting admissions was discriminatory and violative of Article 14 of the Constitution of India. The petitioner submitted that it must be struck down.

(E) The State of Gujarat and the University be directed to constitute a committee consisting of the representative of the State, the University and representative of affiliated colleges or Institutes imparting education for admitting students on NRI seats. A request was made to the Court, directing the University and the State of Gujarat for central admissions system so that after reading the advertisement that may be published by the committee, the student may apply to the committee by showing his preference for courses and that would make task easy for the students, the Institutes and the concerned University. By this system, it will not be necessary for the students to submit applications in various Institutes. It will be for this

committee to invite applications immediately after the results of 12th Standard examinations conducted by the Gujarat Higher Secondary Education Board are declared. A suggestion was made that well in advance for students seeking admissions to NRI seats in professional courses, public advertisement should be given in various newspapers in the State of Gujarat as well as in the newspapers published in foreign countries where large number of non resident Indians are residing. The Public Notice should also contain all information i.e. the Professional Courses, the number of NRI seats available, the names of the Managements / Colleges / Institutes having NRI seats, their location and the fees chargeable by each College / Institute together with the minimum eligibility conditions for the said Courses, the method and procedure of admission (whether by entrance test or otherwise) and other relevant particulars. The committee should be constituted forthwith by the State Government and Universities which shall only call for applications and grant admissions on all the NRI seats available in the Managements / Colleges / Institutes in the State of Gujarat.

Necessary procedure as may be required for the purpose should be adopted by the said Committee. All costs and expenses of the Committee for carrying out the object of admission on NRI seats in the State of Gujarat should be borne by the Managements / Colleges / Institutes, the State and the University.

(F) The action of the respondent No.2, vide its letter dated 13/06/2000 at Annexure - D to the petition, in adding "NRI Sponsored / Indian Citizen Category " to the word NRI as defined by the University Grant Commission is without authority. The respondent No.2 has exceeded its authority and has redefined the word NRI which is not permissible.

(G) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and such differentia must have a rational basis to the object sought to be achieved by the statute in question. The definition of NRI in Regulation 2(i) is clearly defined and in view of the statutory Regulations, the University by the letter dated 13/06/2000 (at Annexure D) cannot substitute or add anything to the definition of "NRI", which is not in the Regulations. By the said communication a class has been brought into existence, which is not permissible.

(H) In case, if students falling in the category of NRI and more particularly as defined in Regulation 2(i) are not available, then in that case the seats remaining vacant must be offered to the category of students known as "Payment Seats". The NRI seats should have been offered to all eligible candidates in the "Payment Seats" category and in the order of merit.

(I) Regulation 7(3)(iii) has not been observed by the Managements / Colleges / Institutes and in flagrant violation of the scheme arbitrarily students have been admitted. In the absence of genuine NRI student being available, it was the duty of the concerned Institute to offer such seat to the student belonging to the payment seats category. Thus, by not offering the seats to the students of payment category, breach of regulation is committed.

(J) Without giving publicity by public advertisement offering admission on NRI seats, the Managements / Colleges / Institutes arbitrarily admitted the students without the knowledge of students having higher marks with ability to pay the amount, which otherwise they were required to pay for NRI seats. Had the public advertisement in the newspaper inviting the attention of all students seeking admission to the First Year Professional Course conducted by the College / Institute published, the students would not have made the grievance that they are making now.

(K) Though there was no question of carrying forward the seats, the University permitted the Management / College / Institute by writing letters at Annexure D and E to admit students more in number than permissible. The Management / College / Institute in view of the letters at Annexure D and E admitted students more in number than permissible. In view of these letters students were admitted keeping aside the maximum permissible limit to admit the students under NRI category. The action of giving admission to the students beyond the maximum permissible seats available for admission in this academic year and also granting admissions by carrying forward last year's seats has resulted in increase in the total strength of students, which is not permissible. Thus, admissions were granted to the students contrary to the regulations. It was submitted that in view of this, admissions granted by the College / Institute / Management in contravention of the regulation must be cancelled insofar as it relates to admissions to NRI category.

(L) The petitioner, under the aforesaid circumstances, considering the importance of the matter and the interest of students, requested the Court to issue appropriate directions to the respondents and particularly the State Government and the Universities.

[13] Mr. Panchal has also placed reliance on the following cases pertaining to education and admission of students :

(I) Unni Krishnan J.P. & Ors. V. State of A.P. & Ors. (1993) 1 SCC 645.

