
(2001) 09 BOM CK 0072

In the Bombay High Court

Case No : Letter Patent Appeal No. 60 of 2001

Dr. Sameer Anant Deshpande

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 141

Citation : (2002) 1 ALLMR 510 : (2002) 104 BOMLR 878 : (2001) 4 MhLj 870

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The issue involved in this appeal is regarding admission to the M.S. (Oph.), M.S. (Paed.) and M.D. (Radiology) courses for January, 2001 batch against the seats returned from the All India Entrance Examinations 2001 quota of 25% for such admissions.

2. The appellant had passed his M.B.B.S. examination in May, 1998 and scored 73 out of 100 marks in the subject of Ophthalmology in the third year of the said examinations. He completed his internship training on 13th July, 1999 and was granted registration by the Maharashtra Medical Council. The Dean, Government Medical College, Aurangabad issued an advertisement on 19th August, 1999 inviting applications for admissions to the Post graduate Degree/Diploma courses in different faculties of medicine for July, 2000 batch and he had applied in response to the said advertisement with first preference for M.S. (Oph.), second preference for Diploma in Ophthalmology and third preference for M.D. (Microbiology). Though he had scored highest marks in the subject of Ophthalmology he had no chance of getting admission either in post graduate Degree or Diploma in the said discipline as the lone seat for M.S. (Oph.) was reserved for candidates belonging to Nomadic Tribes 1, and that of Diploma in Ophthalmology was reserved for the O.B.C. candidates and the petitioner belonged to the open category. He, therefore, filed an appeal bearing No. 70 of

1999 challenging 100 per cent reservation and during the pendency of the said appeal he had restricted his claim for admission to Diploma in Ophthalmology only. The appeal was allowed by the University and College Tribunal vide its order dated 4th November, 1999 by directing the authorities to advertise the seat for Diploma in Ophthalmology, providing one seat for candidates belonging to the open category. Accordingly, advertisement was issued on 8th December, 1999, interviews were conducted on 22nd December, 1999 and the appellant came to be selected for admission to Diploma in Ophthalmology, His name was recommended to the Deputy Director of Health Services on 23rd December, 1999 for being appointed to the post of Medical Officer which is a condition for being admitted to the post graduate courses. The Deputy Director issued an order on 13th December, 1999 appointing the appellant to the post of Medical Officer on account of his selection for admission to the Diploma in Ophthalmology and he joined the said post on 13th December, 1999 itself. Prior to this appointment, he was also appointed as Medical Officer vide order dated 30th August, 1999 and he had completed about four months service as Medical Officer, Class-II, Thus, he put in about nine and half months" service as Medical Officer and claimed that he was eligible for condonation of the shortfall. He approached this Court in Writ Petition No. 3616 of 2000 and by order dated 12th October, 2000 the Director of Medical Education and Research was directed to dispose of the petitioner's application within a period of one week. The said application was finally decided by the Director vide his order dated 9th November, 2000 and the Dean, Government Medical College, Aurangabad was pleased to select the appellant for admission to the D.O.M.S. course of July, 2000 batch and he was admitted at the Government Medical College, Aurangabad against a vacant seat.

3. The appellant joined the Diploma course and he had undergone training for the said course for about 7-8 months. The Respondent No. 1 published an advertisement on 22nd June, 2001 inviting applications to fill in the returned seats from All India Entrance Examination quota (All India quota) as well as the vacant seats from the institutional quota of January, 2001 batch. In the said advertisement there was one seat for M.S. (Oph.) from the A.I.E.E. quota. The Appellant, therefore, applied against the said seat for admission to M.S. (Oph.) while he was studying for the Diploma in Ophthalmology course. On 10th July, 2001 the Respondent No. 1 rejected the appellant's claim for admission to M.S. (Oph.) and, therefore, he approached the University and College Tribunal in Appeal No. 39 of 2001 and impleaded Dr. Darshana Prakash Shah as Respondent No. 2. Another doctor by name Dr. Preeti Khushilal Maithil filed intervention application in the said appeal. While Appeal No. 39 of 2001 was pending, one Dr. Devdatta Sheshrao Deshmukh also filed Appeal No. 40 of 2001 and impleaded Dr. Gauri Apte as Respondent No. 2. Both these appeals came to be decided by a common judgment dated 23rd July, 2001 by the learned Presiding Officer of the Tribunal and operative part of the said order reads, as under:

The Dean Government Medical College, Aurangabad is hereby directed to consider the claim of these appellants on merits, provided these appellants have

informed to the Dean that, they have resigned from the Diploma registration in order to stake their claim for registration to the seat of degree in the same subject as was in case of Diploma Registration. Their case would be thus considered on merit, and if they deserved, they shall be granted admission accordingly. The Dean shall finalise the selection list by or before 25th July, 2001. In view of the present situation, it is directed that, the Dean shall not issue letters of admission to the selected candidates till July 27, 2001 so as to enable the aggrieved persons to take up the matter to the appropriate forum if they are so advised.

4. Before the learned Single Judge three different writ petitions were filed i.e. Writ Petition No. 2959 of 2001 by Dr. Pradnya Nagnath Hayatnagarkar, Writ Petition No. 2962 of 2001 by Dr. Darshana d/o Prakash Shah and Writ Petition No. 2969 of 2001 by Dr. Preeti Khushilal Maithil.

In the first petition, Petitioner Dr. Pradnya was registered for M.D. (Radiology) at the S.R.T.R. Medical College, Ambajogai in the January, 2001 batch and she had joined the said course on 31st March, 2001 and it appears that she was Interested to pursue the said course at the Government Medical College, Aurangabad which she could not get though she was first in the merit list and for the reasons that the lone seat at the Government Medical College, Aurangabad was reserved for the All India quota. Pursuant to the advertisement published on 22nd June, 2001 she applied for registration to the M.D. (Radiology) post graduation course at the Government Medical College, Aurangabad on the ground that she was first in the merit list and this was obviously a transfer of registration from one Medical College to another. She was selected by the Dean for the said seat which was returned from the All India quota and this selection was challenged by Dr. Gauri Apte by filing Appeal No. 41 of 2001.

Dr. Darshana, the Petitioner in Writ Petition No. 2962 of 2001 was granted registration to the M.S. (Oph.) course at the S.R.T.R, Medical College, Ambajogai in the January, 2001 batch and she had joined the said course on 31st March, 2001, though when she had applied for post graduation registration, her first choice was M.D. (Paed.) and she could get admission for her second choice course namely M.S. (Oph.). On return of the All India quota seats, one seat in M.D. (Paed.) fell vacant at the Government Medical College, Aurangabad. Against the institutional quota she could not get the course of her first choice because Dr. Miss. Varsha Vijay Puranik, who was higher in merit, was allotted the said seat. In response to the advertisement released on 22nd June, 2001 Dr. Darshana applied for registration to M.D. (Paed.) at the Government Medical College, Aurangabad and as per the merit list published on 10th July, 2001 she was shown at Serial No. 1 and Dr. Devdatta Deshmukh, who was Respondent No. 3 in the said petition, was shown at Serial No. 2 having obtained 273 marks. Dr. Deshmukh, therefore, challenged the said selection in Appeal No. 38 of 2001 which came to be decided by the Tribunal by the common judgment which was impugned before the learned Single Judge.

