

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 412/2016**

1) Dr. Ankita Arun Pednekar,
BG-2, Hearts Ease Manor,
Behind Colva Police Station,
Colva, Goa.

2) Dr. Pratiksha Pandurang Nadkarni,
B/S/2, Nalanda Vihar Co.Op. Housing
Society Ltd.,
Rawanfond, Margao, Goa.

..... **Petitioners.**

V/s.

1) State of Goa, through the
Chief Secretary, Government of Goa,
having Office at Secretariat,
Porvorim, Bardez, Goa.

2) The Dean,
Goa Dental College,
Government of Goa, having Office at
Bambolim, Ilhas, Goa.

3) The Goa University,
through its Registrar, having
Office at Bambolim, Ilhas, Goa.

4) Dr. Anita Bishnoi,
Resident of Vasco, Goa

5) Dr. Bhadauria Fernandes Trishala
Resident of Panaji, Goa

6) Dr. Gaonkar Sneha Harischandra,
Resident of Sanquelim, Goa.

7) Dr. Lobo Minoshka Leanne
Resident of Porvorim, Goa.

8) Dr. Dias Clarence Pascoal
Cavelossim, Goa.

9) Dr. John Tilak Thomas,
Ponda, Goa.

10) Dr. Naik Mrinal alias Mrinali Gurudas
Resident of Colvale, Mapusa

11) Dr. Rebello Nairica Eurico
Margao, Goa

12) Dr. Sequeira Maria Anthea Francesca
Resident of Vasco – Goa

13) Dr. Pednekar Sneha Jaiprakash
resident of Panjim-Goa

14) Dr. Kerkar Vaishali Vithal

15) Dr. D'Sa Elrida Eusebio,

16) Dr. Bhardwaj Madhika Om Prakash

17) Dr. Sasgiri Tanvy Sabir.

..... **Respondents.**

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the petitioners.

Mr. V. Rodrigues, Government Advocate and Mr. P. Dangui, Additional Govt. Advocate for the respondents No.1 and 2.

Ms. Aditi Kamat, Advocate for respondent No.3.

Mr. Nitin Sardesai, Senior Advocate with Mr. V. Amonkar, Advocate for the respondents No.9 to 14.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date :- 22/04/2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioners, Mr. V. Rodrigues, learned Government Advocate appearing for the respondents No.1 and 2, Ms. Aditi Kamat, learned Counsel appearing for respondent No.3, and Mr. Nitin Sardesai, learned Senior Advocate appearing for the respondents No.9 to 14.

2. Rule. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel.

3. The above petition, inter alia, seeks for a writ to quash and set aside the Merit List dated 7th April, 2016 for the purpose of admissions to M.D.S. Programs for the academic year 2016-17 in the Goa Dental College, and for a writ of mandamus, commanding the respondents that the admissions to the Post Graduate M.D.S. Programs for the year 2016-17 be made on the basis of the Merit List

circulated on 5th April, 2016. Another relief sought by the petitioners is for a writ of certiorari, quashing and setting aside the prospectus as published for the M.D.S. Programs 2016-17 in the Goa Dental College to the extent it prescribes 22/03/2016 as the last date for receipt of completed applications.

4. Shri S. D. Lotlikar, learned Senior Counsel appearing for the petitioners points out that the petitioners had answered the B.D.S. Examinations in the month of February, 2015 and the results were declared in March, 2015, started the Compulsory Internship on 1st April, 2015 for a period of 12 months which would end on 31st March, 2016. He further points out that the petitioners desired to apply for the Post Graduate seats with the Goa Dental College and, as such, purchased the Prospectus for such Programs somewhere in March, 2016. He further points out that the respondent No.2 had issued a Certificate to the effect that the petitioners would complete their Compulsory Internship on 31st March, 2016, to enable them to apply for such Post Graduate Courses. The learned Senior Counsel further points out that the petitioners, as such, submitted their applications for such Post Graduate Courses and, thereafter, on 5th April, 2016 a tentative Merit List was displayed on the Notice Board of the