(ii) Maharishi Dayanand University V. M. L. R. Saraswati College of Education, (2000) 7 SCC 746.

- (iii) Dr. (Mrs.) Sanstosh Kumari V. Union of India & Ors., JT 1994 (7) S.C. 565.
- (iv) Unni Krishnan J. P. & Ors. V. State of A. P. & Ors. (1993) 4 SCC 111.
- (v) Shahal H. Musaliar & Ors. (I) V. State of Kerala (1993) 4 SCC 112.
- (vi) T.M.A. Pai Foundation & Ors. (I) V. State of Karnataka & Anr. (1993) 4 SCC 276.
- (vii) Mar Athanasius College V. State of Kerala & Anr. (1993) 4 SCC 347.
- (viii) T.M.A.Pai Foundation & Ors. (I) V. State of Karnataka, (1994) 4 SCC 728.
- (ix) Institute of Human Resources Development & Ors. V. T.R. Rameshkumar & Ors, (1995) 4 SCC 211.
- (x) T.M.A. Pai Foundation & Ors. V. State of Karnataka, (1995) 5 SCC 220.
- (xi) State of H.P. & Ors. V. Himachal Institute of Engg.& Technology, Shimla, (1998) 8 SCC 501.

[14] In the State of Gujarat, Various statutory Universities are functioning, i.e. Gujarat University, South Gujarat University, North Gujarat University, Sardar Patel University, and, Saurashtra University. These Universities are providing facilities for completion of courses in Bachelor and Master courses degree of Business Administration, Computer Application etc. the training imparted through the Department of University or through affiliated Institutes /Colleges. On behalf of the State as well as the Universities and colleges, it was submitted that the State Government accepted basically the principle of self finance by the Colleges or Institution themselves. It was submitted that in addition to the payment seats certain percentage of the seats are marked as NRI seats. Managements basically responsible for day-to-day managements of the colleges / institutes are insisting that the Institutes should have right to grant admissions to NRI seats. It is further insisted by the Managements that in absence of NRI student, the Management must be permitted to admit a student, if a student is sponsored by NRI. It was further submitted that if no sponsor is available and a student is in a position to pay the fees equivalent to the amount in rupees to that of dollars or sterling payable by NRI student, the management must have right to admit such a student. From the submissions made by the Institutes, it appears that they are keen to collect the fees so that they can run the Institute without any financial difficulties. It was agreed to by all concerned colleges / institutes that they are equally keen to maintain the standard of education but for better running, the Institutes would like to have the finance. They further submitted that if a capable student is paying higher fees for better education of others, one should not insist that on NRI seats only NRI should be

considered. How to protect interest of all concerned i.e., the students, the guardians and the management is the real question ? It is suggested by the respondents including the State and the Universities, that a committee can be constituted which can look after the admissions to be granted against NRI seats. If after the advertisement, sufficient number of NRI students are not available to fill in the seats, local students can be offered the seats through the public advertisement against NRI quota seats by calling upon them to pay the fees that is payable by NRI student. A suggestion was made for formation of a committee consisting of the following members :-

- (1) A representative of the Vice-Chancellor of the concerned University as a Chairman. (A Registrar of the University or Head of the concerned Department should be preferred.)
- (2) A representative of the Education Department of the State Government (A person having wide knowledge on the subject for which admission is being sought for, would be preferred.)
- (3) A representative of the Management.

It was suggested that in absence of NRI students preference should be given to NRI sponsored student in order of merit in accordance with the prevalent rules and regulations. It was further suggested that in case if NRI seats are not filled in by above procedure, such seats be offered to the students on merits on payment seats.

[15] . On behalf of the Management of Institutes / Colleges, it was submitted that after having secured admission on NRI seat, a student should not be allowed to change over to free seats or payment seats or to other Institutes.

[16] On behalf of the respondents the functions and duty of the committee was suggested as under :-

- (1) The committee should invite applications for admission against NRI seats on declaration of the results of the qualifying examination by a public advertisement published in newspapers in vernacular as well as in English language having wide publicity in the major cities of the State of Gujarat. In Public Advertisement, it must be notified as to the number of seats available in respective colleges / institutes and in particular course.
- (2) The committee shall finalise admissions to these seats before commencement of the process of the admission to the free seats and payment seats.

[17] It was further submitted that while this process for giving admissions to these courses against NRI seats be made operative from the next academic year and for the present year, the committee can consider and redress the grievances in the following manner :-

(1) The committee shall screen admissions granted in respect of various courses where public advertisement has been issued by the Concerned University or Institute / College.

