

PETITIONER:
DR. AJAY PRADHAN & ANR.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT 09/08/1988

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
SHARMA, L.M. (J)

CITATION:
1988 AIR 1875 1988 SCR Supl. (2) 281
1988 SCC (4) 514 JT 1988 (3) 295
1988 SCALE (2) 532
CITATOR INFO :
R 1992 SC 1 (66)

ACT:
Madhya Pradesh Selection for Post Graduation Courses (Clinical, Para Clinical and Non-Clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1964-Rule 10-Seat in P.G. Course-Falling vacant 'in the midst of ' towards the end of an academic year-Right to admission.

HEADNOTE:

A seat in the P.G. course in M.D. in the G.N. Medical College, Gwalior, fell vacant due to the death of a student. The appellant, Dr. Sanjay Pradhan, staked a claim to this seat under rule 10 of the Madhya Pradesh Selection for Post-Graduation Courses (Clinical, Para-clinical and Non-clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1984. Inasmuch as the vacancy arose towards the end of the academic year, the authorities took no steps to fill it up. The appellant's writ petition was dismissed By the M.P. High Court. The High Court construed the words 'filled up in that year' in r. 10 as meaning that a vacancy in any particular academic year must be filled up in that year.

One seat in the P.G. Course in M.S., which was occupied by Dr. Smt. Dhurupkar, was transferred from Medical College, Jabalpur, to Medical College, Bhopal, with a view to accommodate her. The appellant, Dr. Sanjay Kumar, moved the authorities seeking admission against that seat contending that the seat had become available in terms of r. 10. The authorities disallowed his claim. His writ petition was dismissed by the High Court in limine holding that the seat occupied by Dr. Smt. Dhurupkar had been transferred with her and hence the seat, in fact, was not available.

It was submitted before this Court that the High Court has consistently been taking a view that it has the power as well as the duty to issue an appropriate writ, direction or order for the 'backlog' of seats to be filled up whenever it finds that the authorities have acted in violation of the norms prescribed by the relevant rules and a deserving candidate has been wrongly denied admission to such a professional course of studies.

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Dismissing the appeals, it was,

HELD: (1) Rule 10 must be interpreted by the written text. If the precise words used are plain and un-ambiguous, the Court is bound to construe them in their ordinary sense and give them full effect. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for parliament, and not for the Courts, to consider. [287C-D]

(2) On a plain construction, rule 10 stipulates that if a seat falls vacant for any reason, and due to inaction on the part of the authorities the seat is not filled up in the academic year to which it pertains, there is no question of the vacancy being carried forward to the next academic year. [288A-B]

(3) 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. [288C]

(4) it is conceded by learned counsel appearing for the State Government that there is no provision which empowered the State Government to transfer a seat in the M.S. course in MD/MS reserved for a medical college to another medical college. It must therefore follow that the High Court was obviously wrong in holding that the seat occupied by Dr. Smt. Dhurupkar had been transferred with her when the seat was, in fact, available. [285C-D]

(5) On the construction placed on r. 10 of the Rules, the appellants are not entitled to any relief. Obviously, the seat that became vacant in the academic year 1986-87 cannot now be filled in terms of s. 10. [295B]

(6) It is impressed upon the State Government the desirability of taking immediate steps under rule 10 of the Rules to fill up the vacancy in the P.G. Course in MD/MS or the Diploma course of studies in a particular discipline, the moment the seat in that discipline is available in any particular academic year. [295C-D]

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(7) The State Government should ensure that the authorities charged with the duty of granting admission to students under rule 10 of the Rules act with due promptitude, and should not by their lethargy or inaction deprive or otherwise meritorious candidate admission to such a higher course of studies to which he was otherwise entitled. Perhaps, the solution lies in making a suitable provision in the Rules providing for a reasonable period, say fifteen days, within which the authorities ought to exercise their power under rule 10 of the Rules, failing which the seat available would be deemed to have been filled by the candidate placed first in the waiting list strictly according to merit. [295D-E]

King Emperor v. Bensari Lal Sarma, LR (1945) 72 IA 57; Dr. Mrs. Urmilla Shukla v. State of M.P., Misc. Petition No. 297/83 decided by M.P. High Court on 17.4.84; Rekha Saxena v. State of M.P., [1985] MPLJ 142; Dr. Sunil Gajendragadkar v. State of M.P. (Misc. Petition No. 57/85 decided by M.P. High Court on 11.3.85.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2560 of 1988.