concerned College which, inter alia, disclosed that the petitioner No.1 was 2nd; whereas, the petitioner No.2 was 7th in the Merit List. The learned Senior Counsel further points out that as such, according to him, the petitioners were eligible to get seats to the Post Graduate Courses. The learned Counsel further points out that to the shock of the petitioners, on 7th April, 2016, there was another tentative Merit List displayed on the Notice Board which, inter alia, showed that the names of the petitioners were deleted. The learned Counsel further points out that they learnt that their names were deleted as they had not completed their Compulsory Internship of 12 months on the last date of submission of the applications which was 22/03/2016. The learned Counsel further submits that in terms of the Schedule, appended to the Rules concerning the Post Graduate Admissions of the Dental College, the last date of receipt of applications for such courses is 8th April of each year and that the first date for counselling is 22nd April, of each year and the Courses have to commence on 1st May of every year. The learned Counsel further points out that there is no justifiable reason for fixing the last date for receipt of such application on 22nd March, 2016 as, according to him, the action of the respondents in fixing such a date is arbitrary, whimsical and is not supported by any justification. The learned Counsel further submits that the eligibility

of the students for the All India Quota, though the counselling begins on 15th March, 2016, nevertheless, the cut-off date to complete the Compulsory Internship is fixed on 31st March, 2016. The learned Counsel has taken us through the guidelines prescribed by the Dental Council of India to point out that though the Entrance Test is conducted in the month of December of the previous year, nevertheless, the students are given an opportunity to ensure that they complete their Compulsory Internship on or before 31st March of every year. The learned Counsel, as such, submits that the petitioners and other students who had answered their examinations in February, 2015, were consequentially eligible to apply for the All India Quota as they met the eligible criteria as provided in the said guidelines. The learned Counsel further points out that the subject prospectus is for the purpose of filling the remaining 50% of seats for the Post Graduate Courses. The learned Counsel further points out that though the Petitioners are held eligible to compete for the seats of All India Quota, nevertheless, on account of the arbitrary decision taken by the respondents to fix the last date of receipt of such applications as 22/03/2016, the petitioners are sought to be made ineligible for applying for such posts. The learned Counsel further points out that the last date on the prospectus, based on a decision which states that the date has been

fixed pursuant to the directions by the Apex Court in the case of *Ashish Ranjan vs. Union of India*, in Writ Petition No. (Civil) 76/2015. The learned Counsel further points out that on going through the said decision of the Apex Court, it is seen that no such date is fixed for receipt of such applications, and, as such, the stand of the respondents that such a date was fixed in view of the directions of the Apex Court, is not at all justified. The learned Counsel further points out that the said Judgment of the Apex Court only stipulates that the first date for counselling as 15th April, 2016 and that the Courses would begin on 1st May, 2016. The learned Counsel further points out that even in terms of the Regulations which govern the admissions to the Post Graduate Dental Faculty, the candidates have to be eligible at the time of their admissions and, as such, according to him, in any event, the petitioners were eligible as on the date when the first round of counselling was fixed in the present case. The learned Counsel has, thereafter, pointed out that the Selection Committee was not empowered to fix such a date for receipt of applications, without any application of mind. The learned Counsel has, thereafter, taken us through the affidavit filed by the respondent No.2 to point out that there are averments therein that such a date was fixed as, according to the respondent No.2, the counselling had to start on or before 15th

April, 2016 and the respondents required seven working days from the date of the last date to scrutinise the applications and a further period of 7 days to prepare the Merit List. The learned Counsel further points out that in terms of the Rules framed by the University, examinations of the B.D.S. Courses have to be held in January, every year and, that in case such examinations were held in time i.e. in January, 2015, the petitioners would not have to suffer in completing their Compulsory Internship of 12 months. The learned Counsel further points out that in the present case, the examinations were conducted in February, 2015 and results were declared on 30th March, 2015 which delayed the entry of the petitioners for Compulsory 12 months' Internship. The learned Counsel further points out that on account of fortuitous circumstances, which cannot be attributed to the petitioners, the petitioners cannot be made to suffer by an arbitrary decision taken by the respondent No.2 in fixing the last date of receipt of such applications as 22/03/2016. The learned Counsel further points out that there are no Minutes produced on record as to on what basis such a decision was arrived at, which itself does not meet the tests guaranteed under Article 14 of the Constitution of India. The learned Counsel further points out that as the respondents have not at all examined the overall circumstances, including the fact that there was a