(2) If no advertisement is published for the current year for NRI seats, the same should be advertised and should be filled in on the Merit only. These exercises should be undertaken within a period of one month from today. If the committee is of the view that term cannot be completed then the admission granted should be screened and on the basis of merits decision may be taken. The committee will have to consider the question of granting admissions on merits provided sufficient number of days are available to the student for the completion of the academic term in the concerned course. The opinion of the University will carry greater weight on this aspect. If the University is of the opinion that at this point of time, no fresh admission should be granted, the same will have to be considered by the committee.

[18] In courses of engineering and computer application, both in Bachelor and Master degrees, the direction indicated above should apply. It was suggested that with regard to the medical and dental faculties and physiotherapy course in all the Universities the aforesaid directions should be made applicable with the following modification.

[19] As per Medical Council Rules, fees shall be charged from the students of NRI category. Admissions to the students to this category will be as per Medical Council's Rules, which permits that in absence of NRI category students, the seats be made available to other students.

[20] The State in its affidavit referred to the definition of NRI as defined in the University Grants Commission (Regulation of Admission and Fees In Private Non - Aided Professional Institutions). The State made it clear in the affidavit that maximum limit of 5% of the total number of seats for a particular year if not filled in, the same can not be filled in the next academic year by carrying forward the seats. On behalf of the State, it was made clear that as per regulations in the event of NRI seats remaining vacant, the same shall be offered to the students seeking admissions on payment seats. It was submitted that under the Regulations made by the UGC and AICTE, student should be admitted. So far as the structure of fees is concerned, it was pointed out that the committee while determining the fees takes into account the likely

expenditure of the concerned colleges / Institutes. In view of this, it was submitted that there is no question of loss to the Managements / Colleges / Institutes running the Professional Courses for the full tenure. It was further submitted that it is open for the committee to examine the expenditure for the purpose of fixing the fees under the UGC Regulations. It was submitted that the notification for fixing the fees, if perused it is clear that after taking into consideration the material placed by the concerned Institutes / Colleges along with the report submitted by the Registrar of the University, the committee takes a decision with regard to fixation of fees. It was further submitted that there cannot be loss to the self financed Managements /Colleges /Institutes. Mr. S. N. Shelat, the learned Additional Advocate General pointed out the Medical Council of India (Norms and Guidelines for Fees and Guidelines for Admissions in Medical Colleges) Regulations, 1994, which have been published vide the Notification dated 21st December, 1994 issued by the Medical Council Of India, in exercise of the powers conferred by clause (n) of section 33 of the Indian Medical Council Act, 1956, with the previous sanction of the Central Government. Mr. Shelat submitted that in Medical Colleges and Dental Colleges in the State of Gujarat admissions to the NRI students and others on NRI seats are given as per the Regulations referred to above. Mr. Shelat fairly stated that there is no mention or reference to " NRI Sponsored or Indian Category Seats " in the said Regulations. Mr. Panchal submitted that in view of the Judgment of the Apex Court in case of Unni Krishnan case (supra), the State or the University cannot relax the meaning of NRI. He further submitted that admissions are to be granted on Medical & Dental seats as per the aforesaid Regulations, and , in any event the principle of merit has to be followed.

[21] The Managements / Colleges / Institutes filed their affidavits giving details of the courses conducted. They submitted certain details in response to the orders passed by the Court earlier. All the Institutes did not furnish the information required. All the Managements / Colleges / Institutes did not give public advertisement inviting applications from the students on NRI seats. Even for admissions to NRI seats all Managements / Colleges / Institutes did not give public Notice or Advertisement inviting applications from " NRIs ". It is surprising that without public advertisement the procedure of admission has been resorted to. Mr. Panchal submitted that the procedure of admission adopted by the Managements/ Colleges / Institutes without resorting to the procedure as envisaged in the Scheme framed in Unni Krishnan's case (supra), the admissions offered to the students must be cancelled at once. On behalf of the Managements / Colleges / Institutes, it was contended that the students are admitted in the order of merit. It was contended that the University informed that the admissions are not to be centralised. It was further contended by the Managements / Colleges / Institutes that they admitted students on NRI seats to the maximum permissible limit and admitted the students subject to availability of seats after they

