

**(2001) 08 BOM CK 0016**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 2959, 2962 and 2964 of 2001

Pradnya (Dr.) and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

**Date of Decision :** 07-08-2001

**Acts Referred:**

Admission to Post Graduate (Medical) Courses Rules, 1991 — Rule 10, 2, 6  
Constitution of India, 1950 — Article 14, 226

**Citation :** (2002) 3 BomCR 382

**Hon'ble Judges :** R.M.S. Khandeparkar, J

**Bench :** Single Bench

**Advocate :** K.R. Deshpande, in W.P. No. 2959/2001, S.R. Barlinge, in W.P. No. 2962/2001 and S.A. Kulkarni, in W.P. No. 2964/2001, for the Appellant; N.B. Khandare, A.G.P., in W.P. Nos. 2959, 2962 and 2964/2001, for respondent Nos. 1 and 2, Sunil A. Kulkarni in W.P. No. 2959/2001, for respondents No. 3, S.R. Barlinge in W.P. No. 2964/2001, for respondents No. 3 and A.B. Kale in W.P. No. 2962/2001, for respondent No. 3., for the Respondent

**Final Decision :** Allowed

## Judgement

R.M.S. Khandeparkar, J.—Since common questions of law and facts arise in these three petitions, they were heard together and are being disposed of by this common judgment.

2. Rule. By consent, the rule is made returnable forthwith. Heard the learned Advocates for the parties. Perused the records.

3. An advertisement came to be published on 22nd June, 2001 inviting applications in prescribed forms from the eligible candidates for the postgraduate degree and diploma courses in relation to vacant seats including those from All India Quota, of January, 2001 term. The details of such vacant seats were given in the appendix attached to the said advertisement. Pursuant thereto, the petitioners and the private respondents herein applied for admission to the seats of their choice. It is the case of all the petitioners that inspite they being eligible

and meritorious candidates for the vacant seats of their choice, they have lost their chance of being selected in those seats pursuant to the impugned orders passed by the Tribunal and hence, the present petitions.

4. In Writ Petition No. 2959/2001, it is the case of the petitioner Dr. Pradnya that she got admission for M.D. (Radiology) at S.R.T.R. Medical College, Ambejogai in relation to January, 2001 batch and she joined the course on 31st March, 2001. On that occasion Dr. Pradnya, in fact, had applied for M.D. (Radiology) seat in Government Medical College, Aurangabad but, inspite of she standing first in the merit list, she could not secure the said seat as the same was then reserved for All India Quota. Therefore, pursuant to the advertisement of 22nd June, 2001, she applied for the vacant seat in M.D. (Radiology) in Government Medical College, Aurangabad and having stood at serial No. 1 in the provisional merit list, on the basis of the applications received in answer to the said advertisement, she was selected for the said seat. The same was challenged by the respondent No. 3 Dr. Gauri before the College Tribunal and by the impugned judgment dated 10th July, 2001 in Appeal No. A.D.M. 41/2001 the Tribunal directed the Dean to take fresh decision and to prepare fresh list bearing in mind the decision of this Court in *Sheela Laxmikant Kulwal v. State of Maharashtra and others*, reported in 1994 M.L.J. 303 and *Dr. Anil Keshavrao More v. State of Maharashtra and others*, reported in 1994 M.L.J. 939 as well as applying Rule Nos. 2, 6 and 10 of the Admission Rules. Acting upon the said directions, the respondent No. 2 Dean of the Government Medical College, Aurangabad published a fresh merit list declaring the respondent No. 3 Dr. Gauri to have been selected for the seat of M.D. (Radiology) at Government Medical College, Aurangabad.

5. In Writ Petition No. 2962/2001, it is the case of the petitioner Dr. Darshana that she was selected for admission to M.S. (Opthalmology) at Ambejogai for January, 2001 batch and she joined the course on 31st March, 2001. In fact, on that occasion Dr. Darshana had given her preference for the seat in order of M.D. (Pediatrics), M.S. (Ophth) and M.D. (Medicine). However, the seat for M.D. (Pediatrics) at Government College, Aurangabad, was allotted to one Miss. U.V. Puranik, who had secured 2 marks more than those by Dr. Darshana and, therefore, the petitioner had to be satisfied with the admission to the said seat of M.S. (Ophth) which was her second choice. In answer to 22nd June advertisement, as Dr. Darshana was interested in post graduation in M.D. (Pediatrics), she applied for the said seat in Government Medical College, Aurangabad. Pursuant to the applications received in answer to the 22nd June advertisement, the merit list of the applicants desiring to seek admission to the M.D. (Pediatrics) was published on 10th July, 2001 and the petitioner Darshana having obtained 280 marks, was shown at Serial No. 1 and the respondent No. 3 Dr. Devdatta was figuring at Serial No. 2 having obtained 273 marks. The selection of the petitioner for the admission to the seat of M.D. (Pediatrics) was challenged by the respondent Dr. Devdatta before the College Tribunal by filing Appeal No. A.D.M. 38/2001. The Tribunal by the impugned order dated 18th July, 2001, directed the Dean-the respondent No. 2 to reconsider the eligibility of the

applicants as directed in relation to the Appeal No. A.D.M. 41/2001. It is to be noted that during the pendency of the appeal, the petitioner in Writ Petition No. 2959/2001 namely Dr. Pradnya sought intervention in the Appeal No. A.D.M. 38/2001 and was accordingly, granted along with five other candidates.

6. In Writ Petition No. 2964/2001, the petitioner Dr. Preeti was given admission for DOMS (Oph) at Aurangabad for January, 2001 batch and she joined the course on 7th April, 2001. Pursuant to the 22nd June advertisement, the petitioner Dr. Preeti applied for the seat of M.S. (Oph) at Aurangabad as it was her first choice. The petitioner stood at Serial No. 2 in the merit list prepared for consideration of filing of the said seat in M.S. (Oph) at Aurangabad. The same was sought to be challenged by the respondent No. 3 Dr. Sameer in Appeal No. Adm. 39/2001, who was admitted to DOMS for July, 2000 batch in Government Medical College, Aurangabad and he had joined the course in November, 2000. In reply to advertisement of 22nd June he had also applied for January, 2001 batch for the seat of M.S. (Oph), but without success. The petitioner having learnt about the said appeal and that, as the decision therein could affect the petitioner, she sought intervention therein and it was accordingly, granted by the Tribunal. By the impugned order dated 23rd July, 2001, the Tribunal directed the respondent No. 1 Dean to reconsider the claim of the candidates afresh on merits and consider the point as to whether the candidates had informed the Dean that they had resigned from Diploma registration in order to stake their claim for registration to the seat in degree course in the same subject and thereupon to consider their case as per the merits.

7. Before proceeding to consider the matter on merits, it is necessary to deal with the point of absence of locus standi to the petitioner Dr. Preeti in Writ Petition No. 2964/2001, raised on behalf of the respondent Dr. Sameer. The point which is sought to be canvassed is whether the intervenor in the appeal before the College Tribunal can challenge the judgment of the Tribunal in such appeal by way of writ petition. The contention of the learned Advocate for the respondent Sameer is that the petitioner Dr. Preeti was merely an intervenor in the said appeal and not the party to the proceedings and, therefore, she has no locus standi to challenge the impugned judgment by way of writ petition. Reliance is placed in the decision of the Apex Court in the matter of Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, and The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, .