delay in conducting the exams by the concerned Respondents, it was not open for them to fix whimsically the last date for receipt of such applications as 22/03/2016. The learned Counsel further points out that even in terms of the Rules which have been notified, the period from the date of receipt of applications to the date to conduct counselling, is 14 days, but, however, in the present case, the respondents have fixed the date as 22/03/2016, leaving a gap nearly of 21 days, without any justification. The learned Counsel further points out that the interest of the students should be of paramount importance and on perusal of the averments in the affidavit, it appears that merely because the Teaching Staff was supposed to go on Summer Vacation after 15th April, 2016, such a date has been fixed. The learned Counsel further points out that this, itself, discloses non-application of mind on the part of the Selection Committee in fixing arbitrarily a cut-off date, which calls for interference of this Court, as the date fixed as last date for receipt of applications stands vitiated and no nexus with the objects it has to achieve. The learned Counsel has, thereafter, extensively taken us through the relevant Rules, as well as the Judgment passed by the Apex Court, fixing the programs for the Post Graduate Dental Courses for the current year, to point out that there is nothing therein to suggest that the respondents were supposed

to fix the last date for receipt of applications as 22/03/2016.

5. On the other hand, Mr. Vivek Rodrigues, learned Government Advocate appearing for the respondents No.1 and 2 has pointed out that once there is a plausible explanation for fixing the last date for receipt of the applications in the affidavit filed by the respondent No.2, the question of interference by this Court in exercise of its jurisdiction under Articles 226 of the Constitution of India would not at all arise. The learned Government Advocate further submits that the respondent No.2 has minutely disclosed in her affidavit that as the Teaching Staff was supposed to go on summer vacation from 15th April, 2016, the last date for receipt of applications had to be fixed as on 22/03/2016. The learned Government Advocate further submitted that the petitioners bought the Prospectus and, in fact, applied on the basis of such a Prospectus and, as such, according to him, it was not open to the petitioners to now contend that the date fixed in the Prospectus as the last date is arbitrary and stands vitiated. The learned Government Advocate further points out that there is no right in the petitioners to say that the exams had to be held on a particular date and, as such, unless such a right is saved, the question of this Court exercising its jurisdiction under Article 226 of the Constitution of India

would not at all arise. The learned Government Advocate further points out that in view of the Judgment of the Apex Court which, inter alia, discloses that the counselling had to start on 15th April, 2016, there is nothing wrong which can be attributed to the respondents to fix the last date of receipt of applications as 22/03/2016. The learned Government Advocate further points out that it is well settled by a Judgment of the Full Bench of this Court reported in 1998(1) Goa L.T. 270, in the case of ***Dr. Rakesh Ravi vs. The Dean, Goa Medical College and ors.***, that meeting the eligibility criteria as on the date of receipt of the application is mandatory and, as such, according to him, as the petitioners had not met the eligibility criteria on 22/03/2016 as they fell short of 8 days in completing their Compulsory Internship, the respondents were justified to delete the names of the petitioners from the first tentative Merit List which was displayed on 5th April, 2016. The learned Government Advocate further points out that the petition is also barred by laches as, according to him, there is gross delay in filing such a petition as the petitioners had, in fact, purchased the Prospectus in the second week of March, 2016. The learned Government Advocate has, thereafter, extensively taken us through the reply filed, as well as the relevant provisions in support of his contention that the action of the respondents in fixing the date as

22/03/2016 cannot be said to be arbitrary and as such, the question of exercise of jurisdiction of this Court under Article 226 of the Constitution of India would not at all arise. The learned Government Advocate further points out that the contention of Mr. Lotlikar, learned Senior Counsel appearing for the petitioners is, in fact, contrary to the Judgment of the Full Bench of this Court which clearly held that meeting eligibility criteria is mandatory while examining the Rules for the Post Graduate Courses of the Goa Medical College. The learned Government Advocate further points out that the question of invoking relaxation as permitted by the Dental Council of India for registration of the candidates to appear for the entrance examination for All India Quota cannot be extended to the candidates who are appearing for the seats reserved for the State Quota. The learned Government Advocate, as such, submits that the petition deserves to be rejected on this ground alone. The learned Government Advocate has relied upon the said Judgment of the Full Bench, in the case of ***Dr. Rakesh Ravi vs. The Dean, Goa Medical College and ors.***, (supra), and another Judgment of a Division Bench of this Court Court passed in Writ Petition No.145/2005 dated 25th April, 2005 in the case of ***Dr. Dattaprasad S. Nagvenkar vs. State of Goa and ors.***, wherein the learned Division Bench has clearly held that meeting the eligibility criteria as on the last

date of receipt of applications is mandatory. The learned Government Advocate, as such, submits that the petition be rejected.