Dr. Preeti Maithil, the Petitioner in Writ Petition No. 2964 of 2001 was granted registration for the D.O.M.S. course at the Government Medical College, Aurangabad in the January, 2001 batch and she had joined the said course on 7th of April, 2001. In response to the advertisement released on 22nd June, 2001 she applied against the returned seat of M.S. (Oph.) at the Government Medical College, Aurangabad and she was at Serial No. 2 in the merit list published on 10th of July, 2001. The present Appellant, therefore, challenged her selection by filing Appeal No. 39 of 2001. She was not impleaded as a party respondent in the said appeal and subsequently having learnt about the challenge raised against her selection she intervened and was thus impleaded as Respondent before the Tribunal.

By a common judgment dated 7th August, 2001 the petitions came to be allowed and the order passed by the Tribunal came to be set aside. The operative part of the directions issued by the learned Single Judge vide the said judgment, reads thus:

The Respondent-Dean is directed to consider the claims of the parties to the petition herein, in relation to admission to post graduation courses, bearing in mind the rules of admission framed under Government Resolution dated 24th October, 1991 and the observations made hereinabove as expeditiously as possible and finalise the admissions within a period of ten days from today. It is made clear that the rule in the present petition shall not affect any of the admissions already finalised, except those of the parties to this petitions which are to be governed by the ruling in these petitions. In other words, nothing stated herein shall entitle the parties to cause any change in admissions already finalised otherwise than those of the parties to the petitions.

Being aggrieved by this judgment, the parties have filed L.P.A. Nos. 60, 61, 64 and 65 of 2001. We had admitted these appeals and fixed for final hearing peremptorily on 8th September, 2001 vide our order dated 28th August, 2001 and they were so heard.

5. The learned Single Judge, after referring to a number of decisions of this Court as well as the Apex Court Ruled (a) considering the scope of Rules 2 and 6 read with Rule 10 of the Admission Rules for Post graduation courses, with the object behind the same, the inevitable conclusion is to be drawn that the same cast a duty upon the authority to fill up all the seats in the academic year itself and it excludes the applicability of carry forward rules to such seats; (b) the candidate of one batch, who had already secured admission to the post graduation course and had joined the course, was not eligible to be considered for the subsequent batch or batches unless he fulfilled the requirements of the admission rules, including Rules 2, 6 and 10; (c) Rule 2 does prohibit concurrent registration by same student in Diploma and Degree courses and in two specialities at the same time unless one registration period is over or is discontinued. Rule 6 puts an embargo over the change of registration from one subject to another subject unless three months notice is given in that regard; (d) When the case of Dr. Anil

Keshaorao More v. State of Maharashtra and Ors. (1994) 1 Mh.L.J. 939, was decided by a Division Bench of this Court (Dhabe and Wahane, JJ.) on 12th/16th August, 1993 the earlier decision of another Division Bench (Deshmukh and Sirpurkar, JJ.) in the case of Sheela Laxmikant Kulwal (Dr.) v. State of Maharashtra and Ors. (1994) 1 Mh.L.J. 503, decided on 10/11th February, 1993 was not brought to the notice or was not relied upon and Dr. Anil More's case was decided in ignorance of the rule having force of law and hence the same decision was not binding, rendering it to be per incuriam; (e) the contentions that the change in course from Diploma to Degree in the same subject would not amount to change in registration within the meaning of said expressions in Rules 2 and 6 and, therefore, requirement of three months notice cannot be insisted upon for such a change, could not be accepted; (f) though there is no specific provision prohibiting the change in institution by a student admitted to the Diploma or Degree course in the same subject, absence of such a provision would not lead to a conclusion that a student from one institution can, as a matter of right, seek such a change ignoring all the provisions relating to the rules of admission and if such a change would offend any of the provisions contained in the said Rules then the same would not be permissible. The change in institution even in the same subject is not permissible without complying with the Rules viz. Rules 2, 6 and 10; (g) the circumstances showing impossibility of compliance of the requirement of these admission rules cannot be a ground to hold that the requirements of Rule 10 or Rule 6 are directory unless it was demonstrated that the authorities concerned were negligent in taking appropriate steps in time or they had acted with malice while initiating the admission process. It cannot be said that mere impossibility of compliance of Rule 2 on account of the publication of the advertisement without leaving sufficient period for issuance of three months notice that by itself would invariably entitle the candidates to claim relaxation of rule of three months notice. Mere publications of advertisement without leaving sufficient period for issuance of notice of three months by itself could not be considered to be an impossibility for issuance of notice of discontinuation and mere delay in publication of advertisement by itself did not amount to be a mala fide act on the part of the respondent authorities and it could not be considered as an impossibility in complying with the rule of issuance of three months notice; (h) primarily it is necessary for every candidate to be eligible for consideration for admission to the course and in that regard he or she, has to fulfill all the eligibility criteria prescribed under the rules of admission. Eligibility criteria would include all the relevant rules pertaining to the admission. It is only when the eligibility criteria is fulfilled, the question of considering comparative merit amongst the candidates would arise for the purpose of finalising the admission process. The rule of merit would apply only after the eligibility is established and not otherwise. Comparative merit can be ascertained only amongst the candidates who fulfill the eligibility criteria and satisfy the rules of admission.

The points framed for consideration were answered by the learned Single Judge

in para 52 of his judgment in the following words:

(1) The candidate of one batch, who had already secured admission to the post graduation course and had joined the course, was not eligible to be considered for the subsequent batch or batches, unless he fulfilled the requirements of the admission rules framed under Government Resolution dated 24th October, 1991, including Rules 2, 6 and 10.

(2) Notice given under Rule 6 for change of registration may ensure to the benefit of the candidate to contend the termination of the existing registration, but the period of three months between such notice and the commencement of the next term is necessary to claim a right to the new registration, either in subject or in another course or at any institution. The expression "course" includes "Degree" as well as "Diploma".

(3) The rule of three months notice is mandatory in nature and mere delay in issuing advertisement does not entitle the candidate to claim relaxation from the requirement under the said rule. Comparative merit is to be ascertained amongst the eligible candidates. The eligibility of the candidates is to be decided based on the rules of admission framed under the Government Resolution dated 24th October, 1991.