8. The eligibility of the petitioner for consideration for the admission to one of the vacant seats advertised on 22nd June, 2001 is not in dispute. The only dispute which is sought to be raised is that she cannot be selected being less meritorious than the respondent Sameer. Being so, the fact that the petitioner has a grievance to make in the matter except on the ground of comparative merits is not in dispute. Whether ultimately she would be entitled for any relief in the matter or not is a totally different issue. It is not possible to say at this stage that she does not fall in the category of "aggrieved person" for the purpose of

adjudication and appropriate decision in the matter.

9. Even otherwise, in cases of appeal under the Code of Civil Procedure, normally, to enable a person to appeal against an order of the Civil Court, firstly he should be a party to the proceedings or the legal representative of the party to the proceedings, secondly, he should be interested in the subject matter of the litigation; and thirdly, he should be prejudicially affected by the order passed. Equally, it is well settled that a person who is not a party to the suit, may also prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the judgment. In this regard, one can advantageously refer to the decision of the Apex Court in *Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., , State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another, .*

10. As regards the intervention in the proceedings before the lower Court, if he can prima facie, demonstrate prejudicial effects of the order under challenge, certainly, he would not be barred from challenging such an order. Indeed, in *Fakir Mohamed Abdul Razak Vs. The Charity Commissioner, Bombay and Others, ,* an intervenor who claimed to be a devotee or a person interested in the proper management of the Darga and who opposed the appointment of the defendant as one of the trustees was held to be entitled to file appeal. The decision of the Apex Court in *M/s. Gammon India's* case as well as in *Ahmedabad St. Xavier College's* case, were totally on different point i.e. the intervenor's right to raise points in the petition before the Apex Court beyond the scope of the pleadings of the petitioner therein. In that regard, in *Ahmedabad St. Xavier College's* case, it was ruled that it is the settled practice of the Supreme Court that an intervenor is not entitled to raise contentions which are not urged by the petitioners in the petition and in *M/s. Gammon India's* case, it was ruled that the intervenor cannot raise points which are not canvassed by the petitioners in the pleadings. Applying the well established principles of law that a person aggrieved by the order passed by the Court below, can file appeal, the same principle will have to be followed in case of right of an individual to approach this Court in writ jurisdiction. Besides, in the case in hand, undisputedly, the interest in the matter was apparently disclosed by the petitioner at the stage of appeal before the College Tribunal itself. Therefore, the objection regarding locus standi is to be rejected.

11. Reverting to the contentions of the parties, it is the case of Dr. Pradnya that she being more meritorious as compared to the respondent Dr. Gauri, she is entitled for admission to M.D. (Radiology) at Aurangabad and bar of three months notice will not come in her way of admission to the said seat as she is not asking for any change in registration in relation to any subject or even any course but, mere change of institution from Ambejogai to Aurangabad.

12. It is the case of Dr. Darshana that she being meritorious candidate in the list prepared for M.D. (Pediatrics) and more meritorious than Dr. Devdatta, she is entitled for admission in the said seat and that the bar under Rule 6 of the

Admission Rules cannot come in her way to secure the admission to M.D. (Pediatrics) from the M.S. (Opth) course to which she had joined earlier at Ambejogai. According to the petitioner Dr. Darshana, it is a mere change of one subject to another in the same course i.e. degree course and in the same batch of January, 2001.

13. It is the case of Dr. Preeti that as per 22nd June advertisement and the Rules of Admission, the candidates belonging to the batch of the year, 2000 are not eligible to be considered for filling up the seats which are sought to be filled up in accordance with the said advertisement and secondly, that the provisions of Rules 2 and 6 of the Rules of Admission, prohibit the concurrent registration in diploma and degree course and requires three months notice for discontinuation of one course before shifting to another even in the same subject. It is the case of the petitioner that she being of January, 2001 batch and more meritorious in the batch of January, 2001, she is entitled to the seat in M.S. (Opth) at Aurangabad. It is also her contention that Dr. Sameer being of July, 2000 batch, he is not entitled for admission to the said seat.

14. It is also the contention of the petitioners that the Rules of Admission do not prohibit change in registration from diploma to degree in same subject as well as the change of institution from one place to another in the same subject and in the same course. It is also their contention that the rule of three months notice is not applicable in cases where advertisement is issued at such a time that the period of three months gap is not available between the date of issuance of advertisement and commencement of the next term. In the case in hand, the advertisement having been issued on 22nd June, 2001, and the next term was to start from July, 2001, it was not possible for the candidates to serve three months notice in advance. Besides, they were granted admission to the course as late as on 31st March, and 7th of April, 2001. Therefore, the period of three months was not available to them to serve notices. In any case it is their contention that they could not have dreamt of the availability of the seat of their choice in June, 2001 prior to the issuance of the advertisement on 22nd June, 2001.

15. It is apparent from the judgments dated 18th July, 2001 that the same proceeded merely on certain concessions made on behalf of the Dean for reconsideration of the claims of the parties, purportedly based on factual position and thereupon, the directions were given without analysing the materials on record and without ascertaining as to how the decisions in Sheela Kulwal's case Anil More's case would apply to the facts of each case. On the other hand, in the judgment dated 23rd July, 2001 while holding that from the point of predicament faced by the petitioners due to delay in issuing advertisement, it is immaterial as to whether such delay was due to the reasons, good or bad and that the rules do not provide answer to the question as to whether a student can be permitted to give up his diploma seat of the previous year in order to stake his claim to the seat pertaining to the next succeeding year and accepting the statement on

behalf of the appellants that they had resigned from diploma registration to stake claim for registration to the seat of degree in the same subject, the Tribunal has directed the Dean to consider the claim of the candidates on merits. The impugned judgments apparently, disclose non-consideration of the material facts on record as well as failure to consider the applicability of the relevant Rules to such undisputed facts resulting in miscarriage of justice. The impugned judgments also disclose misconstruction and misapplication of the judgment of this Court in Sheela Kulwal's case to the proved facts on record. Apparently, therefore, there is improper exercise of jurisdiction by the Tribunal while deciding the matters in hand, warranting interference by this Court in its writ jurisdiction.

16. Upon hearing the learned Advocates for the parties and perusal of the records and in the facts and circumstances of the case, the points for consideration which arise in these petitions, are as under:---

i) Whether the candidates of the year, 2000 batch are eligible for consideration for filling up the seats in question, the vacancy for which arose in the academic year, 2001?

ii) Whether the requirement of three months advance notice under Rule 6 and prohibition against concurrent registration under Rule 2, bar the change in course from the diploma to degree or the change in institution from one place to another place, even if the subject remains the same, prior to expiry of the period of three months?

iii) Whether the rule of three months' notice cannot be made applicable in cases where advertisement is issued at such a point of time that the period of three months gap is not available between the date of issuance of advertisement and of the commencement of the next term and in such cases merit shall be the only criteria?

17. The Full Bench of this Court in Ashwin Prafulla Pimpalwar and etc. Vs. State of Maharashtra and Others, declared that the then existing Rules of Admission to the Post Graduate Course in the State of Maharashtra which were prepared in the year 1989, 1990 and 1991 prior to the pronouncement of the said judgment, were bad in law and invalid and further directed to frame the new rules. Consequently, the State of Maharashtra formulated the Rules for Admission to the Post Graduate Medical Courses in the State under Government Resolution dated 24th October, 1991, which as per the directions of the Full Bench were, more or less, based on the earlier rules of the year, 1971.