were permitted to bring forward the seats of the last Academic Year which remained unfilled. It was also made clear that the numbers of NRI students admitted to the Colleges / Institutes were very negligible. Some of the Students who were admitted were NRI sponsored or that they paid the fees equivalent to the fees payable by NRI students though they were not NRIs as defined under the Income Tax Act, 1961. It was submitted that the fees they paid would assist the Managements / Colleges / Institutes in meeting the cost of imparting education. It was further submitted that the Colleges / Institutes are self financed Colleges / Institutes. It was further contended that for such Colleges / Institutes the collection of higher fees is a source of income and if they are not allowed to generate income, it will not be possible for them to impart education. It was made also clear that the students other than NRI students who were seeking admissions on NRI seats were required to pay the fees equivalent to the amount of fees chargeable from the NRI students. Before us, it was made clear by all concerned that they were not in favour of commercialisation of education but at the same time, they submitted that if they were not allowed to collect the fees, they will not be in a position to impart the education.

[22] Mr. Kamal Trivedi, learned Counsel appearing for some of the Managements / Colleges / Institutes placed before the Court certain extracts of Judgments. Mr. Panchal also referred the same and we have indicated the same hereinabove. Mr. Trivedi submitted that in paragraph - 194 of the Judgment in Unni Krishnan's case (supra), the Apex Court has observed as under :

"The hard reality emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are not in a position to meet the demand and particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most Important functions of the Indian State, It has no monopoly therein. Private educational institutions Including minority educational institutions too have a role to play."

[23] On behalf of the Managements / Colleges / Institutes, it was submitted that the spirit of Self Financing Managements / Colleges / Institutes with three tier structure of fees, is to :

- (I) Make the Managements / Colleges / Institutes financially viable for meeting their recurring expenditure;
- (ii) Take the burden of meritorious students belonging to Free Seats by the students of Payment and NRI Seats;

(iii) Give admission purely on the basis of relative merit in the respective categories of Free Seats and Payment Seats;

(iv) 5% of NRI Seats (in Technical Education) and 15% NRI Seats (in Medical & Dental Courses) have been given to the management at their discretion to meet with the recurring cost. In fact, the discretion on NRI Seats is one of the motivating factors for the Private Self Financing Managements / Colleges / Institutes.

[24] On behalf of the Managements / Colleges / Institutes, our attention was drawn to some of passages in Unni Krishnan's case(supra) and it was submitted that the Professional College might admit NRI student to the limited extent indicated hereinabove for a given year. It was submitted that it must be left to the discretion of the management of the Colleges / Institutes to exercise their discretion in judging the suitability of a student and neither the University nor the State Government should interfere in the mode of selecting a student. But in view of the prevailing situation, it is for the management of the College concerned to judge merit of the student, having regard to the relevant factors. Mr. Trivedi has also drawn our attention to the case of Institute of Human Resources Development (Supra) where the aspect of Self Financing Institution has been considered. Mr. Trivedi fairly stated that the judgments refer to NRI students and not to any sponsored or other category. All counsel submitted that there should be total transparency in the matter of granting admission. It was further made clear to us that the Managements / Colleges / Institutes can have no objection to the admissions being controlled by the committee that may be constituted by the State of Gujarat where there should be representation of Managements / Colleges / Institutes, the State Government and Universities. It was submitted that soon after the declaration of the results, the committee should initiate the process of admission on NRI seats. Wherever the regulations are applicable the word NRI should be given the same meaning as indicated in the regulations but wherever the regulations are not applicable in strict sense, the rule (the Medical Council of India Norms and Guidelines for Fees and Guidelines for Admissions in Medical Colleges Regulations, 1994) as is made applicable in medical and dental faculties should be accepted. It was submitted that the committee should initiate the process of giving admission prior to the commencement of the admissions to the Free Seats and Payment Seats so that the unfilled NRI Seats could be transferred to the Payment Seats. It was submitted that by transferring the vacant NRI Seats would not be wasted and the students seeking admission on merits on payment seats will get admission. By seeking admission on Payment Seats, students could take the benefit of the said unfilled NRI seats which would be offered to them by the committee, while granting admission on the Payment Seats. There is unanimous consent amongst the Managements / Colleges / Institutes to the submissions of Mr. Trivedi and the other Managements / Colleges / Institutes

have in fact adopted the arguments of Mr. Trivedi. They all agree to have a Centralised Admission Committee for the purpose of granting admission on NRI Seats. We have considered the suggestions made by Mr. S. N. Shelat, learned Additional Advocate General.