6. The appellant Dr. Samir Deshpande mainly contents that (a) even though he was admitted for D.O.M.S. against the July, 2000 batch, he was eligible for admission to the M.S. (Oph.) course against the returned All India seat of January, 2001 batch and he ought to have been so considered; (b) for change in admission to Degree course from the Diploma course, in the same subject, Rule 2 and Rule 6 do not create a bar and such a change is not covered by the said Rules; (c) the requirement of giving three months notice cannot come in his way for seeking such a change in admission when the advertisement was published on 22nd June, 2001 and the admissions were to be finalised within 15 days, thereby leaving no scope for giving three months notice. Rule 10 of the Admission Rules must be given its harmonious construction, the circumstances making it impossible for the candidates to give notice ought to be considered and it ought to be held that the requirements of Rule 10 are not mandatory in every case and the said rule must be read as flexible depending upon the facts and circumstances of each case as has been held by this Court in Dr. Sheela Kulwal's case; (d) the decisions of the Division Bench in Dr. Kulwal's case as well as Dr. Anil More's case were binding on the learned Single Judge and he could not have held them as per incuriam and proceeded to disregard the said decisions by rendering a judgment contra. The learned Single Judge ought to have referred the issues for consideration by a Larger Bench and the same is required to be done by this Court while deciding the present appeal in view of the law laid down by the Apex Court in the case of Dr. Vijay Laxmi Sadho v. Jagdish air 2001 S.C.W. 223; (e) the consideration of merit must be paramount and while considering the claims for admission on merit the claim of all the applicants must be considered irrespective of their batch of admission either to the degree course

or diploma course and the view of the learned Single Judge that while considering the claim on merit, only the candidates who had applied for January, 2001 batch were required to be considered, cannot be sustained.

7. The learned Additional Government Pleader has supported the impugned judgment of this Court and thus opposed the appeal. It is contended that the appellant was not a candidate for the January, 2001 batch and he was already admitted against the July, 2000 batch and, thus, ineligible for admission against a seat that was returned or had fallen vacant in the quota of the January, 2001 batch. In addition, from amongst those who were the applicants for the January, 2001 batch, the candidates who were already granted registration in a Degree or Diploma course were not eligible for being considered for admission against the returned seats from the All India quota and a candidate once admitted to such a course, could not change from one speciality to another or from Diploma to Degree in the same speciality in view of the bar provided under Rule 2 of the 1991 Admission Rules, unless the admission already granted and continued was discontinued by following the procedure laid down under Rule 10 of the said Rules. On the issue of merit, it is submitted that admissions are required to be granted strictly on the basis of merit from amongst the candidates who were the applicants for the January, 2001 batch and who were unsuccessful in the admissions already granted in the said batch and those who had appeared for A.I.E.E. 2001 and were unsuccessful in securing registration either to diploma or degree courses in any faculty. The law laid down by this Court in Sheela Kulwal's case as well as in Anil More's case has been properly construed by the learned Single Judge and the said decision does not suffer from any judicial impropriety or a manifest error warranting intervention/correction by this Court as an Appellate Court and more so when the appeal is an intra Court appeal. The provisions of Rules 2 and 6 are mandatory and the provisions of Rule 10 could not be held to be flexible in the instant case Inasmuch as there was no reason to record a finding that the appellant had no opportunity of giving notice of three months before finalising the admissions pursuant to the advertisement dated 22nd June, 2001 and, therefore, there was a case to follow the Division Bench decision in the case of Sheela Kulwal The decision in the case of Dr. Anil More, holding that Rule 6 did not come into play when a candidate already admitted to a post graduate diploma course sought to change over to the post Graduate Degree course in the same discipline, could not be held to be a good law as the said decision was rendered without considering the provisions of Rule 2 as well as the earlier decision of the Division Bench in the case of Sheela Kulwal. The process of medical admissions, whether for graduation or post graduation courses, must receive its finality as early as possible and the uncertainty in such admissions must come to an end at the earliest so that the students complete their terms within the fixed period and the seats do not get lapsed. If the transfers, as were sought, are allowed there would be uncertainty in the vacant seats and consequent admissions against such seats, resulting into either inordinate delay or lapse of seats. In support of these contentions the learned

A.G.P. placed reliance on the following decisions of this Court:

1. Komal Kamlakar Chitnis and Others Vs. Director, Medical Education and Research, Bombay and Others, .
2. H.U. Vaidya v. State of Maharashtra and Ors. 1994 (1) Mh.L.J. 882.
3. Suhas Bhimrao Gadhave v. State of Maharashtra and Ors. 1999 (1) Mh.L.J. 286 : 1999 M.C.R. 484.

A recent decision of the Supreme Court in the case of Arvind Kumar Kankane. Vs. State of U.P. and Others, , has also been relied upon by the learned A.G.P. to buttress his submissions that if the admissions are not allowed to reach its finality on the basis of the options already exercised, it may not be possible to complete the academic course within the stipulated period and the plea that a vacant seat may go to a less meritorious candidate is only a fortuitous circumstance.

8. The learned Counsel for respondent No. 3 has supported the impugned judgment on the first count namely that the appellant was not eligible to seek admission against a vacant seat from the January, 2001 batch as he was already admitted against a seat in the July, 2000 batch. However, the Respondent No. 3 has assailed the impugned judgment on all other counts and supported the appellant in that regard. The learned Counsel for Respondent No. 4 maintained that the said respondent has been rightly admitted against the seat advertised on 22nd June, 2001 and the claim of the appellant as well as Respondent No. 3 has been rightly negatived by this Court. The respondent No. 4 fairly concedes that her admission has been consequent to the order impugned and, therefore, the fate of her admission would be governed by our decision.

9. Before we deal with the rival contentions attacking the impugned judgment, it is necessary for us to consider the Admission Rules of 1971 which originally governed the admissions to post graduation courses in various medical faculties. The relevant rules are reproduced, as under:

(2) Each recognised post graduate teacher in Clinical, Para Clinical and Basic Medical subject shall admit for post graduate registration not more than two candidates per year in a Unit for University post graduate Degree or Diploma taken together i.e. one per term of six months or as allowed according to rules of the Medical Council of India, concurrent registration of same students for degree and Diploma of any type in a speciality having counted as one seat. The students whose terms are complete will not account. Students whose terms are intimated to be discontinued by the College will also not count. Concurrent Registration of same students for Degree and Diploma of any type in a speciality having counted as one seat. The students whose terms are complete will not count. Students whose terms are intimated to be discontinued by the College will also not count. Concurrent Registration of same student in two specialities at a time will not be permitted unless one registration period is over or is discontinued.

(6) A candidate selected for registration will not in ordinary course be allowed to change his registration from one subject to another. A candidate who desires to change registration from one subject to another will have to give three months notice before the commencement of next term to enable notification of his vacancy for others. Such application will automatically terminate the existing registration and it will be treated as a fresh application for registration in new subject, such application shall bear signature of the teacher concerned with termination and should be made after full consideration as they are irrevocable once lodged with the Deans office. Registration by itself has no special priority either in registration or in posts.

10. The candidate who desires to discontinue his course has to give notice three months before commencement of next term and full fees for next three months thereafter will be charged in absence of such notice, if certificate of terms put in is required.