18. Out of the Admission Rules framed under Government Resolution dated 24th October, 1991, the relevant Rules for the purpose of decision in these petitions are:---

"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 2 specialities at a time will not be permitted unless one registration period is over or is discounted.

6. A candidate selected for registration will not 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.

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 term put in is required."

It is to be noted that there is no challenge in these petitions to the validity of the said Rules. These Rules came to be considered in some of the decisions of this Court arising from different set of facts in various petitions. Various decisions in that regard were relied upon by the learned Advocates appearing for the parties.

19. Two of the unreported decisions which are relied upon by the learned Advocates, are one in Writ Petition No. 3909/1989 in the matter of Dr. Dhondiba Dnyanoba Munde v. State of Maharashtra and others, and the other one in Writ Petition No. 3050/1990 in the matter of Dr. Uday Ramchandra Deshpande v. The State of Maharashtra and others,. In Dr. Dhondiba Munde's case, the point for consideration before the Division Bench was relating to the legality and competence of the Government Resolution, Urban Development, Public Health and Housing Department dated 18th June, 1971 and the Government Resolution, Medical Education and Drugs Department dated 10th July, 1989 pertaining to the admission to the Medical Colleges including the seats which had remained vacant and without being filled from All India Quota. The judgment was delivered on 20th August, 1990 and undisputedly, therefore, the decision was relating to the construction of the Rules which were struck down by the Full Bench in Ashwin Pimpalwar's case by judgment dated 16-9-1990. Apparently, therefore, the ruling in Dr. Dhondiba Munde's case does not relate to the Admission Rules framed under Government Resolution dated 24th October, 1991 and cannot be of any help to decide the points for consideration which arise in the present petitions. As regards the decision in Dr. Uday Deshpande's case, it was delivered on 23rd November, 1990 and as such was prior the framing of the Admission

Rules under Government Resolution dated 24th October, 1991. Besides, apart from merely referring to the bar under Rule 6 for change of registration from one subject to another, it does not deal with the scope of the said Rules apparently because both the respondents therein were sailing in the same boat inasmuch as both of them had continued with their alternative post-graduate degree courses even till the date of the judgment. Hence, the Rulings in both these cases are of no help to decide the matter in issue.

20. In Sheela Kulwal's case (supra), the challenge was to the refusal of admission to post-graduate degree course as the petitioners therein were denied the admission on the ground that they were not eligible to be considered as they had already joined and registered for diploma courses. The facts of the case disclose that Sheela was selected for DOMS course in January, 1992 batch but, she was given admission in July, 1992 batch. An advertisement for the course of M.S. (Oph) was issued on 4th November, 1992 for July, 1992 batch. Sheela Kulwal applied for the same on 24th November, 1992 and also made representation showing her willingness to resign from the course of DOMS which she was already undergoing. Her claim was not considered. The candidate selected then was less meritorious inasmuch as, Sheela Kulwal had secured 130 marks whereas the selected candidate had secured 129 marks out of 200 marks. Considering that the admissions to the diploma course were not finalised till July, 1992, that for January, 1992 batch their claim was to expire in May, 1992, and that the advertisement was issued in November, 1992, in the circumstances, it was observed that it was not possible for the candidates to comply with the provisions of Rule 2. After considering the Rules of Admission in force at the relevant time, (the decision was delivered on 10/11th February, 1993, as well as the Rules of Admission as they stood in the year, 1971, it was held firstly, that from the very language of Rule 2, it is clear that the same is mandatory in nature; secondly, that it is essential for the student for being considered for the admission to the degree course and who is, at the same time, selected or is continuing with diploma course, to discontinue his term as provided in Rule 10 by giving notice of 3 months prior to the commencement of the next term; and thirdly that, though Rule 2 is mandatory in nature, in certain exceptional circumstances, the student would be entitled for relaxation from the requirement of notice of 3 months and the provision of the said rule would not debar the student from being considered for the Admission to Post Graduate Degree Course.

21. In Dr. Anil More's case (supra), the challenge was to the admission given to the respondent therein to the post-graduate degree course in Pediatrics in the seat reserved for the S.T. candidate on the ground that in the absence of 3 months notice under Rule 6 she could not have been admitted to the post-graduate degree course as she was already a registered student for diploma course in Child Health since January, 1992 in the open category. The facts of the case were that the candidate who was admitted to the post-graduate degree course, was already registered in January, 1992 for post-graduate diploma in Child Health in Indira Gandhi Medical College, Nagpur. On 14th January, 1993, an

advertisement was issued for post-graduate registration for degree and diploma courses in the Government Medical College, Nagpur in the subject of Pediatrics. There were two seats for post-graduate degree course, one was in open category and another was reserved for the Scheduled Caste candidate. Dr. Anil More as well as the respondent No. 5 therein applied for the same and the latter succeeded in getting admission to the said seat. While holding that merely because of difference in nomenclature, it cannot be said that the subject of Child Health is different from the subject of Pediatrics, the point which was considered was whether by reason of M.D. Course being more intensive than the diploma course in the same subject, the same subject itself can be considered as different from M.D. course and the diploma course for the purpose of application of Rule 6 of the Rules of Admission. Answering the said question, it was held that there is no reason why the word "subject" used in Rule 6 of the Rules of 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 a different subject for the diploma course and degree course for the purpose of change of registration. In view of the language used in Rule 6, the Division Bench rejected the contention that it covers a case of change of registration in the same subject from diploma to degree course.

22. In *Dr. Shilpa Suresh Shinde and others Vs. State of Maharashtra and others*, . The point for consideration was if for some fortuitous reason the quota of 25% of the seats which ought to be reserved for the candidates passing the All India Entrance Examination is unfilled, is the State entitled to reserve any of those seats by applying its reservation policy thereto. Placing reliance in the decision of the Apex Court in the matter of *Jeevak Almast Vs. Union of India (UOI) and Others*, , it was held that the seats which had become fortuitously available, only local candidates from the State of Maharashtra would be admitted in accordance with the 1991 Admission Rules, without application of the reservation policy.

23. In *Komal Kamlakar Chitnis and Others Vs. Director, Medical Education and Research, Bombay and Others*, , the Full Bench considered the point as to whether a student who had passed a qualifying examination in an academic year would be eligible for admission to the medical courses in the years succeeding the academic year which immediately follows the year in which the qualifying examination is conducted. The points for consideration before the Full Bench were, firstly whether the Rules for selection to M.B.B.S./B.D.S. Courses and particularly Rule 3.3.0. prohibit the candidates passing qualifying examination in March, 1993 as ineligible for seeking admission to M.B.B.S./B.D.S. Courses for the academic year, 1994-95 and secondly, whether Rules for Admission to M.B.B.S/B.D.S. Courses for the academic year 1994-95 issued and published by the State Government on 19th June, 1994 and particularly Rule 3.3.0. treats the candidates passing the qualifying examination i.e. H.S.C. 12th standard examination in the month of March, 1994, alone as eligible for admission to such course? Answering the said points, the Full Bench observed that the difference in

the eligibility criteria in the Rules for Admission for different years would classify the students appearing for qualifying examinations in different years into different groups or classes and that whatever may be the year in which the candidate has passed the qualifying examination, his eligibility will have to be determined on the basis of the rules applicable for the particular academic year in which the candidate makes application for admission to the medical course. However, so far as the students who have not only passed their qualifying examination in the previous years but also who have been selected for a seat for a medical course and who have availed of the said seat and, in fact, completed such period of tuition that if they abandoned the seats the same would lapse, then such class of students would definitely form a separate and distinct class which cannot be permitted to be eligible for the admission to the medical courses again during the subsequent years. It has been observed thus:

"When these students obtained the admission and accepted the seats allotted to them and when they have completed one year of their course, they have already deprived some other eligible students waiting in the queue in previous years. If such students discontinue the course by getting admission in the current year not only they waste their own one year of academic career but it results into huge loss ultimately to the society inasmuch as, their seats lapse and are totally wasted. Such a student if held eligible for the current year would additionally displace some other eligible candidate even during the current year.