[25] Our attention was drawn to the booklet published by the Education Department, Government of Gujarat, Gandhinagar for admission to the Engineering/Pharmacy Degree in Diploma Courses for admission to the First Year of the Academic Year 2000-2001. Clause-4 of Annexure deals with eligibility criteria. It was contended by the petitioner that minimum eligibility criteria for admission to the professional courses must be adopted for standard of education, even if NRI seats were offered to non-NRI or sponsored by NRI or to Indian citizens. It was requested that minimum eligibility standard must be applied. If the managements/colleges/institutes while granting admission to the students to the professional courses had not maintained the standards then, in all probability, the students who are admitted being below standard would not be in a position to match with other students. As a result of this, ultimately seats would be spoiled. From the documents placed on record, it was submitted that there were some students who were admitted having less than 55% of marks. One college known as "U.V.Patel College of Engineering" at Mehsana admitted the students though marks secured by them were below the prescribed standard. Students at serial Nos. 4 & 9, according to the petitioner, did not secure minimum prescribed marks and yet they were admitted.

[26] It is required to be noted that in professional courses minimum standard set out and prescribed for granting admission must be maintained. It may not be possible with exactness to find out marks obtained by genuine NRI. Therefore, there is no requirement that a student who belongs to NRI category should have obtained minimum marks. But, so far as the students who are securing admission on NRI seats as they were sponsored by NRI and management has granted admission on payment of fees payable by the NRI students, it becomes the duty of the institution in such cases to grant admission to the students who have secured the marks above the prescribed minimum standard and should be strictly in order of merit.

[27] We have considered the suggestions made by the learned Additional Advocate General and Mr. Trivedi. It is required to be noted that commercialization of education cannot be allowed or should not be permitted. It is also required to be noted that word 'NRI' is to be understood in the sense as indicated in the Income Tax Act. In any way, it is required to be noted that when the admissions are to be granted in private educational institutions which are aided by trusts, cannot be permitted to grant admission without following the rules regarding merits. For professional colleges, the scheme has been indicated in Unni Krishnan case (Supra). Learned counsel, Mr. Trivedi

as well as learned Additional Advocate General submitted that it is subject to the modifications that have been made by the Apex Court and also in the rules framed by the Union of India. If the genuine NRI students are not available then, in that case, equal treatment be given to all students who are not genuine NRI students seeking admission to that category. The transparency requires that admissions are granted in order of merit and also in consonance with Article 14 of the Constitution.

[28] It is clear from the decision of the Apex Court, as submitted by the Counsel for the respondent, that it would be open to grant admission to NRI students in view of different backgrounds they come from and it is for the management of the college concerned to judge the merits of these candidates having regard to the relevant factors. It was submitted that the modifications are in reference to Non Resident Indian students only and that did not apply to the category of the students other than NRI. Learned counsel appearing for the institutions/colleges conceded that there must be transparency in giving admission to non-NRI or NRI and there should be proper Advertisement as well as Public Notice and there should be a centralized admission system.

[29] In case of Maharishi Dayanand University Vs. M.L.R.Saraswati College of Education, reported in (2000) 7 SCC p.746 in paras 31 & 32, the Court has held as under;

31. In State of Maharashtra v. Vikas Sahebrao Roundale, (1992) 4 SCC 435 : AIR 1992 SC 1926 while dealing with certain directions issued by the Bombay High Court, this court observed : (SCC p.439, para12)

"The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc."

32. Again, in State of Punjab v. Renuka Singla, (1994) 1 SCC 175 : AIR 1994 SC 595 this court observed :(SCC Headnote)

"The High Courts or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students..... The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on 'compassionate ground'. The High Court should be conscious of the fact that in this process they are affecting the education of the students..."

"More often, as pointed in the above judgments, colleges or schools which violate the rules, either plead for the students or set up the students to file case in the courts in the belief that the courts can be persuaded to grant orders to jump over the rules. This tendency has been on the increase. Commercialization of education is the reason. This Court has been insisting on discipline and obedience to rules. Where even the High Courts have been setting aside those orders."

[30] Relying on aforesaid observations, the petitioner contended that the colleges have to scrupulously follow the University Grant Commission (Regulations of Admissions and Fees in Private Non-aided Professional Institutions) Regulations, 1997 for more deserving candidates. The petitioner submitted that merely because more deserving students are not approaching the Court, benefit should not be denied. He submitted that the requirements of Public Advertisement and centralized admission system are only to provide transparency. By this method, all students who are seeking admission will get the benefits of the seats available for particular category.

[31] In case of Dr. Santosh Kumari Vs. Union of India & Ors. reported in Judgment Today, 1994 (7) P.565, the Apex Court in para-8 has held as under :

"The allotment of seats should go according to merit. It does not depend upon who comes to court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means to approach the court."

