

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No.408 of 2023**

**1. Dr. Nabanita Debbarma,**

daughter of Kishore Debbarma, resident of Chanmari Road No. 4, Kunjaban, P.O. Kunjaban, P.S. Kunjaban, Agartala, West Tripura, Pin- 799006

**2. Dr. Debasree Das,**

wife of Sagnik Pal, resident of Palace Compound, Sakuntala road extension, P.O. Agartala, P.S. West Agartala, West Tripura, Pin- 799001

**3. Dr. Deepanwita Nath,**

daughter of Asis Ranjan Nath, resident of Bilthai, Panisagar, P.O. Bilthai, P.S. Panisagar, North Tripura, Pin- 799260

**4. Dr. Anupam Roy,**

son of Ajit Kumar Roy, resident of Chandrapur, Jamtala, P.O. Reshambagan, P.S. East Agartala, West Tripura, Pin- 799008

**5. Dr. Rinu Debbarma,**

daughter of Rabindra Debbarma, resident of Ganesh Thakur Lane, Bijoy Kumar Chowmuhani, Krishnanagar, P.O. Agartala, P.S. West Agartala, West Tripura, Pin- 799001

**6. Dr. Monalisa Debbarma,**

daughter of Prabin Debbarma, resident of West Champacherra 2 no. Barai Bari, P.O. + P.S. Champahour, Khowai, Tripura, Pin- 799201

**7. Dr. Twinkle Debbarma,**

daughter of Binoy Debbarma, resident of New Volcan Club, North Banamalipur, P.O. Agartala, P.S. East Agartala, West Tripura, Pin- 799007

**8. Dr. Adrena Debbarma,**

daughter of Dr. Prabhat Debbarma, resident of Salka Residential Complex, Gurkhabasti, P.O. Kunjaban, P.S. NCC, West Tripura, Pin- 799006

**9. Dr. Amartya Debnath,**

son of late Ajit Kumar Debnath, resident of Jagaharimura, near Mahatma Gandhi Play Centre, P.O. Agartala College, P.S. East Agartala, West Tripura, Pin- 799004

**10. Dr. Anindhita Shil,**

daughter of Subhash Chandra Shil, resident of Moharcherra, Teliamura, P.O. Moharcherra, P.S. Teliamura, Khowai, Tripura, Pin- 799203

**11. Dr. Mousami Debbarma,**

daughter of Nagendra Debbarma, resident of near TRTC office, TK Road, Krishnanagar, P.O. Agartala, P.S. West Agartala, West Tripura, Pin- 799001

**12. Dr. Yalwkti Jamatia,**

daughter of Gulak Bashi Jamatia, resident of Noabari, Killa, P.O. Killa, P.S. Killa, South Tripura, Pin- 799114

**13. Dr. Chandini Debbarma,**

daughter of Kirit Debbarma, resident of opposite of Ramkrishna Bhavan, near Chhatra Sangha Club, Krishnanagar, P.O. Agartala, P.S. West Agartala, West Tripura, Pin- 799001

**14. Dr. Debarun Roy,**

son of Bijoy Krishna Roy, resident of Bankumari, P.O. Jogendranagar, P.S. East Agartala, West Tripura, Pin- 799004

**15. Dr. Helina Debbarma,**

daughter of Bikram Debbarma, resident of Santipara, Ambassa, P.O.+ P.S. Ambassa, Dhalai, Tripura, Pin- 799289

**16. Dr. Kushal Debbarma,**

son of Purniram Debbarma, resident of near Youngs' Corner Club, North Banamalipur, P.O. Agartala, P.S. West Agartala, West Tripura, Pin- 799001

**17. Dr. Shreyata Das,**

daughter of Swapan Kumar Das, resident of East side of Old Governor House, Kunjaban, P.O. Abhoynagar, P.S. NCC, West Tripura, Pin- 799005

**18. Dr. Susmita Das,**

daughter of Sukha Ranjan Das, resident of Giridhari Palli, Udaipur, P.O. Radhakishorepur, P.S. Udaipur, Gomati, Tripura, Pin- 799120

**19. Dr. Tirtha Debbarma,**

son of Tarun Debbarma, resident of Champahaur, P.O. + P.S. Champahour, Khowai, Tripura, Pin- 799201

**20. Dr. Suchita Bhowmik,**

daughter of Mihir Chandra Bhowmik, resident of Khas Chowmuhani, Melaghar, P.O. Khas Chowmuhani, P.S. Melaghar, Sepahijala, Tripura, Pin- 799115