10. The Admission Rules of 1971 came under scrutiny by a Full Bench of this Court in the case of Ashwin Prafulla Pimpalwar and etc. Vs. State of Maharashtra and Others, , and pursuant to the directions issued in the same case, the State Government amended the Admission Rules for Post graduate Courses vide Government Resolution dated 24th October, 1991. It would be appropriate for us to consider the provisions of Rules, 2, 6, and 10 of the said Admission Rules, 1991 and they read, as under:

2. Each recognised post graduate teacher in Clinical, Para Clinical and Basic Medical subject shall admit for post graduate registration not more than two candidates per year in a Unit for University post graduate Degree & Diploma taken together, i.e. one per term of six months or as allowed according to rules of the Medical Council of India. The students whose terms are complete will not count. Students whose terms are intimated to be discontinued by the College will also not count. Concurrent registration of same student in Diploma & Degree and in two specialities at a time will not be permitted unless one registration period is over or is discontinued.

6. A candidate selected for registration will not in ordinary course be allowed to change his registration from one subject to another. A candidate who desires to change registration from one subject to another will have to give three months notice before the commencement of the next term to enable notification of his vacancy for others. Such application will automatically terminate the existing registration and it will be treated as a fresh application for registration in the new subject. Such application shall bear the signature of the teacher concerned with termination and should be made after full consideration as they are irrevocable once lodged with the Deans office. Registration by itself has no special priority either in registration or in posts.

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thereafter will be charged in absence of such notice, if certificate of term put in is required.

11. The validity of Rules 5 and 7 of the 1971 Rules was upheld by a Division Bench of this Court in *Dr. Dhondiba Dhyanoba Mundhe v. State of Maharashtra and Ors.* Writ Petition Nos. 3909 and 3910 of 1989 decided on 20.8.1990. In the amended Rules of 1991, Rules 5 and 7 were retained as it is, whereas Rule No. 2 was amended and Rules 2 and 6 were held to be mandatory by this Court in the case of *Sheela Kulwal* and it was held that a student who, had taken admission in a Diploma course, could not be simultaneously registered for a Degree course in the same subject. Regarding the provisions of Rule 10 of the 1991 Rules this Court in *Sheela Kulwal's* case (*supra*) observed:

Rule 10 merely prescribes the methodology for the discontinuation of a term. If the advertisement was so timed as to make the application of Rule 10 impossible, then it cannot be said that because the Petitioners did not give the notice of discontinuation as prescribed, they lost the chance of being considered for the admission to the degree. From the attitude of the Respondent-Dean of delaying the advertisement, it cannot be said that he expected a strict compliance thereof.

The Division Bench further stated:

It will have, therefore, to be held that though Rule 2 is mandatory in nature, where the students could have had no opportunity of discontinuance of the course because of the peculiar timing of the advertisement, merely because the student has not discontinued his or her course in terms of Rule 10, it would not debar the student from being considered for admission to the post graduate Degree course.

12. The decision in *Sheela Kulwal's* case was rendered on 10th/11th February, 1993 and the same was not either relied upon or placed before in the subsequent decision dated 12th/16th August, 1993 in the case of *Dr. Anil More* wherein, in para 19 the Division Bench (at Nagpur) held:

There is thus no reason why the word "Subject" used in Rule 6 of the Rules for admission for the purpose of change of registration from one subject to another should be interpreted in different manner viz. that the same subject should be treated as different subject for Diploma course and Degree course for the purpose of registration. It is pertinent to see that in Rules 6 of the Rules for admission since the emphasis is upon the "change of registration" in the subject as such, the said rule is not as comprehensive as Clause 16 of the University Ordinance No. 57 which is explicit in not allowing concurrent requirements for Diploma courses or Degree courses in the same or different subjects. It cannot, therefore, be held in view of the language used in Rule 6 of the Rules for admission that it covers a case of change of registration in the same subject from Diploma to Degree course.

There is no doubt that the Division Bench in Anil Move's case did not even refer to and thus consider the provisions of Rule 2 while interpreting the provisions of Rule 6 of the 1991 Rules for admission. As against this, the view taken by the earlier Division Bench in the case of Sheela Kulwal has been followed subsequently in the case of Dr. Ganpat Mashnajorao Wadekar Vs. The State of Maharashtra and others, , as well as Dr. (Miss.) Sangita Kamalakar Vyavahare v. The State of Maharashtra and Ors. Writ Petition No. 12 of 1999 decided on 4.5.2000, (both by the Aurangabad Bench).

13. In the case of Dr. Dhondiba Dnyanoba Mundhe (supra) a Division Bench of this Court was called upon to decide, inter alia, the correct procedure to fill in a seat returned/fallen vacant from the All India Entrance Examination quota, which issue is similar to the one of hand and after referring to the provisions of Rules 5 and 6 of the 1971 Rules for admission it held that the seats remaining vacant from the A.I.E.E. quota are required to be filled in from the candidates from the University area purely on merit as the said seats would carry the same character on return and they have to be filled in from the wait listed candidates purely on merit. In addition, the unsuccessful candidates, at the A.I.E.E. also have to be considered against such returned seats on the basis of the same character of merit alone. This view has been approved in the subsequent decision (Division Bench at Mumbai) in the case of Dr. Shilpa Suresh Shinde and others Vs. State of Maharashtra and others, and it was further held that the State cannot apply the reservation policy against such seats as they were the seats from the All India quota and they ought to be filled up only on merit without application of the reservation policy.

14. If the seats reserved for the All India quota remain vacant they are returned to the respective institutes and they are referred to as "All India Entrance Examination Return Seats". These returned seats are required to be filled in by the institutions as per the rules and the law laid down, from amongst the candidates who are unsuccessful in obtaining admission either against the institutional quota or against the All India quota and the admissions are done strictly on the basis of merit. The reservation policy is not made applicable while filling in the return seats from the All India quota. In the case of Dr. Sangita Vyavahare (supra) a Division Bench of this Court (Marlapalle and Zoting, JJ.) by following the decision of the Supreme Court in the case of Jeevak Almast Vs. Union of India (UOI) and Others, and the decision of this Court in the case of Dr. Dhondiba Mundhe (supra) held that the returned/vacant All India quota seats are required to be filled in from the waiting list purely on merit and the said waiting list would be a combined waiting list of the unsuccessful candidates at the A.I.E.E. as well as the candidates against the institutional quota on the basis of the same character of merit alone and by following the provisions of Rule 5 and 7 of the Admission Rules.

15. In the year 2001 the total available seats for post graduate courses, both Degree and Diploma, were 139 and as per the law laid down by the Supreme

Court in the case of Dr. Dineshkumar v. Motilal Nehru Medical College, 25% of this seats were required to be allotted to the A.I.E.E. quota. Similarly, these 139 seats were distributed as 70% for January batch and 30% for July batch.

16. So far as filling in these seats in the respective batches is concerned, the same is done, as under:

The Director of Health Services, New Delhi conducts the All India Entrance Examination (A.I.E.E.) for the post graduate admissions in the month of February every year and 25% seats from all colleges in Maharashtra are reserved for the successful candidates in this examination. The Director of Health Services, Government of Maharashtra, finalises the admissions for the seats reserved for the in-service candidates and the remaining 50% seats are filled in by the Competent Authority of the respective institutions viz. the Dean in the present case.