From the Judgment and Order dated 12.1.1988 of the Madhya Pradesh High Court in Misc. Petn. No. 685 of 1987.

AND

Civil Appeal No. 1639 of 1988.

From the Judgment and Order dated 8.6.1987 of the Madhya Pradesh High Court in Misc. Petition No. 1488 of 1987.

G.L. Sanghi, M.N. Krishmani, Diwan Balak Ram and R.K. Singh for the Appellant in C.A. No. 2560 of 1988.

Rajender Sachar, Sanjay Sareen, Vivek Gambhir, S.K. Gambhir for the Appellant in C.A. No. 1639 of 1988.

Ashwani Kumar, T.C. Sharma and S.N. Khare for the Respondents.

The Judgment of the Court was delivered by

SEN, J. These two appeals by special leave brought from the judgments and orders of the Madhya Pradesh High Court dated June 8, 1987 and January 12, 1988 dismissing the writ

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petitions filed by each of the appellants, substantially involve a question as to the interpretation of Rule 10 of the Madhya Pradesh Selection for Post-Graduation Course (Clinical, Para-clinical and Non-clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1984 ('Rules' for short). The question raised is one of moment as it involves the right to admission to a seat in the Post-Graduate course in Medicine & Surgery in a Medical college (hereinafter referred to as the PG course in MD/MS) falling vacant 'in the midst of', or 'towards the end of', an academic year which, we believe, is a problem facing all the States.

First the facts. In these cases, the facts are not in dispute. In Dr. Ajay Pradhan's case, for the academic year 1986-87 commencing from September 1986, there were nine seats reserved for the post-graduate course in the clinical subject of General Medicine for the G.R. Medical College, Gwalior. All the nine seats were filled by the Dean, Medical College from amongst candidates strictly on the basis of merit i.e. by candidates placed at serial Nos. 1 to 9 on the recommendation of the College and Hospital Council. The appellant Dr. Ajay Pradhan who was placed at serial No. 15 obviously could not be given admission to the P.G. course in M.D. in General Medicine and was instead placed at serial No. 6 in the waiting list. Later on, he was given admission to the Diploma course in Radiology on 4.10.86 and he duly joined that course on 6.10.86 but failed to appear at the examination. On 11.7.87 Dr. Arun Yadav, one of the Selected candidates, who stood first in the merit list and was admitted to the P.G. course in M.D. in General Medicine met with a tragic death in a road accident. Inasmuch as his death occurred towards the end of the academic year, the authorities took no steps to fill up the seat. However, on the death of Dr. Arun Yadav, the appellant staked a claim to fill up the vacant seat under r. 10 of the Rules on the ground that the candidates placed above him in the merit list had been rendered ineligible having either opted for the Diploma course in Radiology or had left their house job. That claim of his having been turned down he moved the Gwalior Bench of the High Court under Art. 226 of the Constitution. A Division Bench of the High Court by its order dated January 12, 1988 dismissed the writ petition holding that the claim of the appellant in terms of r. 10 was misconceived.

The facts in Dr. Sanjay Kumar Shrivastava's case are

these. For the academic year 1986-87 commencing from August 1986, there were five seats reserved for the P.G. course in M.S. in Obstetrics and Gynaecology for the Medical College, Jabalpur. On March 2, 1987, the State Government passed an