.....Petitioners

**-VERSUS-**

**1. The State of Tripura,**

represented by the Principal Secretary/Secretary, Health and Family Welfare Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin-799010

**2. The Under Secretary,**

Health and Family Welfare Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin-799010

**3. The Deputy Secretary,**

Health and Family Welfare Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin-799010

**4. The Director of Health Service,**

Government of Tripura, health Directorate Building, 1<sup>st</sup> Floor, Pandit J.N. Complex, Agartala, West Tripura, Pin- 799001

**5. The Director of Medical Education,**

Government of Tripura, P.B. Das Memorial Building, 2<sup>nd</sup> Floor, Bidurkarta Chowmuhani, Agartala, West Tripura, Pin-799001

....Respondents

|                                                |   |                                                          |
|------------------------------------------------|---|----------------------------------------------------------|
| For Petitioner (s)                             | : | Mr. P. Roy Barman, Sr. Advocate<br>Mr. D. Paul, Advocate |
| For Respondent (s)                             | : | Mr. D. Bhattacharjee, GA<br>Mr. S. Saha, Advocate        |
| Date of hearing & delivery of judgment & order | : | <b>27.07.2023</b>                                        |
| Whether fit for reporting                      | : | <b>Yes</b>                                               |

**HON'BLE MR. JUSTICE ARINDAM LODH**  
**JUDGMENT & ORDER (ORAL)**

By means of filing the present writ petition, the petitioners have prayed for granting them “No-Objection Certificate” (‘NOC’, for short) to pursue Post Graduate (‘PG’, for short) course in Institutions outside the State of Tripura, and to quash the Notification dated 03.05.2023 issued by the Director of Medical Education, Government of Tripura (Annexure-5 to the writ petition), so far the petitioners are concerned.

**2.** Briefly stated, the petitioners are Medical Officers serving the Tripura Health Services (‘THS’, for short) Department. The petitioners no. 1, 2 and 3 have been performing since the year 2017 and petitioners no. 4 to 20 are serving since the year 2021. Their services are placed at different places, which were/are notified as rural areas and treated as rural service under the respondents. In response to an advertisement published on 05.01.2023, the petitioners had applied for obtaining NOC to appear in NEET-PG, 2023. The petitioners were allowed 4 days leave to appear in the said examination. Thereafter, they resumed their duties after expiry of 4 days. The petitioners became qualified to pursue PG course in their respective streams. Thereafter, they had applied for NOC to appear in counseling for admission in PG course, but, the respondent no. 4 i.e. Director of Health Services, had not issued NOC to the petitioners to appear in the counseling process. Such non-issuance of NOC raises the cause of action for filing the instant writ petition before this court seeking the above noted reliefs.

**3.** I have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. D. Paul, learned counsel appearing for the petitioners. Also heard Mr. D. Bhattacharjee, learned GA assisted by Mr. S. Saha, learned counsel appearing on behalf of the respondents.

**4.** Mr. Roy Barman, learned senior counsel has referred to a Memorandum dated 17.12.2015 (Annexure 1 to the writ petition) wherein guidelines for issuing NOC in respect of Medical Officers of THS/Tripura Medical Education (Faculty and condition) services for appearing in Post Graduate Entrance Examination in different courses of study have been formulated. One of the conditions laid down in the Memorandum dated 17.12.2015 is that “*to get NOC open category candidate (regular & ad-hoc) will have to complete a minimum period of 6 (six) months service under this Department*”. Mr. Roy Barman, learned senior counsel has further drawn my attention to the Memorandum dated 11.01.2023 (Annexure 3 to the writ petition), and Memorandum dated 03.05.2023 (Annexure 5 to the writ petition), issued by the Government of Tripura.

**5.** Referring to Memorandum dated 11.01.2023, learned senior counsel appearing for the petitioners has submitted that under the said Memorandum a Medical Officer must work under Tripura Health Services atleast for 2 (two) years in rural areas. However, under Memorandum dated 03.05.2023, the said period of rural services has been extended to further six years for obtaining NOC from the competent authority. According to learned senior counsel for the petitioners, this condition as laid down under Memorandum dated 03.05.2023 prevented the petitioners from pursuing PG course, though, they have become successful and qualified for the same. Mr. Roy Barman, learned senior counsel has strenuously argued that the Memorandum dated 03.05.2023 has no reasonable nexus, and put unreasonable restrictions for the candidates to pursue PG courses. Proceeding further, Mr. Roy Barman, learned senior counsel has argued that the Memorandum dated 03.05.2023 laying down the policy of issuance of NOC to a Medical Officer is irrational and arbitrary, and therefore, liable to be set-aside. Mr. Roy Barman, learned senior counsel has