[32] If without giving Advertisement or proper Publicity, the students are admitted, there would be injustice to others even on the seats of NRI/NRI Sponsored category/Payment category. Therefore, it is essential that the managements / colleges / institutions should give proper publicity. It was submitted by the petitioner that the University had no authority to permit any deviation or modification. Our attention was drawn to a letter produced on record by the petitioner at Annexure-D. According to the letter, decision has been taken by University that NRI/NRI sponsored/Indian citizens category seats in the First Year BCA courses are to be filled in by affiliated colleges/institutions and further that every college / institution can take maximum six candidates in these NRI/NRI sponsored/Indian citizens plus six which remained unfilled last year. It was further submitted that in any case, University could not have changed the meaning of the word 'NRI' by substituting the category and University could not have permitted to admit the students on the seats which remained unfilled in the previous year. It was submitted by the petitioner that university could not have allowed the institutions to make any deviation or modification in the regulations. It is required to be noted that the Government of Gujarat vide its Resolution dated 30/05/1998 resolved that the department of professional college by private trusts/bodies on self

financing basis, should be encouraged. Two conditions amongst other of the State Resolution are required to be referred at this stage : (1) "If all the seats reserved for NRI are not filled up, the seats remaining vacant shall be filled up from the students who belong to Gujarat" & (2) "The ceiling of the fees that can be charged from NRIs students by managements/colleges is 5000 US \$ per year." The Resolution was made with regard to 12 NRI seats of Pramukh Swami Medical College, Karamsad, keeping in mind Medical Council's Rules as referred by us earlier. It is required to be noted that the Apex Court in Unni Krishnan Case (supra) has observed as under :

"Pointing out inability of the Government to spend huge amount for running the institutions, self financing educational institutions in Medical and Engineering field should also be welcomed"

31. The Court has also observed as under :

"The hard reality emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are not in a position to meet the demand and particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most Important functions of the Indian State, It has no monopoly therein. Private educational institutions Including minority educational institutions too have a role to play."

[33] It was submitted on behalf of the institutions that the State of Gujarat lags behind in terms of equal professional experts in comparison to Karnataka, Tamil Nadu, Maharashtra etc. So far as the professional experts are concerned, there are less number of educational institutions having less intake capacity. It was pointed out that in all, there are 204 institutions in the aforesaid three states (93 in Maharashtra, 51 in Karnataka while 60 in Tamil Nadu) and intake capacity according to the respondent is 59,392 in the aforesaid three States. So far as the State of Gujarat is concerned, in all there are 15 institutions and the intake capacity is only 3510; That in comparison to other States of Maharashtra, Karnataka or TamilNadu, in State of Gujarat, there are less number of institutions having much less intake capacity with regard to Diploma courses. In the aforesaid three States, there were 450 institutions in 1995 (148 in Maharashtra, 168 in Karnataka and 134 in Tamil Nadu) and intake capacity of three States was 81,526 in the year 1995 while in the State of Gujarat, there were 26 institutions and intake capacity was only 5120. Considering the number of institutions in the State of Gujarat and other States, it is clear that there are very few institutions. So far degree in engineering is concerned in Maharashtra, there are 118 institutions, in Karnataka 70 and in TamilNadu 129, in total 370 while in the State of Gujarat, there were only 20 institutions in 1995 and as per the latest record, there are 23 institutions.

So far intake capacity is concerned, Maharashtra has intake capacity of 28,985, Karnataka has intake capacity of 24,752 and Tamil Nadu has intake capacity of 32,160 totaling to 85,897 in the aforesaid three States while in the State of Gujarat in year 1995 intake capacity was 4850 and latest comes to 6,960. Thus, on behalf of the institutions, it was pointed out that some more colleges are required for improving the situation. The State of Gujarat has permitted more and more self financing institutions. If in the State of Gujarat more and more professional colleges are required to be established then, it is necessary to encourage the institutions, which are established at its own huge fund. More funds are required for establishment of a college. It is also required to be noted that if such institutions are permitted to be established with a liberal approach, the State will be in a position to utilize the funds which otherwise is required to be spent for education for other social activities or other developments.

[34] The Apex Court in the case of Unni Krishnan has pointed out as under :

"The question is how to encourage private educational institutions without allowing them to commercialise the education? This is the troublesome question facing the society, the government and the courts today."