6. Mr. Nitin Sardesai, learned Senior Counsel appearing for the respondents No.9 to 14 has pointed out that fixing of the cut-off date is within the domain of the concerned Authorities. The learned Counsel further points out that when no malafides or bias are attributed to the Authorities who have fixed such a cut-off date, the question of interference in such a date by this Court would not at all be justified. The learned Counsel, in support of his submissions, has relied upon Judgments of the Apex Court reported in (2002) 1 SCC 124 in the case of *Jasbir Rani and ors., vs. State of Punjab and another*, (2004) 2 SCC 76, in the case of *Ramrao and ors., vs. All India Backward Class Bank Employees Welfare Association and ors.*, and (1996) 10 SCC 536, in the case of *University Grants Commission vs. Sadhana Chaudhary and ors.*. The learned Counsel further points out that the petitioners had, in fact, purchased the Prospectus in January and had accepted the terms upon which such admissions to the Post Graduate Courses would be conducted and, as such, after applying on the basis of such Prospectus and having failed to get admissions, it is not open to the petitioners now to turn around and challenge the last

date for receipt of applications. The learned Counsel further points out that the conduct of the petitioners itself disentitles them from exercising any discretion in favour of the petitioners. The learned Counsel further points out that as the learned Full Bench of this Court has found that meeting the eligibility criteria was mandatory, it is not for this Court to extend the last date of receipt of applications to make the petitioners eligible to be considered for the Post Graduate admissions. The learned Counsel has, thereafter, extensively taken us through the Judgment of the Apex Court to point out that considering the dates fixed therein, fixing of the date as 22/03/2016, cannot be said to be unjustified in view of the specific reasons stated in the affidavit of the respondent No.2, and as such, there is no case made out for any interference in the decision of the respondents in deleting the names of the petitioners. The learned Counsel has also pointed out that in view of the directions issued by the Apex Court in the case of *Ashish Ranjan (supra)*, the date fixed in terms of the Rules stands superseded.

7. Before we proceed to examine the rival contentions, we would also like to note two aspects in respect of which we called for some clarification from the learned Government Advocate. When it was pointed out that the tentative list prepared on 5th April, 2016

clearly disclosed that the petitioners had stood at numbers 2 and 7 respectively in the Merit list, we called upon the learned Government Advocate to disclose to the Court the decision of the Selection Committee which preceded the display of such tentative Merit List. The learned Government Advocate pointed out that there are no Minutes of the Selection Committee on that count. But, however, according to the learned Government Advocate, on the application itself the Selection Committee had stated the rankings of the respective candidates. On perusal of such applications which were produced before us, we found that besides giving specific rankings to such candidates, the applications were signed by two Members of the Selection Committee and countersigned by the respondent No.2. This would definitely imply that the eligibility of the applicants was not doubted by the Selection Committee when the first Merit List was displayed on 5th April, 2016. The list which was subsequently displayed on 7th April, 2016 is also termed as 'Tentative Merit List'. The learned Government Advocate when asked on this aspect, has pointed out that the second tentative list was the final Merit List prepared by the Selection Committee. We also called upon the concerned Authority to produce the records to find out how the decision was arrived at to fix the last date of the receipt of applications

as 22/03/2016, the learned Government Advocate, upon instructions, has submitted that there was no decision taken by the Selection Committee on that aspect. The learned Government Advocate, however, brings to our notice a letter addressed by the Under Secretary, Government of Goa dated 18th April, 2016 which, inter alia, states that the Government has approved the Prospectus of Dental College for the year 2016-17.