further informed this court that as many as 40 candidates had been given NOC, but, they may not get the cut-off marks entailing them to pursue PG course, and in that eventuality, the petitioners having qualified may be given the NOC for pursuing PG course. To reinforce his submissions, Mr. Roy Barman has pressed into service a decision of Madhya Pradesh High Court (Jabalpur Branch) titled as *Diwakar Patel and ors. vs. The State of M.P. and ors.*[Writ Petition no. 16249 & others of 2022] decided on 22.09.2022, and a judgment of Hon'ble Supreme Court of India titled as *Parmender Kumar and ors vs. State of Haryana and ors*, (Manu/ SC/1336/2011), on the context “rules of games cannot be changed”.

**6.** On the other hand, Mr. D. Bhattacharjee, learned GA has submitted that a good number of Medical Officers, approx. 300 members (50% of the existing strength) have applied for NOC for appearing in NEET-PG, 2023, but no one had been provided with NOC from the Department during this year. It is expected that a good number of them will get seat in the PG courses and if the respondents allow them to pursue PG course, then, the entire health system of the State would be collapsed. Learned GA has further argued that most of the slots of clinical services under THS will remain vacant. Sum and substance of the submission of learned GA is that the State Medical Services will be badly affected if NOC is given to the petitioners and other similarly situated Medical Officers. Added to it, learned GA has referred to Rule 7 and Rule 50 of CCS (Leave) Rules and, particularly, the Rules relating to granting of “Study leave” to re-inforce his submission that leave cannot be granted as a matter of right and it is the discretion of the employer to consider the exigency in public service before granting leave in any form including study leave.

**7.** I have considered the submissions of learned counsel appearing for the parties.

**8.** Before I advert to the merits of the case, I must say that State has every right to formulate its own policy keeping in mind the interest of public as a whole, and the court will not interfere with such policy, unless it suffers from arbitrariness, illegality or legal or factual malafides or any of the vices within the scope of Wednesbury reasonableness. In addition, the Court will be loath to interfere if the policy decision taken by the State has rational nexus with the objectives it sought to be achieved. *To summarize, the Government of the day has power to formulate its policy and to change the same from time to time depending upon the exigencies of the situation.* Keeping this well established principle in mind, I have proceeded to decide the instant case on merits.

[Emphasis supplied]

**9.** At the outset, I should refer the Memorandum dated 11.01.2023 (Annexure 3 to the writ petition) where under Clause 1(j), it is laid down that “*a candidate must work under Tripura Health services at least for 2 (Two) years in rural area*”. In supersession of this Memorandum as regards granting of NOC, the government has come up with another Memorandum dated 03.05.2023 (Annexure 5 to the writ petition) where it is decided that “*conditional NOC will be given to the eligible in-service candidates who have completed rural service tenure for more than 6 years for following clinical subjects only i.e., Medicine, Surgery, OBG, Ophthalmology, Radiology, Anesthesia, Pediatrics, Transfusion Medicine, ENT, Ortho, Nephrology, Radiation Oncology, Respiratory Medicine, Dermatology and FMT*”.

**10.** Now, firstly, it is to be considered whether such change of policy of this Clause extending the required tenure of rural services to more than six years under Memorandum dated 03.05.2023 from two years under

Memorandum dated 11.01.2023 suffers from the vice of arbitrariness, irrationality or has no reasonable nexus the policy makers wanted to achieve.

**11.** Having perused the Memorandum dated 17.12.2015 (Annexure 1 to the writ petition), Memorandum dated 11.01.2023 (Annexure 3 to the writ petition) and Memorandum dated 03.05.2023 (Annexure 5 to the writ petition), I find clear distinction in issuance of the aforesaid Memorandums. In the Memorandums dated 17.12.2015 and 11.01.2023, there is clear distinction between the use of the words the policy makers had incorporated. In the Memorandum dated 03.05.2023, for the first time, the framers have considered the aspect of acute shortage of Medical Officers. The memorandum has started with the following words:-

**"In view of acute shortage of Medical Officers, the following decisions has been taken for in-service Medical Officers in respect of NOC for availing PG courses in super session of earlier order on this issue.**

**a) Conditional NOC will be given to the eligible in-service candidates who have completed rural service tenure for more than 6 years for following clinical subjects only i.e. Medicine, Surgery, OBG, Ophthalmology, Radiology, Anesthesia, Pediatrics, Transfusion Medicine, ENT, Ortho, Nephrology, Radiation Oncology, Respiratory Medicine, Dermatology and FMT.**