.....Looked from any angle, we are clearly of the opinion that holding any student who belongs to such class of students, eligible afresh for admission to the medical courses is not only extremely unfair and unjust to other eligible students who had competed with him and failed in the previous years but also to other eligible student for the current year."

In other words, the Full Bench has held that whatever may be the year in which the candidate has passed the qualifying examination, his eligibility will have to be determined on the basis of the rules applicable for the particular academic year in which the application for admission to the medical courses is to be considered. It is further held that in a case where the student who has not only passed his qualifying examination in the previous years but who has been selected for seat for a medical course and who has availed of the said seat and, in fact, completed such period of tuition that if he abandoned the seat, the same would lapse, and therefore, such class of students would definitely form a separate and distinct class which cannot be permitted to be eligible for the admission to the medical courses again during the subsequent years.

24. The Apex Court, in the matter of Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, while dealing with the issue of admission of the candidates from All India Quota has observed thus :

"It would be wholly unjust to grant the admissions to students by assessing their relative merits with reference to the marks obtained by them not at the same

qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of the equality enshrined in Article 14 of the Constitution.

.....The admissions must be based on evaluation of relative merits through an entrance examination which would be open to all candidates throughout the country"

Undoubtedly, the Apex Court was dealing with the matter pertaining to the admission of the candidates coming from All India Quota.

25. In *N. Deepak and Vs. State of Karnataka and others*, , the Division Bench of the Karnataka High Court while observing that the policy of admission should be so devised as to subserve the object of the rule and in the best interest of the meritorious candidates, has held thus :

"It is stated that all candidates, who have been selected for admission to a seat in any institution under the "Free Seats" category who have also opted for "Payment Seats" shall be eligible for the latter. It also includes candidates remaining in general merit list. This Rule makes it clear that the object of the Rule is not to debar or foreclose forever the choice of the candidate who has in fact been selected to a seat in a course in a particular college and who may wish to change the same to a payment seat on account of various personal reasons, including his inability to join an institution at a distant place etc. In other words, the authorities cannot permanently debar a candidate from changing his mind to take a payment seat in a course and institution of his choice if he is eligible to the same."

26. In *Dr. Ganpat Mashnajirao Wadekar Vs. The State of Maharashtra and others*, , the petitioner though secured admission to M.S. (General Surgery) course in January, 1997 batch, yet he was already admitted to and registered in M.S. (ENT) in January, 1996 batch. Therein, in July, 1996 an advertisement came to be issued for January, 1996 batch for the admission to the post-graduate in M.S. Surgery at SRTR Medical College, Ambejogai. There were in all two seats and one seat was for open category candidate and the other seat was for OBC category candidate, whereas for the post-graduate, in ENT course, there was only one seat at SRTR Medical College at Ambejogai and that lone seat was reserved for SC category candidate. Admittedly, the petitioner Ganpat Wadekar's application was considered by the respondents for admission to M.S. (ENT) at SRTR Medical College, Ambejogai against the lone seat for SC category candidate and he was granted admission to the said course which he joined on 27th September, 1996. On 1st March, 1997, the respondent No. 3 therein published an advertisement for admission to post-graduate courses against January 1997 batch. The details of distribution of the seats for different courses indicated that at Government Medical College at Aurangabad, there were three seats and at

SRTR Medical College at Ambejogai, there were two seats for post-graduate (surgery course). Out of the two seats at SRTR Medical College at Ambejogai, one seat was reserved for OBC whereas out of the three seats at Government Medical College at Aurangabad, two seats were reserved for open category candidates and one seat was reserved for SC category candidate. It was contention of the petitioner Ganpat that he addressed a letter dated 12-3-1997 to the respondent No. 3 therein and had stated that his original application submitted against January, 1996 batch was with first preference for M.S. (General Surgery) and at that time there was no seat available in the said subject and that, he should be considered for admission to M.S. General Surgery course against January, 1997 batch. The petitioner therein had further stated that there was no time to give three months notice as is otherwise required under the Rules of Admission and the said condition be relaxed in his case. He had also shown his willingness to resign from M.S. (ENT) course before he joins the M.S. (General Surgery) course. The application of the petitioner was not considered. The advertisement issued was specifically providing that all those who had applied previously for January, 1996 batch were permitted to change their preference for subject and college, if they so desired. In the facts and circumstances of the case, the question which arose for consideration was whether the petitioner Ganpat could have been declared as a candidate entitled for admission to M.S. (General Surgery) course at that stage when already he had been admitted for M.S. (ENT) course against the January, 1996 batch and he had joined the said course on 27th September, 1996. Considering the decision in Dr. Sheela Kulwal's case, it was held that the provisions of Rule 6 of the Admission Rules are mandatory in nature as well as that the petitioner Ganpat was already admitted to M.S. (ENT) course in January, 1996 batch, his application could not be entertained at belated stage.

27. At this stage, it is to be noted that while considering the matter, the Division Bench in Ganpat's case referred to the Rule Nos. 2, 5, 6 and 10 of the Admission Rules and they have been reproduced in the judgment. The Rule 2, as is reproduced in the judgment, was not the Rule which is or which was in force even when the said judgment was delivered. The judgment was delivered on 7th May, 1997. The Rule 2 which has been quoted in the judgment was the Rule as it existed in the Rules of 1971 and not as it existed or exists in the Rules under Government Resolution dated 24th October, 1991. It is also to be noted that the Rules framed under Government Resolution dated 24th October, 1991 were on the same lines with those framed in 1971. However, Rule 2 was restructured inasmuch as the expression "in diploma and degree and" was inserted in the said Rule between the words "student" and "in" the last sentence of the Rule. The last sentence of Rule 2 as is in force since October, 1991 reads thus:

"Concurrent registration of same student in diploma and degree and in 2 specialities at a time will not be permitted unless one registration period is over or is discontinued."

The Rule reproduced by the Division Bench in Ganpat's case as far as last sentence of Rule 2 is concerned, reads thus:

"Concurrent registration of same student in 2 specialities a time will not be permitted unless one registration period is over or is discontinued."

Apparently, the correct Rules, either were not brought to the notice of the Division Bench while delivering the judgment in Dr. Ganpat's case or the correct Rules were not noticed by the Division Bench. This is evident from the fact that the point regarding restructuring of the said Rule at the time of framing of Rules by Government Resolution dated 24th October, 1991 was extensively dealt with in Sheela Kulwal's case and the said decision was very much before the Division Bench while delivering the judgment in Dr. Ganpat's case. In fact, the relevant observations as regards the changes brought about in last sentence of Rule 2 under Government Resolution dated 24th October, 1991 as compared to Rules of 1971 in Sheela Kulwal's case read thus :

"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 remain in the same subject but desired to change the course from diploma to degree. A leading judgment, which is generally relied on by the petitioners in this case, is in Writ Petition No. 5306 of 1986, Dr. Makarand Chandrakant Ghaisas v. The University of Poona and others, decided on 28th April, 1987 (at Bombay). The petitioners want to contend and heavily rely upon the ratio in Dr. Markarand Ghaisas's case. The Counsel for the petitioners also took us through the various other judgments. However, admittedly in all the judgments the bar of Rule 6, as it then was, and when there was no specific bar created by any other provision in these Rules. 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 some 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. The 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."