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order transferring the seat occupied by Dr. Smt. Dhurupkar in Obstetrics and Gynaecology from the Medical College, Jabalpur to Medical College, Bhopal with a view to accommodate her and presumably because such transfer involved financial implications. On her transfer to Medical College, Bhopal, Dr. Smt. Dhurupkar continued to draw her stipend of Rs.800 per month reserved against one of the five seats in that discipline for Medical College, Jabalpur. The appellant Dr. Sanjay Kumar Shrivastava, who was placed at Serial No. 7 in the waiting list moved the authorities seeking admission to the P.G. course in Obstetrics and Gynaecology in Medical College, Jabalpur contending that the seat had fallen vacant because of the transfer of Dr. Smt. Dhurupkar and had therefore become available in terms of r. 10 of the Rules. The authorities having disallowed his claim, the appellant moved the High Court by a petition under Art. 226 of the Constitution. The High Court by its order dated June 8, 1987 dismissed the writ petition in limine holding that 'the seat occupied by Dr. Smt. Dhurupkar had been transferred with her and hence the same, in fact, was not available.

The main question that falls for determination in these appeals is whether in terms of r. 10 of the Rules there is a right to admission to a seat in the PG course in MD/MS falling vacant in a medical college 'in the midst of' or 'towards the end of' an academic year to which it pertains. A further question arises in one of these appeals as to whether the State Government has the power to transfer a seat in any of the disciplines in the PG course in MD/MS reserved for a medical college to another medical college in the State in order to accommodate a particular post-graduate student.

The Medical Council of India constituted under the Indian Medical Council Act. 1956 and one of whose duties is to prescribe the minimum standards of medical education, made recommendations on February 12/13, 1971 prescribing uniform standards for post-graduate medical education throughout India which having been approved by the Government of India and as revised from time to time, have the status of Regulations under s. 33 of the Act. The Regulations framed by the Medical Council of India provide inter alia for the different specialities for which PG courses in MD/MS as also Diploma courses in certain disciplines may be conducted, and the norms for admission of students to the PG courses in MD/MS as also to the Diploma courses. According to the Regulations framed by the Medical Council of India, the student-teacher ratio for the PG course in MD/MS is to be maintained at 1:1. The relevant regulation prescribing a student-teacher ratio at 1:1 for

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the PG course in MD/MS made with a view to maintain the minimum standards of medical education for the PG course in MD/MS insofar as relevant, is as-follows:

"General

(1) For M.D./M.S. degree in clinical subjects, there shall be proper training in basic medical sciences related to the disciplines concerned as well as paper in these subjects at the examination. In the case of M.D. & M.S. in basic medical sciences there should be training in applied aspect of the subject and a paper on the subject.

(2) In all post-graduate courses, whether clinical or basic medical sciences, preventive and social aspects should be emphasised.

(3) This should be a part of the examination in the degree courses as this gives training in research methodology.

(4) The student teacher ratio should be such that the number of post-graduate teachers to the number of post-graduate students admitted per year be maintained at 1:1.

For the proper training of the post-graduate students, there should be a limit to the number of student admitted per year. For this purpose every unit should consist of atleast 3 full time post-graduate teachers and can admit not more than 3 students for post-graduate teachers in the unit is more than three then the number of students can be increased proportionately. For this purpose one student should associate with one post-graduate teacher.

(5) The selection of post-graduates both for degree and diploma courses should be strictly on the basis of academic merit."

In most of the States rules have been framed by the various State Governments under Art. 162 of the Constitution regulating the manner of admission of students to the PG course of studies in MD/MS in the medical college in the State. The number of seats available for the PG courses in

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MD/MS and for the Diploma courses in various disciplines is therefore limited. There cannot be increase in the number of seats without the sanction of the Medical Council of India and without corresponding increase in the strength of the teaching staff, which necessarily involves financial implications.

The whole controversy turns on the purport and effect of r. 10 of the Rules prescribing the manner in which seats available in any particular year are to be filled, and is in these terms:

"10. The seats available in any particular year will be filled up in that year. No candidates will be admitted against the seats remaining vacant from previous year."

We must interpret r. 10 by the written text. If the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense and give them full effect. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the Courts, to consider. "Where the language of an Act is clear and explicit", said Viscount Simon in *King Emperor v. Bensari Lal Sarma*, LR (1945) 72 Ia 57 at p. 70, "we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature". We do not see why the same rule of construction should not apply to the Rules framed by the State Governments under Art. 162 of the Constitution.