17. The Applicants, whose cases are relevant for our consideration, are (1) Dr. Devdatta Deshmukh, (2) Dr. Kumari Darshana Shah, (3) Dr. Priti Maithil, (4) Dr. Sangita Marlecha, (5) Dr. Gauri Apte, (6) Dr. Rajesh Parashwani and (7) Dr. Samir Deshpande. The first six candidates had already applied for the January, 2001 batch and the 7th candidate (the appellant) was already admitted against the July, 2000 batch and he was not one of the applicants for the January, 2001 batch in response to the advertisement released on 9th March, 2001. While submitting their applications they had also indicated their preferences i.e. first preference, second preference and third preference. Dr. Devdatta Deshmukh had given his first preference for M.D. (Paed.), second preference for M.S. (Surg.) and third preference for M.D. (Medi.). Dr. Darshana Shah had given her first preference for M.D. (Paed.), second preference for M.S. (Ophth.) and third preference for M.D. (Path.). Dr. Priti Maithil had given her first preference for M.S. (Ophth.), second preference for Diploma in Child Health. She did not indicate her third preference. Dr. Sangita Marlecha had given her first preference for M.S. (Ophth.), second preference for Diploma in Anaesthesia and third preference for Diploma in Child Psychology. Dr. Gauri had given her first preference for M.D. (Radiology), second preference for M.D. (Pathology) and third preference for M.D. (Anaesthesia). Dr. Rajesh Parashwani had given his first preference for M.S. (Surg.), second preference for M.D. (Radiology) and third preference for Diploma in M.R.D.

Dr. Devdatta Deshmukh, Dr. Darshana Shah, Dr. Rajesh Parashwani and Dr. Sangita Marlecha had appeared for the All India Entrance Examination 2001 and were unsuccessful in obtaining admissions against the said All India quota. They were also the applicants in the January, 2001 batch against the institutional quota and only Dr. Darshana Shah could secure admission for the M.S. (Ophth.) degree course at the S.R.T.R. Medical College, Ambajogai which was her second preference. The other candidates viz. Dr. Priti Maithil, Dr. Gauri Apte and Dr. Samir Deshpande did not appear for the All India Entrance Examination in 2001 and when the said examination was held, Dr. Sameer Deshpande was already

registered for a seat against the July, 2000 batch as per his choice and availability of the seat.

18. The advertisement released on 22nd June, 2001 was for two different types of seats viz. the vacant seats from the institutional quota and the returned seats from the All India quota against the January, 2001 batch and in the vacant seats of the institutional quota there were some seats which were to be filled in against the reserved seats for Scheduled Castes, Scheduled Tribes and Other Backward Class, whereas the seats from the returned All India quota were to be filled in strictly as per the merit and without following the reservation policy. Pursuant to the impugned judgment the admission process in respect of the seats advertised on 22nd June, 2001 has been finalised and the following candidates, are granted registration for the respective courses.

19. The first point that fails for our consideration is, whether the action of the Dean was legal and justified in releasing the advertisement dated 22nd June, 2001 for filling in the vacant seats from the institutional quota as well as the return All India quota against the January, 2001 batch. The learned Additional Government Pleader stated that such a course was required to be followed by the Dean in view of the law laid down by this Court in the case of Sanjeev Dinkarrao Rokde v. State of Maharashtra and Ors. (1994) 2 Mh.L.J. 1328. In the said case one post graduate seat in medical faculty had fallen vacant due to the resignation submitted by a registered candidate who belonged to the Nomadic Tribes category and he was admitted against such a reserved seat. This vacant seat was subsequently filled in by considering the merit list of the unsuccessful candidates and as there was no unsuccessful candidate from the Nomadic Tribes category, by rotation the seat was granted to an unsuccessful candidate from the Other Backward Class category, who was also registered for the M.D. (Path.) course at the relevant time and the Dean did not advertise the said post. The selection so made came to be challenged and this Court (Dhabe and Chavan, JJ.) in para 7 observed:

In our view, whenever a seat falls vacant, It is obligatory upon the respondent Dean to advertise the said seat before it is allotted to any candidate. The merit list which is prepared is essentially for the seats which are advertised whether in January term or July term of the year. It has to be seen that the State is bound to comply with the mandate of Article 14 of the Constitution which requires that all eligible candidates must get an opportunity to compete for the seat which is sought to be filled in by the Dean. The said requirement is basic and can be complied with only by advertising the said seat in an appropriate manner or as may be provided for under the Rules for admission. In particular, in the instant case, had the seat been advertised, it would have given an opportunity to a N.T. candidate for whom the seat was reserved to apply for the said seat.

20. In the above case, this Court was not called upon to consider the issue of filling in a return seat from the All India quota and the decision was in respect of a seat which fell vacant from the institutional quota. It is well recognised in law,

as has been observed earlier, that while filling in the return seats from the All India quota, the policy of reservation is not applicable and such seats have to be filled in strictly on the basis of merit by preparing a combined merit list from amongst the candidates who were unsuccessful in the merit list prepared for the institutional quota as well as the All India quota from the batch concerned. In the case of Dr. Sangita Vyavahare (supra) this Court held that (a) the action of releasing an add to fill in the return seat from the All India quota was illegal and unwarranted, (b) the returned seat from the All India quota was required to be filled in from amongst the unsuccessful candidates for admission to post graduate medical courses in the All India quota as well as the institutional quota, even though the candidates from the institutional quota did not appear for the All India Entrance Examination held in the concerned year, (c) admissions against such returned seats must be finalised at the earliest and it was imperative for the authorities concerned to ensure that such a seat did not get lapsed, (d) the admissions were required to be granted purely on merit and the reservation policy would not be applicable, and (e) a candidate who had not appeared for the A.I.E.E. in the year concerned or was not an applicant for the institutional quota for a particular batch, either January or July, shall not be entitled to seek admission against a vacant/returned seat from the respective batch. This view was based on the law laid down by the Supreme Court in the case of Dr. Jeevak Almast (supra) and by this Court in the case of Dr. Dhondiram Mundhe (supra) and reaffirmed in the case of Dr. Shilpa Suresh Shinde and others Vs. State of Maharashtra and others, . The relevant observations made by the Apex Court in Dr. Almast's case are:

We are of the view that it would be in the interest of everyone if the Respondent No. 2 is directed to supply to each State and/or Union Territory from where candidates had appeared at the entrance test, candidate-wise particulars confined to such State within 10 days from now. Once these particulars are available the Selection Committee operating in the State and/or Union Territory or in the respective medical colleges covered by the scheme, as the case may be, shall draw up a list of the remaining candidates seeking admission as against the 75 per cent of the seats and the candidates who had taken the All India Entrance Examination but have not been found fit on the basis of the marks secured in their respective selection tests and in the event of their being no selection test in the States relating to the 75 per cent quota then at the M.B.B.S. examination. This shall be on the footing that the marks in the respective tests or the test and the examination are at par and admission would be on the basis of merit. There is no doubt that the All India Selection test had been a stricter one. Now it would not be possible for us to direct what weightage is to be added on that score. Once the common list is drawn up on the basis of the performance, admission to the remaining seats in the Post Graduate courses can be taken up.