[35] The Court has further observed as under :

"All of them recognise the necessity of charging higher fees by private educational Institutions. They seek to regulate the fees that can be charged by them which may be called permitted fees and to bar them from collecting anything other than the permitted fees, which is what 'Capitation fees' means. Our attempt in evolving the following scheme precisely is to give effect to the said legislative policy. It would be highly desirable if this scheme is given a statutory shape by incorporating it in the Rules that may be framed under these enactments."

[36] In Review petition, in case of Unni Krishnan reported in 1993 (4) SCC p.111, the Court has observed as under :

"It shall be open to the professional colleges to admit NRI students to the extent of only 5% of their total intake for a given year. By way of illustration if the permitted intake of a professional college is 100 for a given year, 50 seats out of it will be free seats and other 50 seats will be seats on payment. The five seats for NRI students shall be out of the 50 payment seats. The NRI students shall be admitted on the basis of merit. But in view of the different backgrounds they come from it is for the management of the college concerned to judge the merit of these candidates, having regard to the relevant factors. The fees payable by such students shall be as may be prescribed by the Committee referred to in clause (6) of the Scheme."

[37] The Apex Court, thereafter, in case of T.M.A.Pai Foundation (I) And Others vs. State of Karnataka And Others reported in 1993(4) SCC p.276, modified its earlier judgment and in Para-23 held as under :

"Then remains the question whether any quota is to be allotted for foreign students for this year - it being an year of transition and adjustment in view of the Government of India's orders referred to above permitting admission of foreign students to the extent of as much as 50%. Taking into account all the facts and circumstances and having regard to time that has already elapsed and the construction of time, we are of the opinion that it would be proper to permit the private professional colleges to admit NRIs and foreign students up to a maximum extent of 15% of the intake capacity for this year. In other words, provisions made for NRIs to the extent of 5% in the order dated May 14, 1993 in Review Petitions 482 of 1993 etc. shall be raised to 15% and shall be available both for NRIs as well as foreign students. The basis of selection and admission for these NRIs and foreign students shall be the same as indicated in our order dated May 14, 1993* in Review Petition Nos. 482 of 1993 etc. In case, however, NRIs/foreign students are not available to fill up all the seats within the said 15% meant from them, it shall be open for the management to admit other students within the said quota. It will not be necessary that the students admitted against the said 15% quota should be the allottees from the Government or that they should have appeared for the joint entrance examination, if any, held by the Government or authority concerned. It is made clear that this is a special provision made only for this year, being an year of transition."

[38] In case of T.M.Pai Foundation reported in 1993(4) SCC p.278, the Apex Court in Para 3 has observed as under;

" So far as the NRI quota is concerned, we fixed the same as 15% last year. We fixed the NRI quota in respect of minorities institutions as 5%. Although the NRI quota should not, normally, be more than 5% but keeping in view the reduction in the fee structure, we fix the same as 10% (of the total seats) for this year. We further make it clear that in case any seat in the NRI quota remains unfilled, the same can be filled by the Management at its discretion."

[39] Thereafter, again in year 1995, in case of T.M.Pai reported in 1995(5) SCC 220, the Apex Court reiterated its earlier view and has observed that in case managements are not able to get the NRI or foreign students upto the specified percentage, it shall be open to them to admit students on their own. It seems that, after the Apex Court decision in 1994(4) SCC p.728, the State of Gujarat by its Resolution allowed the

institutions to fill in vacant seats from the students belonging to the State of Gujarat by charging fees. The said notification has been referred earlier.

[40] In case of Institution of Human Resource Development & Ors. vs. T.R.Rameshkumar & Ors. reported in 1995(4) SCC p.211, the court laid emphasis about the need of technical personnel for better future of the nation. The Court observed as under :

"Undoubtedly, in a State which has a high record of education achievements, where people have enjoyed good educational facilities for higher education at low cost, this kind of a departure may cause some resentment. But the choice is between not having the colleges or having them on a self-financing basis. It is necessary in national interest that we have sufficient number of technically trained personnel of the requisite calibre to work for the nation. In cases where merit and means combine there is no reason why self-financing educational institutions should not step in to meet the national requirement for such qualified personnel of good calibre."

[41] On behalf of the respondent, it was submitted that in case NRI students will not be available, institution is admitting students who are sponsored by NRI or the students who are able to pay the fees as mentioned in the Resolution of the State of Gujarat. There should be no reason for others not to allow the management to run the institutions in the interest of others. No doubt, it was also accepted by them that fair opportunity should be given to all the students and transparency must be maintained while granting admissions. It is in this background, the matter is required to be disposed of by giving the following directions :

A. A committee shall be constituted to see that admissions be granted against NRI quota on payment of fees as fixed by Government Resolutions or that may be fixed from time to time as per Scheme ** and under the Statutory Regulations/Rules governing admission to NRI seats, in so far as they are applicable.