On a plain construction, r. 10 is in two parts. The power to admit a student under the first part arises when a seat falls vacant in a particular year. The words 'filled up in that year' necessarily qualify the preceding words 'the seats available in any particular year'. It must logically follow that a necessary concomitant of the power under the first part of r. 10 is the 'availability' of the seat being filled up in the academic year to which it pertains. The words 'filled up in that year' which follow clearly imply that the vacancy cannot be carried over to the next academic

year or years. That construction of ours is reinforced by the second part of r. 10 which, by the use of negative language, clearly creates a bar against the seat being filled up in the next or succeeding academic year. What is implicit in the first part of r. 10 is made explicit in the second part. The use of the negative words in the second part 'No candidates will be admitted etc.' are clearly

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prohibitory in nature and exclude the applicability of the carry-for-ward rule. It follows that if a seat falls vacant for any reason, namely, that the candidate selected in order of merit does not join the PG course in MD/MS in a medical college or by reason of his death or otherwise, and due to inaction on the part of the authorities the seat is not filled up in the academic year to which it pertains, there is no question of the vacancy being carried forward to the next academic year.

Rule 10 is a specific provision made for the benefit of the merit candidates who are placed in the waiting list. Normally, the question of a seat being filled up must arise at the commencement of the academic year or soon thereafter. In our considered opinion on the terms of r. 10 as it exists, no other view is possible. 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.

As per the Regulations framed by the Medical Council of India, the PG course in MD/MS is a three-years' course including one year's house job. This is followed by a two-years' degree course. The two years' degree course in a medical college as prescribed by the Medical Council of India is a period of intensive training. A post-graduate student has not only to write a dissertation or thesis under the supervision of the Professor or Associate Professor who is his guide, but has also to take part in seminars, group discussions, clinical meetings besides attending classes. There is also emphasis on in-service training and not on didactic lectures. The in-service training requires the student to be a resident in the campus and he has the graded responsibility in the management and treatment of patients entrusted to his care. For this purpose, adequate number of posts of clinical residents or tutors are created. The period also includes adequate training in the basic sciences of Anatomy, Physiology, Bio-Chemistry, Bio-Physics. Pharmacology and Pathology in all aspects relevant to the speciality concerned. He is also required to participate in the teaching and training programmes of under-graduate students or interns in their subjects. The examination for the PG course in MD/MS consists of (i) thesis or dissertation, (ii) written papers. (iii) clinical, oral and practical examination. There are four theory papers for the post-graduate degree examination, of which one has to be on Applied Basic Sciences. The clinical examination is aimed at eliciting the knowledge of the student to undertake independent work as a Specialist. The oral and practical examinations are meant to test his knowledge on

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investigative procedures, techniques and other aspects of the speciality. The syllabus prescribed by the Medical Council of India for the PG course in MD/MS as also the student-teacher ratio of 1:1 virtually negate the right to admission to a seat falling vacant in the midst of or towards the end of the academic year to which it pertains.

In Ajay Pradhan's case, the High Court dismissed the writ petition principally on the ground that in terms of r. 10 of the Rules he was not entitled to any relief. Dr. T.N. Singh, J. speaking for himself and Ram Murti Rastogi, J. construed the words 'filled up in that year' in r. 10 as meaning that a vacancy in any particular academic year must be filled up in that year. According to him, the power to admit a student under r. 10 must be availed of either before the academic year commences or very soon thereafter, so that a candidate placed in the waiting list admitted under r. 10 does not suffer serious loss of study due to belated admission. Further he rightly observes, the second part of r. 10 mandates that if any seat has not been filled up in the academic year to which it pertains, the exercise cannot be undertaken in the succeeding year and it furnishes the rationale behind the provision, and said:

"An academic course cannot be compressed to accommodate any particular candidate who comes late. Because, no separate or 'special' arrangement can be made for a latecomer for imparting instructions to him. Any other view would not make a reasonable reading or construction of the Rule in its context and setting for each candidate has to be not only examined periodically with respect to instructions imparted, the pre-requisite therefore has also to be fulfilled by rendering instructions to him during the whole period of the course. We have no doubt that when a seat is allotted a date has to be specified by which it has to be availed. Therefore, it shall not be deemed 'filled up' if it is not availed. Indeed, it would then become the duty of the concerned authority to fill up the same by offering it to any other eligible candidate according to merit. In such a case, a decision has obviously to be taken to do so either before the session commences or very soon thereafter so that the new-comer does not suffer serious loss of studies due to belated admission."