28. In *Dr. Mohammad Laeeque Vs. State of Maharashtra and others*, , the petitioner could not secure admission to post-graduate degree course in M.D. (Medicine) for January, 1996 batch. When one of the seats from All India Quota was returned unfilled, the respondent No. 4 was admitted to the said seat. The same was challenged on the ground that the respondent No. 4 had already registered for diploma in DLO and had already joined the course from 23rd April, 1997 for the January batch and that Rule 6 bars change of registration from one subject to another without complying the pre-requisite of 3 months notice. Considering the scope of Rule 6, it was held that if Rule 6 is interpreted in its proper perspective, it appears that the provision of 3 months notice was made to enable the other candidates to know in advance that the vacancy was likely to arise, so that they would apply for that vacancy in the next term and that the candidate who desires to change the registration from one subject to another will have to give the three months notice as contemplated by the rule and such application will automatically terminate existing registration. It was also observed that the Government Resolution does not provide for the contingency and the situation for filling up of the vacancy arising after the term has already started. The learned Single Judge placing reliance in the decision of *Dr. Jeevak Almast*'s case (*supra*) and considering the fact that the petitioner was seeking change from diploma in DLO to M.S. (Medicine), and that too for change of his registration in January, 1996 batch to January, 1997 batch, his claim was disallowed.

29. In *Ajay Pradhan Vs. State of Madhya Pradesh and Others*, , the Apex Court while considering Rule 10 of the M.P. Selection for Post Graduation Courses (Clinical, Para-Clinical and Non-Clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1984, has held that normally, the question of a seat being filled up must arise at the commencement of the academic year or soon thereafter. 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. There is no doubt that the ruling was given after considering the scope of Rule 10 of the said Rules.

30. The first point for consideration has, in fact, already been answered by this Court in three decisions namely, *Komal Chitnis*, *Ganpat Wadekar* and *Mohammad Laeeque*. The ruling of Full Bench in *Komal Chitnis* case, though it was with reference to the M.B.B.S. and B.D.S. Courses, it also applies with full vigour to the situations like the one arising in the case in hand. The broad principle of law laid down by the Full Bench applies to a situation where a candidate passes qualifying examination in the previous year and on being admitted to any post-graduate course either degree or diploma, undertakes training for a considerable period of time and if such student is allowed to discontinue the course by getting admission to another in the current year then not only he would waste, his own

one year of academic career but it would result into huge loss ultimately to the society inasmuch as, his seat lapses and is totally wasted. Such candidates would form class by themselves and they would not be eligible for consideration for admission to the batch in subsequent years, unless they comply with the provisions of the Rules of Admission in force and there is no question of relaxation from the requirement of the Rules being considered for such candidates.

31. Dr. Ganpat Wadekar's case was similar to the case of the respondent Dr. Sameer in the matter in hand. Dr. Ganpat was already admitted to 1996 batch for M.S. (ENT) course who was seeking admission to M.S. (General Surgery) for January, 1997 batch and his claim was rejected in view of the Rule 6. Mohammad Laeeque could not secure admission to M.D. (Medicine) for January, 1997 batch as he was already admitted to January, 1996 batch. Of course both these decisions were sought to be distinguished on the ground that the candidates therein were seeking change in subjects whereas there is no such change in subjects sought for by the concerned candidate in the matter in hand. Whether change in course from diploma to degree in the same subject is permissible or not is a totally different issue to be dealt with while answering the point No. 2 under consideration. The fact remains that the change from one batch to another batch without complying the pre-requisite of Rules was not permitted in the case of Ganpat Wadekar and Mohammad Laeeque.

32. While considering the issue, it is not possible to ignore the decision of the Apex Court in Ajay Pradhan's case though the same was delivered in a matter dealing with the scope and interpretation of Rule 10 of Madhya Pradesh Admission Rules to the post-graduate courses. It cannot be disputed that there is no Rule in Government Resolution dated 24th October, 1991 in para materia with the Rule 10 of the Madhya Pradesh Admission Rules. However, bar prescribed in change of registration from one subject to another in absence of three months notice in advance, prohibition for concurrent registration in two subjects or two courses under Rules 2 and 6 respectively read with Rule 10 are certainly with a view to avoid seats remaining vacant which could result in considerable loss to the State exchequer as well as in losing of an opportunity to a deserving candidate to get medical education at post-graduate level. While dealing with this aspect, the learned Single Judge of this Court in an unreported decision in Writ Petition No. 3971/1997 in the case of Dr. Prasanna Sudharkarrao Deshmukh v. State of Maharashtra and others, delivered on 23rd December, 1997, has held thus:

"Rule 2 was framed with the specific objective. The State has to spend a huge money on every student admitted to the post-graduation much more than he actually has to spend. Therefore, the post-graduate seats in the Medical Colleges have become rare opportunities offered by State. In such circumstances, if one is offered a seat, he should make up his mind whether to accept the seat or not. He cannot be permitted to leave that seat and go for some other seat since this is

likely to result in rendering that seat vacant which would be considerable loss to the society in terms of money and in terms of losing an opportunity to train a citizen.

.....The selection on merit to a particular post-graduation course, offer of a job in the Maharashtra Medical Services, acceptance of the job and joining the services, completion of the service satisfactorily, then depositing the requisite fees, getting registration and commencement of the course, completion of the course satisfactorily, furnishing the bank guarantee as required by the Rules, and then completing the remainder of the two years required service, are all parts of a single process and one cannot be detached from the other. As soon as the student is offered a seat and joins in the Maharashtra Medical Services, he will have to be deemed to have been entered in the arena of the prohibition of Rule 2. It would be too technical an interpretation which would defeat the purpose of the rule to say that the rule would be applicable only after the actual registration is made.

.....If the student changes his line and wants to opt for some other registration, say after six months, then the process for selection of the seat which would fall vacant, cannot again be restarted and the seat is bound to go waste. ....Hence, Rule 2 would apply in such situation also. Though the words say that 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, it will have to be interpreted to mean that concurrent registration to the same course in two batches is also not permitted."

33. Considering the scope of Rules 2 and 6 read with Rule 10, the object behind the same, the inevitable conclusion to be drawn is 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 rule to such seats. In fact, this situation has also been considered by the Division Bench in Shilpa Shinde's case.

34. The conclusion, therefore, to be drawn is that the candidate of one batch who had already secured admission to the post-graduate course and has joined the course, is not eligible to be considered for the subsequent batch or batches unless he fulfils the requirements of the Admission Rules including Rules 2, 6 and 10.

35. The first part of the second point for consideration relates to the change in course from diploma to degree. It is sought to be contended on behalf of Dr. Preeti that such a change is totally barred in view of the concurrent registration under Rule 2. On the other hand, the contention is opposed referring to Rule 6, which restricts such prohibition in case of change of subjects. It is the contention on behalf of Dr. Sameer that the Rules of Admission read in proper perspective, do not prohibit change from diploma to degree in the same subject and for that purpose, reliance is placed in the decision of Division Bench in Dr. Anil More's case. Further, relying upon Mohammad Laeeque's case, it has been strenuously

argued that once a student intimates his desire to shift to another course from diploma to degree, it automatically puts an end to the registration of the diploma course and, therefore, there can hardly be any scope to contend that in such a situation the candidate could be accused of having concurrent registration of two courses at a time. As already observed above, 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.