8. Before dealing with the rival contentions, we would like to note the observations of the Division Bench of this Court in Writ Petitions No.210/97 and ors., dated 6th August, 1997 in the case of ***Master Vasudeo alias Amey S. Kamat vs. State of Goa and ors.*** where in it has been observed at paras 11 and 12, thus :

“11. Admittedly, no such procedure has been followed here. It is equally well-settled that framing rules for admission to Medical Colleges run by the Government is a field of public law. It is undoubtedly controlled by the provisions of Article 14 of the Constitution of India, which excludes arbitrariness and there is no unfettered discretion to the Government in the field of public law. Since the Government exercises its powers for the public good, there is a duty cast upon it to act fairly and to adopt a procedure which

involves fair play and, as far as possible, a reasonable notice to all concerned. We may briefly refer to a few decisions to this effect.

12. In 'Dr. Prita Subodh Patgaonkar & Ors. vs. The State of Maharashtra & ors., reported at 1991 (2) Bom.C.R. 474. the Division Bench of Mrs. Sujata Manohar J •, (as she then was) and Mr. Patankar J., was dealing with the question of a change of rule regarding the marks in the concerned subject to be taken into account for admission to the Post-Graduate Course. While disapproving such a change, this was what the Court observed in para 19 of the judgment at page 484 of the report:

“ In order that mindless changes in admission rules may be avoided, we direct that in future the State Government shall not, ordinarily, alter rules for admission, without consulting the Universities concerned and the Medical Council of India and that the rules, if they are changed, shall be published extensively at least three months before the students appear for the examination or examinations in which their performance is considered as relevant as per the new rules for seeking admission to courses of further study.” (Emphasis supplied).

The learned Division Bench of this Court in the case of ***Dr. Dattaprasad S. Nagvenkar, vs. State of Goa and ors***, in Writ Petition No.145/2005, dated 25/04/2005 whilst observing that the eligibility as on the last date of receipt of applications is mandatory, has observed

at para 10 , thus :

“10. Moreover, the Regulation 8(3) of the Post Graduate Medical Education Regulations 2000 (hereinafter, referred to as 'the Regulations 2000') provides that every student selected for admission to postgraduate medical course in any of the medical institutions in the country, shall possess recognized MBBS degree or equivalent qualification and should have obtained permanent Registration with the Medical Council of India, or any of the State Medical Councils or should obtain the same within one month from the date of his admission, failing which the admission of the candidate shall be cancelled. The said regulation reveals that every student selected for admission to the Post Graduate Medical Courses should possess recognized MBBS Degree or equivalent qualification. This clearly implies that as on the date a student is selected for the Post Graduate Course, he must possess recognized MBBS Degree or equivalent qualification. That being the position, the petitioner cannot be said to possess MBBS Degree on the date fixed for selection i.e. 25th April, 2005 and without possessing MBBS Degree, he is not eligible to apply for the Post Graduate Course.

9. We would also keep in mind the observations of the Apex Court in the case of *University Grants Commission v/s Sadhana Chaudhari and others*, reported in (1996) 10 SCC 536, wherein it has been observed at para 21 thus :

“21. We find considerable force in the aforesaid submissions of Shri Banerjee. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark.....”

10. In the present case, the fact to be examined is whether fixation of the last date of receipt of applications as 22/03/2016 passes the test of Article 14 of the Constitution of India. The contention of the learned Government Advocate that such a date was fixed on the basis of the Judgment of the Apex Court in the case of *Ashish Ranjan* (supra) cannot be accepted as it is undisputed that there is no

date specifically fixed in the said Judgment to the effect that the last day for receipt of such applications should be by a particular date. The only observation therein is that the State Authorities would have to fix their program to ensure that the date fixed for counselling and for starting the course are strictly complied with. In the present case, the date fixed for counselling is 12/04/2016. It is the contention of the respondent that the date as 22/03/2016 was fixed based on the averments in the affidavit of the respondent No.2. On perusal of para 7 of the affidavit of the respondent No.2, the basic contention therein appears to be that the respondents would require 7 working days to process the applications and further 7 working days to prepare for counselling. It is also pointed out that in view of the intervening public holidays, 7 working days were required to carry out such exercise. It is also pointed out that the summer vacation for the teaching staff would begin on 15th April, 2016. It is sought to be contended that the date was fixed on account of such difficulties. Apparently, the interest of the students who had answered the exams in the batch of February, 2015 had not at all been considered. The circumstances which forced the College to conduct their examinations for the year 2015 only in February, 2015 though the University Rules provide that such examinations had to be conducted in January, and the reasons thereof