We are in complete agreement with the view expressed by the learned Judge.

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We shall now deal with a couple of decisions to which we were referred to by learned counsel for the appellants during the course of their arguments. It was submitted that the High Court has consistently been taking a view that it has the power as well as the duty to issue an appropriate writ, direction or order for the 'backlog' of seats to be filled up whenever it finds that the authorities have acted in violation of the norms prescribed by the relevant rules and a deserving candidate has been wrongly denied admission to such a professional course of studies. It seemingly appears to be so, but on closer scrutiny the decisions relied upon are clearly distinguishable on facts.

There are three decisions we must mention: Dr. Mrs. Urmilla Shukla v. State of M.P. & Ors., (Misc. Petition No. 297/83 decided on 17.4.84); Rekha Saxena v. State of M.P. & Ors., [1985] MPLJ 142 and Dr. Sunil Gajendragadkar v. State of M.P., (Misc. Petition No. 57/85 decided on 11.3.85). In Dr. Urmilla Shukla's case, the facts were these. Dr. Mrs. Urmilla Shukla had applied for admission to the PG course in MS in Gynaecology and Obstetrics as well as to the Diploma course in that discipline in G.R. Medical College, Gwalior for the academic year 1983-84. It was not in dispute that there were 7 Lecturers in Obstetrics & Gynaecology in that College and as such 7 students had to be admitted for the PG course in MS in Gynaecology and Obstetrics. As per r. 2.2 of the Rules the State Government had fixed the ratio of 2/3rd for the merit candidates and 1/3rd for the candidates in

Government Service as Assistant Surgeons or equivalent posts, for admission to Post-Graduate course in Gynaecology. No rules had been framed for working out the ratio of 2/3rd and 1/3rd. Dr. Mrs. Urmilla Shukla stood fifth in the merit list. However, the authorities did not select her for the studies in MS course in Obstetrics & Gynaecology for the academic session starting from August 1983 but gave her admission to the Diploma course. She made a representation that she should have been given admission to the PG course in MS in Obstetrics & Gynaecology and not to the Diploma course, contending that there was no justification now the ratio of 4:3 had been worked out. The Government however rejected the representation and there-upon she moved the High Court. The High Court allowed the writ petition and struck down the decision of the State Government dated August 30, 1983 fixing the ratio at 4:3 as being wholly arbitrary and without any rational basis, and held that the ratio should have been 5:2.

C.P. Sen, J. speaking for himself and R.C. Shrivastava, J. explained that 2/3rd of 7 came to 4.666 while 1/3rd was 2.333. and the question was now the figure had to be rounded

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off for filling up the 7 seats. The learned Judge explained that the proper method would be that if the figure is more than half the same has to be rounded off as 1 while if the figure is less than half it is not to be reckoned. The High Court accordingly issued a writ in the nature of mandamus directing the Government to give admission to Dr. Mrs. Urmilla Shukla to the Post-Graduate course in Obstetrics & Gynaecology and permit her to appear at the MS examination in that discipline. It is however necessary to observe that the learned Judge mentioned that out of 7 seats for the PG course of studies in Obstetrics & Gynaecology, one seat had been kept vacant probably because of the filing of the writ petition by Dr. Mrs. Urmilla Shukla and therefore there could be no impediment to the grant of admission to her and cited a precedent under similar circumstances during the earlier year. Dr. Miss Sushma Dixit had been admitted to the MS course in Obstetrics & Gynaecology because one of the candidates selected had gone abroad without permission and her admission had been cancelled. He further pointed out that Dr. Mrs. Urmilla Shukla was pursuing her studies in the Diploma course in Obstetrics & Gynaecology and the syllabus in the MS in that discipline for the first year was the same and therefore there could be no difficulty in her way in determining the percentage of attendance to make her eligible to appear at the examination. The decision in Dr. Mrs. Urmilla Shukla's case therefore turned on its own facts.