21. In view of this settled position in law it was imperative for the Dean to finalise the admissions against the returned All India seats by preparing a combined merit list from amongst the unsuccessful candidates against the

institutional quota (January, 2001 batch) and the All India quota who had appeared for the A.I.E.E. 2001. If this was done, there was no occasion for inviting applications and for that matter the present Appellant or any other similarly placed candidates, who were already granted registration, to apply in response to the same.

22. The next point that we are required to consider is regarding the interpretations of Rules 2, 6 and 10 of the 1991 Admission Rules. Rule 2 of the 1971 Admission Rules ended with the wording "concurrent registration of same student in two specialities at a time will not be permitted unless one registration period is over or is discontinued". Whereas, the said rule in the amended 1991 Admission Rules ended with the wording "concurrent registration of same student in Diploma and Degree and in two specialities at a time will not be permitted unless one registration period is over or is discontinued".

23. The words so underlined in the amended Rule 2 are deliberate and the provisions of the said rule in their entirety mean that (a) concurrent registration of the same student in Diploma and Degree at a time will not be permitted unless one registration period is over or is discontinued and (b) concurrent registration of same student in two specialities at a time will not be permitted unless one registration period is over or is discontinued. This Court in Sheela Kulwal's case (supra), on the interpretations of the amended Rule 2, observed:

10. ...The reliance of the Petitioners, therefore, on these cases, including Dr. Ghaisas's case, would be uncalled for in view of the change in the present rules by restructuring Rule 2 and by adding the words "of same student in Diploma and Degree". We do not wish to go into the facts of all the other judgments, since we find that in all the judgments it is only the ratio in Dr. Ghaisas's case which is relied upon. This bar, which has been introduced in Rule 2, is deliberate and with positive intention on the part of the Respondent-State, so that the maximum students could get the advantage of higher education, particularly the post graduate education in the medical field. It cannot, therefore, be said that the rule should be so construed as if the bar was not there. With the bar having been brought in specifically and the bar having been made applicable to the students in Diploma and Degree along with the other students who wish to change from one speciality to another, it would not be possible for us to accept the contention of the Petitioners that this bar should be ignored and, for that purpose. Rule 2 should be held as directory. A clear and unambiguous language of the rule which admits of no relaxation also supports our view. We, therefore, hold that Rule 2 as it stands today is mandatory in nature and a student who has taken admission in a Diploma course cannot be registered for a Degree course.

24. The view taken by this Court in Sheela Kulwal's case is specific and which rules that simultaneous registration in a Diploma and Degree course in the same speciality is not permissible and change of registration from Diploma course to Degree course in the same subject amounted to change of registration and, thus, covered by the provisions of Rule 2 as is applicable for change from one

speciality to another speciality. In the case of Dr. Anil More (supra) the amended Rule 2 could not be considered by this Court either because it was not referred to or there was no occasion for bringing it to the notice of this Court the earlier decision in Dr. Sheela Kulwal's case. The interpretations so given on the provisions of Rule 6 in Dr. Anil More's case were without referring to the provisions of Rule 2 as well as its interpretations in the case of Dr. Sheela Kulwal. In the case of Dr. Sangita Vyavahare (supra) we have held that a candidate who was ultimately found to be eligible for registration against a returned seat had completed his registration period as well as the course he was registered for on the date when he was selected for the same seat and the intervenor was not only less meritorious but was also having a registration for a Diploma course simultaneously.

25. The view taken by the learned Single Judge that change in registration from Diploma to a Degree course in the same speciality also amounts to change in registration from one subject to another cannot be held to be erroneous and we reaffirm the same view which has been consistently followed barring the exception in the case of Dr. Anil More.

26. Rules 6 and 10 of the Admission Rules, as framed in 1971 and 1991 are in *pari materia*. As per Rule 6 a candidate selected for registration will not, in ordinary course, be allowed to change his registration from one subject to another and in Sheela Kulwal's case it was held that the term "from one subject to another" would also mean "from Diploma to Degree in the same subject". The word "ordinarily" would mean that generally such change is barred but in exceptional circumstances the change could be permissible and it has to be, therefore, interpreted as an exception to the general rule. A candidate who desires to change registration either from Diploma to Degree in the same speciality or from one speciality to another (Diploma or Degree), is required to give three months notice before commencement of the next term so as to enable the notification of his vacancy for others and such application of notice will automatically terminate the existing registration and it would be treated as a fresh application for registration to the degree course in the same subject or for registration in a different speciality.

27. There is a difference between the applicability of Rule 2 and Rule 6 and they have to be read harmoniously. Rule 2 ends with the words "unless one registration period is over or is discontinued", whereas Rule 6 opens with the wording "a candidate selected for registration will not, in ordinary course, be allowed to change his registration from one subject to another". Rule 2, thus, bars simultaneous registration in Diploma and Degree course in the same speciality or a Degree course in different speciality unless the registration in the existing course is discontinued or the registration period is over. As against this, Rule 6 speaks of allowing the change of registration in exceptional cases and it states, in the subsequent portion, the procedure for such a change in the following words:

The candidates who desire to change their registration from one subject to another will have to give three months notice before the commencement of next term to enable notification of his vacancy for others. Such application will automatically terminate the existing registration and it will be treated as a fresh application for registration in a new subject.

Rule 6 does not speak about discontinuation of the course or the procedure for such discontinuation. It is at this stage that Rule 10 comes into play for those who desire to discontinue the existing course. This discontinuation would include the discontinuation of course contemplated under Rule 2 so as to give up existing registration for coming out of the bar created under it so as to seek registration from Diploma to Degree in the same speciality or in a degree course in different speciality. Rule 10 has its application only for prescribing the procedure of discontinuation for the purpose of Rule 2 and it has nothing to do for the procedure of change of registration as contemplated under Rule 6, Rule 2 and 10 have to be, thus, read together, whereas Rule 6, which has been held to be mandatory by this Court in the case of Dr. Sheela Kulwal (*supra*), has to be read independently. In the said case, on the provisions of Rule 6, this Court, observed:

10. Time and again, this rule came to be considered by this Court and it was held that the bar created by Rule 6 in 1971 Rules applies only for the students who wanted to change from one subject to another and it did not apply to the candidates who wanted to retain the same subject but desired to change the course from Diploma to Degree.

Even if it is presumed that a change over from Diploma to Degree course, in the same speciality, is not covered by Rule 6, the same is certainly covered by Rule 2 and unless the existing registration for a Diploma course is discontinued by following the provisions of Rule 10, the registration for a Degree course in the same speciality cannot be granted. Or else, the candidate concerned has to wait for the completion of the registration period of the existing course i.e. Diploma for applying for registration to the Degree course in the same speciality. A candidate admitted in a Diploma course in one speciality and seeks admission for a Degree course in another speciality would certainly be covered by the provisions of Rule 6 as well.