have not at all been considered. Apart from that, it is not disputed that for all these years to meet the eligibility criteria for the Post Graduate Courses, the students had to answer their examinations in the month of January of the previous year and the period of 12 months to complete the Compulsory Internship prior to the last date of receipt of such applications was projected. It was not disputed by the respondents that such practice was followed so that the students who had answered the exams in January would have enough period of 12 months to complete their internship at the time of admission to the Post Graduate Courses. Apart from that, the petitioners who are also entitled to compete for the All India Quota are found eligible to apply for the entrance examinations for the year 2016-17, though they would complete their internship on 31/03/2016. The fact that the respondent No.2 had even issued Certificates to show that the Petitioners would complete their internship on 31/03/2016 to enable them to apply for such posts, is also found from the records produced by the petitioners.

11. All these circumstances had to be examined by the concerned Selection Committee before fixing the last date for receipt of applications as they were very crucial to examine the eligibility criteria and the fate of the batch of 17 students who had answered their

examinations in February, 2015. Apart from that, it is material to note that in the Rules which have been duly notified, the eligibility criteria to apply for the Post Graduate Courses, provided the last date as 8th April, and the first date for counselling as 22nd April, which shows that a period of 14 days is reserved to complete the exercise of examining the applications, preparing the Merit List and starting the counselling process. In the present case, by artificially fixing the date as 22/03/2016, the Selection Committee, without considering all such aspects, has disqualified 17 students from making themselves eligible to be considered for the Post Graduate Courses. The Selection Committee has not at all considered the interest of the meritorious students, such as the petitioners who are stated to be second and seventh in the Merit List. It cannot be disputed that when the cut-off date is fixed, there may be cases who fall on the wrong side and on this count alone it cannot be said that the decision is arbitrary. But however, in the present case, the relevant aspects which were material to fix the cut-off date, have not been examined by the Selection Committee while fixing such date as pointed out above.

12. That apart, it is not disputed that for all these years, the practice which was followed by the concerned college was that the

students who had answered the examination in the month of January of the previous year had a gap of 12 months to complete the compulsory internship before the last date of receipt of the applications. Once this practice has been followed for all these years and even in the current year considering the last date fixed as per the notified Rules for receipt of the applications was 8th April, when the students started their compulsory internship on 1st April, 2015, the students who intended to undergo the Post Graduate Curriculum in the year 2016 had a legitimate expectation that they would be permitted by the College to be eligible for the Post Graduate courses for the year 2016-17 and as such, having failed to examine this aspect also while fixing the cut-off date as 22nd March, 2016, the decision is arbitrary and unreasonable in the facts and circumstances of the case. The Selection Committee should have taken note of all these factors while fixing the cut-off date or given cogent reasons why these aspects were not required to be considered while doing such exercise. The Selection Committee should have taken note that the students who had appeared for the BDS Course in February, 2015 would be excluded from being eligible for the Post Graduate course during the year in question. Care should have been taken to see that the field of selection is as broad based as possible and a large number of candidates are not kept out from the

arena by picking up an artificial cut-off date. This would help the Selection Committee to make a proper selection of meritorious candidates which should be the foremost consideration in the matter of selection to the Post Graduate Dental studies. But however, in the present case, we find that the Selection Committee whilst fixing the last date has not even considered these aspects and, as such, the decision to fix the cut-off date cannot stand the test of reasonableness as well settled by the Apex Court. Apart from that, the Schedule which was appended to the Rules, was duly notified in the Official Gazette. In the present case, the decision by the Government to approve the Prospectus was taken on 18/03/2016, only after the petitioners had filed the present petition and were found to be ineligible on account of an arbitrary date fixed by the Selection Committee. The names of the Members of the Selection Committee, nor their appointments have been produced by the respondents on record. While fixing the cut-off date in order to pass the test of Article 14 of the Constitution, the classification has to be on an intelligible differentia which distinguishes persons who are grouped and those left out and that must have a rational relation to the object it seeks to achieve. In the present case, 17 students who had answered the examination in February, 2015 were excluded in view of the fixing of