**b) \*\*\***

**c) \*\*\***

**d) \*\*\***

**e) \*\*\***

**f) \*\*\***

**2. This is issued as per approval vide U.O. No. 1303/CM/2023 dated 24.04.2023 of the competent authority and this order shall take with immediate effect until further order."**

**12.** On bare perusal of the Memorandum dated 03.05.2023, it is crystallized that the policy makers of this Memorandum have taken into consideration the acute shortage of Medical Officers within the State hospitals and Public health Centers (PHCs), and in their counter affidavit, it is clearly stated that *the entire health service system would be collapsed*. As such, from the Memorandum dated 03.05.2023, it is clear that the Government of Tripura, particularly, the authorities concerned had obvious reasons to re-visit the issue in respect of granting NOC in favour of a Candidates/Medical Officers

intending to pursue PG courses. In my opinion, the said Memorandum dated 03.05.2023 [Annexure 5 to WP(C) 408 of 2023] extending the tenure of rural services to the extent of more than 6 (six) years does not suffer from any irrationality, arbitrariness, and such decision is taken in the exigencies of providing required health services to the people of the State. The State being a welfare State governed by rule of law would definitely to consider the issue in consonance to its fundamental and constitutional obligations towards its people as enshrined under Article 21 of the Constitution of India to cater adequate health and medical services to its populace. 'Right to Health' is one of the significant dimensions of Article 21 of the Constitution of India. Every persons have the right to get themselves adequately and effectively treated. The people of the State expect better health care and services from a benevolent Government.

**13.** Keeping in view the categorical statements made in counter affidavit that if the State is prevented from implementing the policy decision dated 03.05.2023, the health service system of the State would be collapsed, one may unhesitantly hold that the change of policy as regards the granting of study leave to the State's Medical Officers has rational nexus to achieve the object of providing adequate health service towards the people of the State, and thus, would not warrant interference.

**14.** At this juncture, Mr. Roy Barman, learned Senior Counsel appearing for the respondents has eloquently submitted that the State authorities have failed to justify their actions of changing its policy as regards the period of rural service from 2 (two) years to more than 6 (six) years within a span of 4 (four) months. I do not find any merit in the submission of Mr. Roy Barman, learned Senior Counsel.

**15.** In the opinion of this court, State legislatures being the elected public representatives are well aware of the ground realities as well as the basic needs of the people to which the Court has very little idea. As such, it is exclusively within the domain of the legislatures to lay down appropriate policy taking into account the best interest of the people. Accordingly, I repel the submission of learned Senior Counsel appearing for the petitioners that the respondents-State has arbitrarily changed the policy decision dated 11.01.2023, which prescribed 2 (two) years rural service.

**16.** Added to it, it is no longer *res integra* that to obtain the benefit of leave is a matter of right. Rule 7 of CCS (Leave) Rules, postulates that:

**“7. Right to leave**

**(1) Leave cannot be claimed as of right.**

**(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.”**

Furthermore, Rule 50 of CCS (Leave) Rules, is relevant herein, which reads as under:

**“50. Conditions for grant of study leave**

**(1) Subject to conditions specified in this Chapter, study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialized training in a professional or a technical subject having a direct and close connection with the sphere of his duty.**

**(2) \* \* \* \* \***

**(3) Study leave shall not be granted unless-**

**(i) it is certified by the authority competent to grant leave that the proposed course of study or training shall be of definite advantage from the point of view of public interests;**

**\* \* \* \* \***

On plain and conjoint reading of above provisions, it crystalizes that none can claim leave in whatever form as a matter of right, and it can be denied in the exigencies of public interest.

**17.** Undoubtedly, granting of statutory leave definitely will be an advantage to the government from the point of view of public interest and is related to sphere of duties to the government servant. Furthermore, the study

leave is to be allowed to an eligible candidate to improve the academic excellence in the relevant establishment. It is also equally true that the competent authority i.e. the employer is the best authority to determine its need and overall public interest. It is obvious that before framing any policy on any issue related to public administration, the government makes thorough exercise keeping in mind the exigencies of public service and the interest of the people of the State. In the instant case, it is crystallized that the policy makers while issuing the memorandum dated 03.05.2023 in supersession of its earlier policy under Memorandum dated 11.01.2023 have taken into consideration the acute shortage of Medical Officers in the State, which compelled the Government to change its policy with an aim to cater better health service to its people.

**18.** For the reasons stated and discussed here-in-above, I find no ground to interfere with the Memorandum dated 03.05.2023. Accordingly, the instant writ petition stands dismissed being devoid of merit. Pending application(s), if any, also stands disposed in the above terms.

**JUDGE**