36. Undoubtedly, in Dr. Anil's More case it has been held that the transfer from diploma to degree course in the same subject would not amount to change of registration from one subject to another subject within the meaning of the said expression under Rule 6 because in the said Rule emphasis is upon "change of registration in the same subject" and secondly, that Rule 6 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. Apparently, the word "requirement" must have been wrongly typed in place of "registration" in the said sentence. The Clause 16 of the University Ordinance No. 57 which has been quoted in the judgment in Dr. Anil More's case discloses that it specifically bars concurrent registration in diploma and degree either in the same subject or in two different subjects. Being so, it is apparent that the conclusion arrived at by the Division Bench in Anil More's case to the effect that the transfer from diploma to degree course at post-graduates level does not apply in a case where there is no change in subject, is based on assumption of bar for change of registration from one subject to another in post-graduate degree and diploma course under Rule 6 alone. While drawing the said conclusion on the basis of the above referred assumption, it must be noted, with due respect to the learned Judge of Division Bench in the said case, that they had ignored or had not noticed the provisions contained in Rule 2 relating to such bar for concurrent registration. The said provision clearly prohibits concurrent registration in diploma and degree as well as in two specialities. It does not differentiate between two courses in two different subjects and two courses in the same subject as such. Whether it is in same subject or in two different specialities, a student cannot enjoy the benefit of training in two different courses at one and the same time. First part of the last sentence is very clear in that regard and warrants no interpretation as is otherwise sought to be contended on behalf of the respondent Dr. Sameer. In fact, second part of the last sentence of Rule 2 makes it abundantly clear by referring to the prohibition for concurrent registration in two different specialities at a time. If the intention of the framers of the rules was to the contrary, then there would have been no occasion to specifically provide bar for even in cases of two different specialities, when the prohibition for concurrent registration in two courses at a time was already provided for. The contentions raised in this regard on behalf of Dr. Sameer would have been of substance and the law said to have

been laid down in Dr. Anil More's case would have been a good law but for the changes brought about in Rule 2 by the Government Resolution dated 24th October, 1991, in the Rule 2 of the Admission of Rules of 1971, which is evident from the decision in Sheela's case which was delivered prior to the decision in Dr. Anil More's case. After considering the change brought about in Rule 2 while framing the Admission Rules under Government Resolution dated 24th October, 1991 as compared to said provision in 1971 Rules, the Division Bench in Sheela's case has ruled in no uncertain terms then that "The clear and unambiguous language of 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." This finding has been arrived at based on the reasoning in para 10 already quoted herein above.

37. The decision in Sheela Kulwal's case was delivered by the Division Bench at Aurangabad on 10/11th February, 1993. The decision in Dr. Anil More's case was delivered by the Division Bench at Nagpur on 12/16th August, 1993. It appears that the decision in Sheela Kulwal's case was not brought to the notice or was not available before the Division Bench at Nagpur when Dr. Anil More's case was decided.

38. It is apparent that the Division Bench in Dr. Anil More's case was not appraised of the provisions of Rule 2 dealing with the prohibition of concurrent registration before delivering the said judgment. In other words, the decision in Dr. Anil More's case was delivered in ignorance of the Rule having force of law. The Division Bench in Dr. Anil More's case apparently escaped the sight of the relevant provisions of law in force and applicable to the facts and circumstances of the matter. In this regard, it is worthwhile to quote the relevant extracts from well recognised commentary in respect of Law of Precedent in "Salmond on Jurisprudence" 12th Edition by Professor P.J. Fitzgerald. The same reads thus:

"A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute, i.e., delegated legislation. This rule was laid down for the House of Lords by Lord Halsbury in the leading case (*infra*, § 28), and for the Court of appeal it was given as the leading example of a decision *per incuriam* which would not be binding on the Court (x). The Rule apparently applies even though the earlier Court knew of the statute in question, if it did not refer to, and had not present to its mind, the precise terms of the statute (y). Similarly, a Court may know of the existence of a statute and yet not appreciate its relevance to the matter in hand, such a mistake is again such *incuriam* as to vitiate the decision (z). Even a lower Court can impugn a precedent on such grounds."

39. In *Municipal Corporation of Delhi Vs. Gurnam Kaur*, , the Apex Court has ruled that "A decision should be treated as given *per incuriam* when it is given in ignorance of the terms of a statute or of a Rule having the force of a statute." In *Arnit Das Vs. State of Bihar*, , it has been held by the Apex Court that "A decision not expressed, not accompanied by reasons and not proceeding on conscious

consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi." In *Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut*, the Apex Court has ruled that a decision cannot be relied upon in support of a proposition that it did not decide. As already observed above, the decision in Dr. Anil More's case was delivered in ignorance of the Rule 2 of the Rules of Admission which specifically provides for prohibition of concurrent registration in two courses as well as in two specialities. In the circumstances, with all respect to the learned Judge of the Division Bench who delivered the decision in Dr. Anil More's case and to the learned Judge who agreed with him, I am unable to concede that this Court is bound to follow the said decision.

40. Perhaps, knowing that the decision in Dr. Anil More's case would not be binding on this Court in view of the fact that the same was delivered in ignorance of the provisions of Rule 2 and thereby, rendering it to be per incuriam, it was sought to be contended that though there is bar for concurrent registration in two courses, the Rules of Admission do not completely debar the change of registration but, the same only regularise it and considering the ruling of the learned Single Judge in *Mohammad Laeeque's* case, to the effect that the registration of one course would automatically be put to an end on an application for new course in terms of Rule 6, and the registration of one course having come to end with such an application, change to another course thereupon would not fall within the mischief of Rule 2. However, this argument totally overlooks the requirement of three months notice to put an end to the registration of a course for which the candidate has already been admitted and joined. The change of registration would itself imply existence of registration in one course and intention to shift such registration to another course. However, the same would be permissible provided three months notice is given. The decision in *Mohammad Laeeque's* case does not lay down law on this point as is sought to be argued. On the contrary, it has been specifically held therein that "the use of the word "such application will automatically terminate the registration" shows that once the decision is taken by a student to change his registration and he has given three months notice then nothing prevents him from terminating his existing registration." The learned Single Judge has not ruled out the necessity of three months notice. In other words when three months notice as required under Rule 6 is issued, the same could be construed to be putting an end to the existing registration, but 3 months gap is necessary to claim new registration. Therefore, the contention 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 expression in Rules 2 and 6 and, therefore, requirement of three months notice cannot be insisted upon for such a change, cannot be accepted.

41. That brings us to the second part of the second point for consideration i.e. change in institution. It is the contention of the learned Advocate for the petitioner Dr. Pradnya that the change of institution for same course from

Ambejogai to Aurangabad would not be hit by the provisions of Rules of Admission contained in Rules 2 and 6. It is his further contention that the Rules do not provide for prohibition for such change of institutions. Reliance is sought to be placed in the decision of Karnataka High Court in N. Deepak's case (supra). It has been argued that such an exercise would amount to adjustment of seat and not any change as such in its strict sense.