The decision in Rekha Saxena's case was an aftermath of the decision in Dr. Mrs. Urmilla Shukla's case. Dr. Rekha Saxena had applied for admission only to the Diploma course in Gynaecology & Obstetrics and she rightly contended that the ratio for the P.G. course in MG between merit candidates and Assistant Surgeons should have been 5:2 and she being placed at serial No. 4 in the merit list, should have been admitted to the Diploma course. She complained that after Dr. Urmilla Shukla was given admission to the MS course, she made an application that she be given provisional admission to the Diploma course on the assurance that if ultimately Dr. Urmilla Shukla had to come back to the Diploma course she would walk out and further that she could not claim any stipend for the period of her studies, and that though the High Court allowed the writ petition of Dr. Urmilla Shukla and the College Council recommended her case for admission

to the Diploma course, the authorities turned down her claim on the ground that she could not be given admission in 1984 against the quota for the academic year 1983-84. The petitioner in her rejoinder pointed out the instance of Dr. Miss Sushma Dixit who was given admission to the MS course in Gynaecology & Obstetrics in the month of March 1983

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though she was doing her Diploma course for the academic year 1982-83, and made a grievance that she was being discriminated against as the authorities were adopting different yardsticks in her case. In the return filed by the State Government, the facts were not disputed. All that was said was that against the aforesaid judgment of the High Court in Dr. Mrs. Urmilla Shukla's case, the State Government had taken an appeal to the Supreme Court and therefore her seat in the Diploma course was kept vacant and had not been declared to be available for any other candidate. Upon this basis, it was asserted that as there was no seat vacant, no admission could be granted to Dr. Rekha Saxena. At the hearing of the writ petition the Government's appeal in Dr. Mrs. Urmilla Shukla's case was still pending.

G.L. Oza, Actg. CJ. speaking for himself and Rampal Singh, J. allowed the writ petition and directed that the petitioner Dr. Rekha Saxena be given provisional admission to the Diploma course in the vacancy caused on admission being granted to Dr. Mrs. Urmilla Shukla to the MS course. The High Court repelled the contention that the petitioner was a candidate for admission to a course for the academic year 1983-84 and could not be admitted in the year 1984, and observed:

"It is strange that this request of the petitioner dated 26.8.1983 was ultimately turned down by the respondents by an order dated 25.4.1984, practically eight months after this prayer was made by the petitioner. This delay in taking a decision on such matters when every day that passes in the life of a professional candidate is materially speaks volumes about the efficiency of this department and the rejection is on this basis that the petitioner was selected for the year 1983 and could not be admitted in the year 1984. This logic of this order, it appears, is not defended in the return and a new defence has been raised in the return that as the case of Dr. Smt. Urmilla Shukla is not yet finally decided and is pending in the Supreme Court, the seat has not been declared vacant although it is not disputed that the seat is and was vacant in fact. It is peculiar that if Dr. Smt. Urmilla Shukla could be given a provisional admission, why the petitioner could not have been given provisional admission immediately when she had herself offered in terms which would throw no liability on the respondents if ultimately she had to go back, but it appears that her application was not considered and ultimately practically major part of the session was wasted

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and then the refusal was on the ground of delay for which the authorities themselves were responsible. It is, therefore, plain that this kind of attitude could not be justified."

It was then observed:

"It is also interesting that in fact the selection of a candidate for admission to a course is for the academic session which is August 1983 to August 1984 and, therefore, when this order in April 1984 was passed, the session was still in the offing and if the petitioner was granted admission, there was no question of consideration of merit

for the year 1984. It is also plain that the seat remained vacant as Dr. Smt. Urmilla Shukla had been admitted in the M.S. Course.''