28. There is no provision in these Rules for transferring the registration from one institution to another. If the Rules have not provided for a right of change in registration from one institution to another, such a right cannot be sought to be exercised by resorting to legal remedies solely because such a bar is not specifically provided in the Rules. The Rules contemplate change from Diploma to Degree in the same subject or change in Degree course in different subject. It would not be safe to read an implied provision in these Rules for transfer of registration in the same course (Diploma or Degree) from one institution to another and more so when it is a persistent need of the time that the medical admissions or for that matter the admissions to any professional course or a course of higher learning must be finalised at the earliest and vacant seats in a

particular batch/year are not allowed to get lapsed. Of course, there may be some cases of mutual transfers from one institution to another which can be treated as an exception to the general rule and such transfers may be permissible even in the absence of a specific provision in the Rules, to that effect.

29. In *Sheela Kulwal's* case (supra) this Court has considered the provisions of Rule 2 and 10 together while posing an issue "whether the strict compliance of Rule 10 is necessary treating it to be mandatory". In the said para, it is observed:

12. However, that cannot be the end of this controversy. It will have to be seen as to whether a student, who is already admitted in Diploma, could be admitted or could be considered for the admission to the Degree course. The words "unless one registration period is over or is discontinued" are extremely clear and as to how a student would discontinue his course is provided for in the provisions of Rule 10. A candidate who desires to discontinue his course has to give a notice of three months before the commencement of the next term and full fees for the next three months thereafter will be charged in the absence of such notice, if certificate of terms put in is required, it is, therefore, essential for a student for being considered for the admission to the Degree course and who is, at the same time, selected or is continuing with a Diploma course, to discontinue his term as provided in Rule 10 by giving a notice three months prior to the commencement of the next term. It is, therefore, essential that the student must get a reasonable opportunity to give such notice before he applies for consideration of his admission to the Degree course. Whether the strict compliance of Rule 10 is necessary treating it to be of mandatory nature, is a question which we have to answer now.

On analysing the facts in that case this Court held that there was Inordinate delay in advertising the seats vacant and the authorities themselves had left no scope for the strict compliance of Rule 10, by their highly belated actions, for which the authorities could not give any reasonable explanation. The advertisement for July, 92 batch was issued as late as on 4th November, 1992 and it was specifically pointed out by the candidates concerned who were holding a registration either in Degree or Diploma course that they could not be in a position to give notice to discontinue the course within the date prescribed by Rule 10 as the advertisement itself was given in the month of November, 1992. Analysing the circumstances of that case, this Court held that if there was no opportunity for the student to discontinue his/her course for the purposes of seeking admission to the Degree course, obviously a prejudice was caused to such students by the issuance of the advertisement as late as on 4th November, 1992 and. if the advertisement was released in time the petitioners could have been in a position to firstly decide whether to take the admission in Diploma course or at least they could have been in a position to resign before their next term started. All the petitioners were deprived of this opportunity and this had resulted In injustice having been caused to them. It was under this background that the Division Bench proceeded to observe:

15. ...Rule 10 merely prescribes the methodology for the discontinuation of a term. If the advertisement was so timed as to make the application of Rule 10 impossible, then it cannot be said that because the Petitioners did not give the notice of discontinuation as prescribed, they lost the chance of being considered for the admission to the Degree courses. From the attitude of the Respondent-Dean of delaying the advertisement, it cannot be said that he expected a strict compliance thereof.

16. It will have, therefore, to be held that though Rule 2 is mandatory in nature, where the students could have had no opportunity of discontinuation of the course because of the peculiar timing of the advertisement, merely because the student has not discontinued his or her course in terms of Rule 10, it would not debar the students from being considered to admission to the post graduate Degree course.

These observations of the Division Bench in Sheela Kulwal's case do not apply in the instant case inasmuch as we are dealing with the issue of admissions against the returned seats from the All India quota for which the procedure has been laid down by the Supreme Court in Jeevak Almost's case (supra) and the said law holds the field as at present. These seats were required to be filled in only from amongst the unsuccessful candidates, which means the candidates who were without a registration when the returned seats were sought to be filled-in June, 2001. The observations in Sheela Kulwal's case must be applicable in the facts and the circumstances mentioned therein and those observations were only byway of an exception to the general rule. They cannot be read as a ratio decidendi. On the touchstone of this legal position, learned Single Judge proceeded to decide the petitions without being influenced by the above observations in Sheela Kulwal's case and we have no hesitation to hold that the approach of the learned Single Judge cannot be held to suffer from any infirmities.

30. A fervent plea was raised before us in support of reference before a Larger Bench of this Court on the ground that (a) there was a conflict in the decisions rendered by this Court in the case of Sheela Kulwal and Anil More, (b) the learned Single Judge did not follow the law laid down in Sheela Kulwal's case as well as Anil More's case and (c) it would be judicial impropriety for us to take a different view than taken in the case of Dr. Sheela Kulwal regarding the compliance of Rule 10 and more particularly the circumstances which made it impossible for the candidates to comply with the said rule and in such circumstances it must be read to be directory and not mandatory.

31. The law of precedent has two exceptions viz. (a) the doctrine of per incuriam and (b) the rule of sub-silentio. If a decision is rendered without considering a statutory provision or a rule on the basis of which a decision is sought or a judicial pronouncement made earlier by a coordinate Bench or Larger Bench of the High Court or the decision rendered is contrary to the law laid down by the Apex Court, the doctrine of per incuriam would operate. If there was no occasion

for the Court to consider a particular statutory provision or a particular rule and a decision was rendered, such a decision would be silent regarding the interpretation of the statutory provisions or the rules which were not referred to. The issue of binding precedents has been considered by the learned Single Judge by referring to the judgments of the Supreme Court in the case of (i) *Municipal Corporation of Delhi Vs. Gurnam Kaur*, , (ii) *Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut*, and (iii) *Arnit Das Vs. State of Bihar*, . A constitution Bench of the Supreme Court in the case of *Jaisri Sahu Vs. Rajdewan Dubey and Others*, , had an occasion to deal with the same subject and on the subject of exceptions to the general rule of binding precedents the following exception, as stated in Halsbury's Laws of England, third edition, Vol. 22, para 1687, pp. 799-800.

The Court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.

32. In the case of *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, , (R.M. Sahai, J., as then he was - concurring) observed in para 41, while dealing with the exceptions when the decision of an Appellate Court was not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio, "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* (1941) 1 K.B. 675: (1941) 2 All E.R. 11, the Court did not feel bound by earlier decision as it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority". It was approved by this Court, in *Municipal Corporation of Delhi Vs. Gurnam Kaur*, . The bench held that, precedents sub-silentio and without argument are of no moment". The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141, Uniformity and consistency are core of judicial discipline. But that which escapes in the Judgment without any occasion is not ratio decidendi. In *B. Shama Rao Vs. The Union Territory of Pondicherry*, , it was observed, "it is trite to say that a decision is binding not because of its

conclusions but in regard to its ratio and the principles, laid down therein". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

33. In Dr. Anil More's case (supra) Rule 2, as amended in 1991 Admission Rules, was not referred to and thus there was no occasion for the Division Bench of this Court to interpret the provisions of Rule 6 in juxtaposition with Rule 2 and, therefore, the interpretation of Rule 6 rendered by this Court in the said case were in the absence of the provisions of Rule 2 and in ignorance of the earlier decision of another Division Bench in the case of Dr. Sheela Kulwal (supra). These two decisions cannot be held to be conflicting on the point of law inasmuch as the provisions of Rule 2 were not considered in the later case of Dr. Anil More.