42. At the outset, the decision of Karnataka High Court is to be kept apart as the same was delivered in totally different set of facts and the issues involved were also different. Therein the Court was dealing with an issue relating to the rights of the students to opt for payment seats by foregoing the selection in free seats and in the process to make choice as regards the institution. In no respect the facts of the said case are similar to any of the cases in hand nor the points for determination in these cases are similar to those which were in N. Deepak's case.

43. It cannot be disputed that there is no specific provision prohibiting the change in institution by a student admitted to the diploma or degree in the same subject. However, absence of provision would not lead to a conclusion that the student from one institution would as a matter of right can change the institution ignoring all the provisions relating to the Rules of Admission. There is no doubt that as far as the change in institution by way of adjustment is concerned, it would be a totally different story. Perhaps, such an adjustment would be permissible in normal procedure of admissions while it is yet to be finalised or by way of mutual transfer, subject to the consent of the concerned authorities and on similar such exceptional grounds but within the frame work of law. In the case in hand, undisputedly, it is not a matter of adjustment. The seats are proposed to be filled up by entertaining fresh applications and not on the basis of original applications which were filed in answer to the March Advertisement. Therefore, in any case there is no case of adjustment as such. However, on reading of the Rules under Government Resolution dated 24th October, 1991 in proper perspective, it would reveal that such a change is certainly permissible subject to compliance of the said Rules and not in violation thereof. In other words, if such a change would offend any of the provisions contained in said Rules, then the same would not be permissible. As already observed above, the seats are being filled up by inviting application afresh. Even though the seats are returned seats from All India Quota, admission process for the same is not continuation of the same admission process which had commenced on issuance of the advertisement in March, 2001, but, is initiated by issuing fresh advertisement in June, 2001. Besides, the seat which is offered to be filled in by the advertisement of June, 2001 was not earlier available to Dr. Pradnya as it was from All India Quota and Dr. Pradnya, therefore, could not be considered for the said seat prior to the said advertisement in June, 2001. The right, if any, to be considered for the said seat can be said to have arisen only on issuance of advertisement in June, 2001 and, therefore, the admission process to the said seat cannot be considered as continuation of the one which had commenced in March, 2001, nor it can be a case of adjustment as such. It is, therefore, to be concluded that de hors the

adjustment as specified herein above, the change in institution even in the same subject is not permissible without complying the Rules and when one speaks about the Rules of Admission, the same would include Rules 2 and 6 read with Rule 10.

44. Impossibility of compliance of rule of the three months notice is the third point for consideration. It is the contention of the candidates that the advertisement was published at such point of time and as late as in the second fortnight of June, thereby making it impossible for the candidates who were already admitted to other courses, to give three months notice under Rule 6. Since, the advertisement was issued on 22nd June, 2001 in relation to January, 2001 term, there was no occasion for the candidates desiring to change the registration to give three months" notice before commencement of the next term which was to start from July, 2001. In that regard, reliance is placed in the decisions of Shilpa Shinde and that of Sheela Kulwal.

45. It is not in dispute that the seats were not available for being considered to be filled prior to June, 2001. Being so, publication of the advertisement for filling of unfilled seats from All India Quota in the month of June, by itself, cannot be termed as an abnormal situation. It is not the case of the candidates that the authorities have deliberately delayed the publication of the advertisement and that the same could have been issued earlier, leaving sufficient period for due compliance of rule of three months notice. There is no charge of mala fide nor bias against the Dean of the Medical College in the matter of issuance of the advertisement in June, 2001. The point for consideration will have to be considered in this background.

46. In Shilpa Shinde's case, the point for consideration was relating to applicability of reservation policy to the 140 unfilled seats from All India Quota. The Court has ruled against the applicability of policy of reservation to such seats. Therein, contention for applicability of 1991 Admission Rules either fully or not at all was raised on behalf of intervernors, and rejecting the same it was ruled that the contention would have been had merit only under normal circumstances and that in the matter under consideration, the abnormal situation had arisen because of the State of Maharashtra in suddenly implementing the pre-requisite of rural service even to the All India Quota candidates. Besides, Rule 3 specifically excluded the All India Quota from reservation.

47. In Sheela Kulwal's case, the Division Bench has observed that the advertisement was so timed as to make the application of Rule 10 impossible, then it could not have been said that because the petitioners did not give the notice of discontinuation as prescribed, they had lost the chance of being considered for the admission to the degree courses. It was specifically observed :

"From the attitude of the respondent- Dean of delaying the advertisement, it cannot be said that he expected a strict compliance thereof."

Further, it was observed that the respondent, more particularly, the Dean could

not given any reasonable explanation as to why the advertisement was not issued in July and why it was issued as late as on 4th November, 1992. It is therefore, sought by way of exception to rule of three months notice and not as a general Rule. It was on account of prejudice shown to have been caused to the candidates on account of unexplained delayed publication of advertisement, that the said exception was made. This is apparent from the following observations in the said judgment :

"We find that in writ Petition No. 3258 of 1992, the petitioner has by her communication dated 20th November, 1992 brought this situation to the notice of the Dean, wherein the petitioner had conveyed that she had joined the D.O.M.S course on 25th July, 1992 and, therefore, her term started from July 1992 and, therefore, she would not be in a position to give notice to discontinue the course within the date as prescribed by Rule 10, as the advertisement itself is given in the month of November, 1992 and she had also shown her readiness that since her application is for the same subject, her application may be considered on that ground and that she would be ready to discontinue the present course. It is an admitted position that all the petitioners have also given such a communication to the Dean, but they have neither been asked to discontinue the course at that very moment, nor had any action been taken on that communication. Under such circumstances, if there was no opportunity for the student to discontinue his or her course for the purposes of seeking admission to the degree course, that is, for the betterment of qualifications, then, obviously, a prejudice is caused to such students by the issuance of the advertisement as late as on 4-11-1992."

Besides, in the said case, the admission of the candidates to the diploma courses were in the seats which were meant for the January, 1992 batch and their admissions were, however, not finalised by April, 1992 and in one case till July, 1992 batch (vide paras 13, 18, and 19 of the judgment). Therefore, relaxation as regards requirement of three months notice was given in the peculiar set of facts of that case and no general proposition of law in that regard can be said to have been laid down by the Court. This aspect is abundantly clear from the observation of the Division Bench quoted above, in relation to the attitude on the part of the Dean in the said case. 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. At this stage, it is worthwhile to note the observation made by the Division Bench of this Court in the matter of R. Nagarajan Vs. The Revenue Divisional Officer, , has observed that:

"We must emphasize that this Court is in full agreement with the submissions made by the learned Government Pleader regarding the binding nature of the Rules and any indulgence by this Court to water down the requirement of these Rules would unnecessarily prolong the admission process and encourage

unavoidable litigation."

48. It should not be forgotten that a decision is only an authority for what is actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. Vide Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, . At the same time it is to be noted that it is well settled principle of law relating to interpretation of statutes that all the provisions of a statute should be harmoniously read together to give effect to them and should not be rendered otiose or surplusage or ineffective, and this Rule applies even to subordinate legislation also.