Incidentally, the High Court was not impressed with the submission made on behalf of the Government that there was no declaration that the seat in the Diploma course had fallen vacant and therefore there was no question of giving admission to the petitioner, observing that formal declaration of vacancy was too abstract a concept to deprive a candidate admission to the P.G. Course or Diploma course to which he is entitled, merely on the ground that the vacancy pertained to the academic year which had gone by or that no additional seat in the new year could be created without sanction of the Medical Council of India. In coming to the conclusion that it did, the High Court mainly relied on certain observation made by this Court in Punjab Engineering College v. Sanjay Gulati & Ors., [1983] 2 SCR 801, and in particular to the following observations:

"Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made."

We need not enter into this controversy. What is of significance is that in Rekha Saxena's case the seat occupied by Dr. Urmilla Shukla in the Diploma course in Obstetrics & Gynaecology was kept vacant and therefore there was no legal impediment for the High Court to have issued a direction for the admission of Dr. Rekha Saxena.

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In Sunil Gajendragadkar's case, the facts were more or less these. One Dr. Laxmi Jain did not join the P.G. course in MD in General Medicine for the academic year 1983-84 and the College Council on December 22, 1984 decided to cancel her admission w.e.f. August 1, 1984. But the vacancy caused thereby was not notified or advertised. The High Court relying on Rekha Saxena's case repelled the contention of the Government based on r. 10 that a seat falling vacant in a particular year can only be filled up in that year and the Sunil Gajendragadkar could not be admitted in the academic session 1983-84 which commenced from August 2, 1983.

Oza, C.J. speaking for himself and Ram Pal Singh, J. repelled the contention of the Government that the petitioner being a candidate for admission to the P.G. course in MD in General Medicine for the academic year 1983-84, could not be considered for admission in the year 1984-85 relying on the earlier decision in Rekha Saxena's case based on the observation of this Court in Punjab Engineering College that "those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made", and quoted from Rekha Saxena's case:

"In the present case, as it is clear that in the vacancy of Dr. Urmilla Shukla the petitioner was entitled to admission immediately in August 1983 itself, and if the respondents had chosen to keep her away by not considering her prayer, it could not be contended that now it is too late for her to be admitted."

The learned Chief Justice largely relied on the concept of justice and fairness. He adverted to the fact that the College Council took a decision on December 22, 1984 creating a vacancy w.e.f. August 1, 1984 i.e. commencement

of the next academic session. Although Dr. Laxmi Jain did not join the P.G. course in MD in General Medicine in August 1983, her seat was in fact vacant, but due to apathy and lethargy of the authorities no steps were taken to fill up the seat in that year in terms of r. 10. On the language of r. 10, we find it difficult to sustain the action of the authorities in making the seat available from August 1, 1984 i.e. commencement of the next academic year, or the view expressed by the High Court.

In the appeal preferred by Dr. Sanjay Kumar Shrivastava, it is conceded by learned counsel appearing for the State Government that there is no provision which empowered the

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State Government to transfer a seat in the P.G. course in MD/MS reserved for a medical college to another medical college. It must therefore follow that the High Court was obviously wrong in holding that the seat occupied by Smt. Dhurupkar had been transferred with her when the same was, in fact, available. On the construction that we place on r. 10 of the Rules, the appellants are not entitled to any relief. Obviously, the seat that became vacant in the academic year 1986-87 cannot now be filled in terms of r. 10.

We wish to impress upon the State Government of Madhya Pradesh the desirability of taking immediate steps under r. 10 of the Rules to fill up the vacancy in the P.G. course in MD/MS or the diploma course of studies in a particular discipline, the moment the seat in a medical college in that discipline is available in a medical college in any particular academic year. The State Government should ensure that the authorities charged with the duty of granting admission to students under r. 10 of the Rules must act with due promptitude, and should not by their lethargy or inaction deprive an otherwise meritorious candidate admission to such a higher course of studies to which he was otherwise entitled. Perhaps, the solution lies in making a suitable provision in the Rules providing for a reasonable period, say fifteen days, within which the authorities ought to exercise their powers under r. 10 of the Rules, failing which the seat available would be deemed to have been filled by the candidate placed first in the waiting list strictly according to merit.

In the result, the appeals must fail and are dismissed. There shall be no order as to costs.

R.S.S.

Appeals dismissed.