34. In the case of Vijay Laxmi Sadho (supra), the Apex Court observed:

...It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a Larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

This caveat would be applicable if the decision in Dr. Anil More's case was rendered after considering the provisions of Rule 2 and Rule 6 and not otherwise. We, therefore, do not find it safe to hold that there is a controversy between the two decisions rendered by coordinate Benches in Dr. Sheela Kulwal's case and Dr. Anil More's case and hence there is no occasion to make a reference to a Larger Bench. In aid of this view, we rely upon a Division Bench judgment of this Court (Dhabe and Wahane, JJ.) in the case of Kashibai wd/o Sanga Pawar and Ors. v. State of Maharashtra (1993) 2 Mh.L.J. 1168.

35. It is no doubt true that in Dr. Sheela Kulwal's case this Court has held that the provisions of Rule 10 are required to be read as directory and if the circumstances revealed that it was impossible for the candidates to comply with the requirements of the said rules for discontinuation of the course, the benefit ought to go to the candidates and mere readiness to relinquish the existing registration would be sufficient compliance of the provisions of Rule 10. As we have noted earlier, the concessions granted by this Court in Dr. Sheela Kulwal's case are only qua the circumstances of that case and it would be unsafe to generalise the said observations. The learned Single Judge did hold that the respondent authorities were not at fault and, therefore, unless it was shown that their action suffered from malice or negligence causing inordinate delay, there was no reason to extend the benefit of the interpretations of Rule 10 as rendered

in the case of Dr. Sheela Kulwal and that, however, cannot be a reason to come to the conclusion that the learned Single Judge has disregarded the view of the Division Bench. Even otherwise, the issue of admissions that fell for consideration before this Court in the instance case, is regarding admissions to the returned All India seats. The candidates who had been already granted registration and had joined the respective courses had no legal right for being considered against such returned seats to June, 2001 and it was imperative for the Dean to consider the cases of those unsuccessful candidates by drawing a combined merit list from the All India quota as well as the institutional quota and this is the spirit of the order impugned before us. There is no occasion for us, in the instant case, to rely upon the observations made earlier in the case of Dr. Sheela Kulwal regarding the interpretations of Rule 10 of the Admission Rules and hence to record a contrary finding as well. We, therefore, do not see any merit in the prayer for reference to a Larger Bench on this count as well.

36. Much has been stated about the merit of the appellant and other petitioners. We are of the firm opinion that merit has to be considered amongst the candidates who are eligible for seeking admissions against the particular seats/batch. The appellant Dr. Sameer Deshpande was already registered for the July, 2000 batch and he had neither appeared for the A.I.E.E. 2001 nor was an applicant for the January, 2001 batch. The provisions of Rule 5 specifically provide for the procedure to prepare the merit list and this rule can be made applicable in respect of the candidates who were seeking admissions for the January, 2001 batch. The appellant was not one such candidate and he was, thus, ineligible to seek admission against the returned All India seat which was sought to be filled in June 2001. The others who were in the original merit list prepared for admissions against the January, 2001 batch but were already granted registration, could not remain in the fray for filling in a seat returned from the All India quota and such a seat is required to be filled in as per the law laid down by the Supreme Court in Jeevak Almast's case (supra) and not by any other mode or method. These candidates who were already granted registration to a course of their first choice or the second choice or the third choice, as the case may be, were already registered candidates and they ceased to be unsuccessful candidates either against the All India quota or the institutional quota and, thus, ineligible for seeking registration against the subject seats. They could not emphasis the factor of merit alone to be considered for admissions which issue is required to be considered amongst the eligible candidates alone. We affirm the view taken by the learned Single Judge in this regard and hold that a candidate has no vested right to continue to claim admission/registration to a course of his/her first choice.

37. It is stated by the Dean that the returned seats for M.S. (Oph.), M.D. (Paed.) and M.D. (Radiology) have been allotted pursuant to the impugned directions, strictly on the basis of a combined merit list from amongst the unsuccessful candidates of the All India quota of 2001 and the institutional quota of January, 2001 batch. Accordingly, Dr. S.P. Marlecha has been granted M.S.

(Ophth.), Dr. Devdatta Deshmukh has been granted M.D. (Paed.) and Dr. Parashwani has been granted M.D. (Radiology) and there is no other candidate from the respective faculty who is above in merit to these three candidates. All these three candidates were unsuccessful in the institutional quota for 2001 batch and all of them had appeared for the A.I.E.E. 2001 and were unsuccessful in getting registration against the All India quota. The candidates who were already granted registration and had joined the respective courses had no right to seek admissions against the returned All India seats which could be sought to be filled in, in June, 2001 and there is no provision in the Rules which ought to be read to provide for transfer from one institution to another in the same course. It is expedient to read the provisions of Rules 2, 6 and 10 for providing finality to the post graduation admissions at the earliest possible and during the concerned term period which are (a) first term - 1st January to 15th May, (b) second term - 1st July to 15th November. When a seat falls vacant in any particular academic year, there is a corresponding duty cast on the authorities to take immediate steps to fill up the same. There is no question of a right of admission to a seat falling vacant in the midst of or towards the end of the academic year. *Ajay Pradhan Vs. State of Madhya Pradesh and Others*, . We are informed that if the registration is granted before 31st March, or 30th September the respective term periods are maintained and in case the registration in the respective batches is granted after the above mentioned time period, the term period is automatically extended by a maximum of three months. The appellant as well as two other petitioners were granted registration and all of them had joined the course immediately thereafter. Their first term would, therefore, expire by 15th May, 2001 or at the most 15th of August, 2001. Having completed one full term of a particular course, it is not certainly in public interest that such candidates are allowed to change over from the Diploma to Degree registration in the same subject or to a Degree in different course. The approach of the learned Single Judge has certainly considered all these aspects and, therefore, there is no reason for us to take a different view. The recent decision of the Apex Court in the case of *Arvind Kumar Kankane (supra)* as relied upon by the learned Additional Government Pleader, does support the action of the Dean in following the directions of this Court and we usefully quote the following observations in the said case:

5. The grievance made is that if a choice subject like surgery and medicine is given up by a candidate and that seat becomes vacant it may go to a candidate who is lower in rank in the merit list. This is only a fortuitous circumstance dependent on so many contingencies like the student who has been allotted a seat in medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the Rule.

38. For the reasons elaborately set out herein above, we hereby dismiss the appeal, but without any orders as to costs.