an arbitrary cut- off date which cannot have any nexus with the object for which such dates were being fixed. The object in the present case to be achieved is to ensure that the counselling had to be conducted on or before 15th April, 2016 and the course had to start on 1st May, 2016. Even considering the Rules which were then in force as referred to herein above, the last date was 8th April and the date of counselling was 22nd April. Even considering a conservative estimate of the time taken to finalize the merit list, we find that the date fixed as 22nd March, 2016 is unreasonable which has grossly violated the provisions of Article 14 of the Constitution. It was incumbent upon the authorities to consider the facts and circumstances prevailing in the College during the year in question while fixing the cut- off date. Completely ignoring the relevant factual position prevailing in the subject year namely, the date when the students of the batch who answered in February, 2015 would complete their internship; the circumstances which forced the delay in holding the exams for the batch of January, 2015, as well as the fact that the cut-off date for completing such internship for the candidates who had applied for All India Quota was 31/03/2016, has made the decision to fix the cut-off date to receive the applications manifestly unreasonable and wholly arbitrary. The stand taken by the respondent

no.2 that the cut-off date is fixed considering that the summer vacation for the teaching staff would begin in April, 2016, by itself shows that the authorities had acted in total disregard to the interest of the meritorious students who had started their compulsory internship on 01/04/2015. This would show that the concerned authorities have not acted reasonably and in fairness. As already pointed out herein above, there are no minutes of the Selection Committee on what basis such date was fixed as stated in the prospectus and this action of the authorities has gravely prejudiced the career of the meritorious students, such as the petitioners who were second and seventh receptively in the Merit List. It is also to be noted that fixing of the date for examinations in February, 2015 was on account of circumstances beyond the control of the petitioners, nor the petitioners were responsible for the delay in conducting such examinations. These aspects were very material to be examined by the Selection Committee whilst fixing the date as it was always open to meet the objectives by looking into the interest of the students who had answered their examinations in February, 2016.

13. In similar circumstances, the Full Bench of Orissa High

Court in the judgment reported in 1987 SCC onLine Ori 99, in the case of *Dr. Basanta Kumar Behera and ors. vs. State of Orissa and ors.*, observed at para 8 thus :

“ 8. Suffice it to say, that picking up the cut-off date for the purpose of admission to the post-graduate medical courses on the basis of the academic session stated in the University Statutes ignoring the facts prevailing during the year in question would, in my opinion, be unreasonable and arbitrary. Such action would result, as it did during the year 1986-1987, in keeping out a large number of candidates from the field of selection. This strikes at the very purpose of any process of selection, particularly for higher technical education like medical sciences. In course of his submissions, the learned Addl. Govt. Advocate posed a difficulty said to be faced by the authorities while framing the prospectus. He submitted that it is not possible for the authorities to know the exact date on which the three Universities will hold the M.B.B.S. Examinations conducted by them. That was not the difficulty faced during the year 1986-1987 since admittedly the result of the 1985 M.B.B.S. Examination was declared in November, 1985 and the prospectus was finalised in August, 1986. However, that difficulty may not also arise if a date like the first day of the month during which the prospectus is issued is taken as the cut-off date. We were informed at the Bar that this is the practice followed in All India Institute of Medical Sciences, New Delhi. Here I may notice that the Supreme Court in the case of *Dr. Dinesh Kumar v. Motilal Nehru*

Medical College, Allahabad reported in AIR 1986 SC 1877 examining the scheme for holding entrance examination for M.B.B.S./B.D.S. courses and post-graduate medical courses submitted before the Court by the Government of India held as follows:

“Thirdly, so far as the All India Entrance Examination for the Post-Graduate courses is concerned we are of the view that there should be only one examination in a year as suggested by the Government of India in the Scheme submitted by it. But we are of the view that it would not be right to insist that a student should not be eligible for appearing at this examination unless he has completed compulsory rotating internship practical training programme and obtained registration from the Medical Council of India or any of the State Medical Councils. That would greatly inconvenience the students. The final M.B.B.S. Examination is normally held in October/November each year and therefore every student has to undergo compulsory rotating internship practical training for a period of one year and then only he can be awarded M.B.B.S. Degree and he can obtain registration from the Medical Council of India or a State Medical Council. If therefore it is provided that a student shall be eligible to appear at the All India Entrance Examination only after he was (has?) acquired M.B.B.S. Degree and obtained registration, it would mean that he would be able to appear at such Examination only after a lapse of about one year from the date of his passing M.B.B.S. Examination..... It would be better in our view if a student is allowed to appear at the All India Entrance Examination after the result of the M.B.B.S. Examination is announced and he is declared to have passed M.B.B.S.

Examination, because at that date the theoretical part of the syllabus would be fresh in his mind and it would save him the trouble of reading the entire course over again after a period of one year.....”

However, it is for the authorities in charge of medical education in the State to consider all relevant aspects and formulate an appropriate Scheme for admission to post-graduate medical courses and higher specialities. The position is that the particular cut-off date specified in the prospectus for the year depends to a great extent on the facts and circumstances prevailing during the period. Therefore, it cannot be said with finality that 30th June could never be a reasonable and proper cut-off date. It might have been so during the year in question if the M.B.B.S. Examinations were held in April, 1985 as scheduled and the results were declared by the end of June that year. But as discussed earlier, the factual position during the year 1986-1987 was very much different and that was not taken into account by the authorities in fixing the cut-off date. As noticed earlier, this Court in the cases of *Dr. Sanjukta Panda*, *Dr. Leena Das* and *Dr. Chitta Prasad Das*, (AIR 1982 Orissa 120, AIR 1986 Orissa 277 and AIR 1987 Orissa 14) (*supra*) upheld 30th June as the cut-off date holding that since it was based on the academic year described in the University Statutes it was not arbitrary. These decisions for the reasons stated in the foregoing paragraphs must be held to be incorrect.”

Taking note of the said observations, as the concerned Authorities have not examined the relevant material whilst taking the decision to fix the cut-off date to receive the applications as 22/03/2016, such exercise stands vitiated being arbitrary and violates the rights guaranteed under Article 14 of the Constitution of India which calls for interference of

this Court.

14. In such circumstances, we shall now proceed to examine what is the relief which can be granted in the present petition. It is not disputed that the petitioners have filed an affidavit to point out that the petitioner No.1 and the petitioner No.2 are the highest rankers in the batch who had answered the examinations in February, 2015. This aspect is also not disputed by the learned Government Advocate appearing for the respondents No.1 and 2. We are not inclined to disturb the process of selection which has already commenced and due to complete in terms of the directions of the Apex Court in the case of *Ashish Ranjan (supra)*. But, however, by an ad interim relief, we had directed the concerned Authorities to permit the petitioners also to take part in the counselling process which was fixed on 12th April, 2016 though the results of all the candidates were ordered to be kept in abeyance. It would not be appropriate to hold that the petitioners are ineligible from being considered for the Post Graduate Courses based on arbitrary decision in fixing the cut-off date as 22/03/2016. The petitioners have promptly approached this Court after the tentative list dated 5th April, 2016, which disclosed the petitioner No.1 at number 2 and the Petitioner No.2 at number 7 in the Merit List was sought to be

superseded on 7/4/2016 and filed the present petition on 11/4/2016 as 8, 9 and 10th were Court holidays. As such, we find that the petitioners should be considered for the Post Graduate seats of the Dental College for the year 2016-17, if they are otherwise eligible.

15. In view of the above we pass the following :

ORDER

(I) Deletion of the Petitioners from the Merit List dated 07/04/2016 is quashed and set aside and the Respondents No.1, 2 and 3 are directed to consider the petitioners for counselling for the Post Graduate Degree Courses of the Goa University at the Goa Dental College, Bambolim for the year 2016-17 and declare the results on such counselling held on 12/04/2016 on the basis of the relevant merit of the Petitioners, with all legal consequences.

(II) Rule is made absolute in the above terms.

The parties to act on the basis of the operative part of the Judgment, duly authenticated by the Registrar (Judicial) of this Court.

NUTAN D. SARDESSAI, J.
ssm.

F.M. REIS, J.