49. The learned Advocate for the respondent Dr. Sameer while fairly conceding that it is an interim order has made reference to the order of the Division Bench in Writ Petition No. 2774/1999 in the matter of Dr. Chandrashekhar Hood v. State and others, delivered at Nagpur on 19th August, 1999. The said interim order refers to another unreported decision of the Division Bench in Writ Petition No. 2927/91 in the matter of Dr. Ku. Jaishree Madhusudhan Bakshi v. State of Maharashtra and others, delivered on 24th April, 1992. The facts of Jaishree's case as well as the ruling of the Division Bench in the said case has been reproduced in the said interim order passed by the Division Bench in Dr. Chandrashekhar's case and therefrom, it is evident that in the case of Dr. Ku. Jaishree, the petitioners who were registered in the year, 1990 for different subjects applied for change of subjects which they were not successful in getting in the previous registration. It was held in that case that as contemplated by Rule 6 of the Rules 1991, the petitioners had not given 3 months notice before commencement of the next term for the change of registration from one subject to another and therefore, they were ineligible for the said change. While rejecting the claim for relaxation regarding 3 months notice, the Division Bench in Dr. Jaishree Bakshi's case had taken note of well established principle of law that the law does not compel the doing of impossibility. In that regard, the Division Bench had also taken note of the decision of the Apex Court in the matter of Cochin State Power and Light Corporation Ltd. Vs. State of Kerala, and Raj Kumar Dey and Others Vs. Tarapada Dey and Others, , but considering the facts of the case, it was held that the same do not attract the application of the above said maxim. In other words, it is necessary for the person who want to invoke the principle of law that the law does not compel doing of impossibilities, to

establish the facts that he was asked to do some impossibility. As already observed, mere publication of advertisement without leaving sufficient period for issuance of notice of 3 months by itself cannot be considered to be an impossibility for issuance of notice. Before raising the said contention, it is necessary for the contender to establish that primarily he is entitled to the seat as a matter of right being eligible to be considered, that the publication of advertisement was delayed with intention to avoid possibility of getting the said seat to the contender or similar such circumstance whereby the situation has rendered the contender helpless to comply with the requirement of 3 months notice. At the cost of repetition, mere delay in publication of advertisement by itself cannot be said to be a mala fide act on the part of the respondent and that, it cannot be considered to be an impossibility in complying with the Rule of issuance of 3 months notice.

50. It is also sought to be contended that in any case, the merit should prevail and therefore, under no circumstances there could be compromise on the point of meritorious student being offered the seat of his choice and viewed from this angle, the impossibility of compliance of the rule of 3 months notice in the situation arising from delay in publication of advertisement should not be considered in favour of such candidates. There can be no doubt about the general proposition that the meritorious candidates should not be made to suffer in the matter of admission to specialities in medical courses. However, it does not follow therefore, that the same should be at any cost and in any manner, totally unconcerned of the Rules of Admission. Primarily it is necessary for every candidate to be eligible for consideration for admission to the course and in that regard he or she, as the case may be, has to fulfil all the eligibility criteria prescribed under the Rules of Admission. The 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 merits amongst the candidates would arise for the purpose of finalisation of admission process. The Apex Court in Jeevak Almast's case (supra) has nowhere ruled that the admissions to post-graduate courses shall be done ignoring the eligibility and/or Admission Rules. 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 satisfies the Rules of Admission.

51. It was sought to be contended that the eligibility criteria is to be understood with reference to one specified in the advertisement of 22nd June, 2001. Attention is drawn to the eligibility criteria specified in the said advertisement which reads thus:-

"1) The candidate must have passed final M.B.B.S. Examination from the M.C.I. Recognised Private or Government Medical Colleges under the University of Dr. BAMU & SRT, University, Nanded.

2) Must have completed I years compulsory internship satisfactorily.

- 3) Must possess permanent registration certificate of M.M.C Mumbai.
- 4) The candidates must have completed one year Government Service on or before the last date of submission of application of this advertisement.
- 5) The candidates who are eligible for January, 2001 batch and were given due condonation in respect of completion of M.O. ship by DMER, are also eligible to apply in response to the present advertisement.
- 6) The candidates for January, 2001 batch who have joined the courses can apply, if they desire to change the course and or college they have joined. They may be shifted to a new subject on merit as these seats are meant for January, 2001 batch itself."

Referring to the above quoted eligibility criteria appearing in the advertisement, it is contended that no other criteria be made applicable while considering the applications of the candidates for filling up the seats in question and laying stress on Clause 6 above, it is argued that merit will prevail upon everything. It is to be always borne in mind that the advertisement issued by the enforcing or implementing agency cannot be read de hors the Rules of Admission duly framed by the rule making authority. The contents of the advertisement cannot be read as substitute or supplementing the Rules framed by the authority who is empowered to frame the Rules for Admission to Post Graduate courses. Besides, the advertisement nowhere states that the admission to the course would be on the basis different from the Rules of Admission. On the contrary, Rule 5 specifically provided that the candidates who were eligible for January, 2001 batch were entitled to apply. The expression "the candidates for January, 2001 batch who have joined the courses can apply, if they desire to change the course and or college they have joined" does not mean that the same can be read to mean that such changes can be effected in contravention of the Rules of Admission to the Post Graduate Courses. Such a change has necessarily be on due compliance of the said Rules. Same would be the case in relation to shifting of the subject. The advertisement cannot be read independently of the said Rules of Admission but the same has to be read along with the said Rules.

52. The points for consideration formulated above are, therefore, to be answered as under:---

- i) The candidate of one batch who had already secured admission to the post-graduate course and has joined the course, is not eligible to be considered for the subsequent batch or batches, unless he fulfills the requirement of the Admission Rules framed under Government Resolution dated 24-10-1991 including the Rule Nos. 2, 6 and 10 thereunder.
- ii) Notice given under Rule 6 for change of registration may enure to the benefit of the candidate to contend the termination of the existing registration, but the period of 3 months between such notice and the commencement of next term is necessary to claim right to the new registration, either in subject or in another

course or at another institution. The expression "course" include "degree" as well as "diploma".

iii) The Rule of 3 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 to be decided based on the Rules of Admission framed under Government Resolution dated 24-10-1991.

53. The fail out of the above discussion is that the impugned judgments cannot be sustained though the observation of the Tribunal that the Rules of Admission as they stand today, have left many aspects unattended and same have given rise to confusion resulting in flood of petitions every year, cannot be found fault with. Least that is expected from the Government is to bring necessary amendments to the said Rules bearing in mind various decisions delivered by this Court in relation to said Rules. One wonders whether the Government waits for a wake up call in that regard from this Court. The matter relates to the students' welfare and that too, medical courses at post-graduate level. The Government is certainly expected to do the needful in the matter at the earliest to avoid unnecessary hardship to the students community in the medical field. It should not be forgotten that it is not the duty of the Court either to enlarge the scope of legislation on the intention of the legislature, when the language of the provision is plain. The Court cannot rewrite the legislation for the reason that it had no power to legislate. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used in a statute, the Court cannot correct or make up the deficiency. Vide *Union of India v. Deoki Nandan Aggarwal*, reported in AIR 1992 S.C. 96. It is high time that the Government should wake up and do the needful in the matter on top priority basis.

54. In the result, the writ petitions are allowed. The impugned orders are set aside. The respondent-Dean is directed to reconsider the claims of the parties to the petitioners herein in relation to admission to post-graduate courses, bearing in mind the Rules of Admission framed under Government Resolution dated 24th October, 1991 and the observations made herein above, as expeditiously as possible and finalise the admissions within a period of ten days from today. It is made clear that the ruling in the present petition shall not affect any of the admissions already finalised, except those of the parties to these 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. Rule is made absolute in above terms, with no order as to costs.