B. The committee shall consist of (1) representative of Vice Chancellor of the concerned University or the Registrar of the concerned University, (2) representative of Government from the Education Department or the Secretary/Education, State of Gujarat or the Commissioner, Higher Education, State of Gujarat, (3) the Director/Technical Education, State of Gujarat or the Director, Medical Education, State of Gujarat (Selection shall be made of a person in accordance with the seats to be filled in a particular branch), (4) A representative member of Centralised Committee for Free Seats and Payment Seats (for better Coordination) and (5) A representative of the management. Thus, the committee

shall consist of five persons for the purpose of granting admission. It is hoped that the senior most person having more experience, in absence of Vice Chancellor, shall be selected as the Chairman of the Committee.

C. Soon after the results of the qualifying examinations are declared, it will be the duty of the Secretary of this committee to give Public Advertisement for inviting the applications in absence of NRI students. The advertisements will be given vide Publicity at least in all major cities in the State of Gujarat and in the Daily newspaper if published from the District town. Advertisement shall be published in English and Gujarati Newspapers having larger circulation. The amount of publication shall be borne by all the institutions collectively.

The Public advertisement shall notify the number of seats that are available at the respective colleges/institutions

D. The committee after receiving the applications from the students seeking admissions against NRI seats will give admission in order of merit. If NRI seats are not filled in, in the aforesaid manner, the seats shall be offered to the students on merit on payment seats by the committee. After securing admission on NRI seats, the students will not be allowed to change over to free seats or to payment seats or to other institutions.

E. So far as NRI students are concerned, the admissions are given to the NRI students by the institution/college itself. However, if NRI students are not available, then, in that case, managements/colleges/institutions shall intimate the committee number of vacant seats of NRI category. Thereafter, the committee will have to give advertisement for centralized admission system as referred hereinabove and will have to consider the question of granting admission on merits. For this year, the Committee shall keep in mind the period required for completion of the academic term in the concerned courses and the due weightage shall be given to the opinion of the university in this regard. This direction shall be applied in respect of admission to the courses of technology, master degree courses in engineering, master degree courses in computer and bachelor degree courses in engineering and bachelor degree courses in computer application and diploma courses.

F. The aforesaid directions shall apply to the medical, dental and in physiotherapy courses in the all the Universities in the State with the following modification.

Fees to be charged in NRI category will be on the basis of Medical Council Rules and admission to this category of students should also be as per the Medical Council Rules which permit NRI seats to be made available to the other students in case NRI seats are not filled in.

G. For the admission given in the present academic year, we find that no proper Advertisement was given for NRI quota seats. Therefore, the committee shall make such enquiry as it deems fit and shall call for information from the managements / colleges / institutions to verify that the admissions which have been granted on NRI seats are granted purely on merits and after giving proper advertisement with wide publicity. If the admissions are not granted by giving proper Public Notice/Advertisement having wider circulation in the area; or that the admissions on the NRI seats are not granted in order of merit or admissions are granted in absence of proper publication, or meritorious students have been left out though they were willing to pay fees; or students who have applied for seeking admissions and more meritorious have not been granted admission and have been left out; or the meritorious students are left out or denied admissions to the institutions, keeping the norms or guidelines as per the Medical Council of India (Norms and Guidelines for Fees and Guidelines for Medical Colleges) Regulations, 1994, ** and the Regulations in mind, the committee shall advertise and shall consider the applications that may be received and in order of merit will grant the admissions.

H. It is further directed that all the colleges/managements/institutions in the State of Gujarat shall render necessary assistance to the committee to enable it to comply the admission formalities even for this year also. The committee shall give Public Notice for the aforesaid purpose inviting applications and the committee shall undertake the process forthwith and shall comply as early as possible but in any case not later than 15th February, 2001.

I. The committee thereafter shall inform the centralized committee about NRI seats remaining vacant for payment category seats. The committee shall regulate the admission process every year or till such regulations are framed by the Competent Authority.

[42] In the result, the petition stands allowed. Rule is made absolute accordingly with costs which is quantified at Rs.10,000.00 to be borne by the managements, colleges and institutions collectively.

[43] Inserted as per order dated 20/01/2001 passed on Note for Speaking to Minutes.