

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.100 of 2023

Dr. Nabamita Debbarma and others
..... Appellant(s).
Versus
The State of Tripura and others
..... Respondent(s).

For Appellant(s) : Mr. C.S. Sinha, Advocate.
For Respondent(s) : Mr. D. Bhattacharya, GA,
Mr. S. Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

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28/08/2023

Heard Mr. C.S. Sinha, learned counsel for the appellants and Mr. D. Bhattacharya, learned Government Advocate assisted by Mr. S. Saha, learned counsel for the State-respondents.

[2] The writ petitioners No.1, 2 and 3 claimed to have been working since 2017 and petitioners No.4 to 20 have been serving since 2021. They had applied for obtaining NOC to appear in NEET-PG, 2023 under advertisement dated 05.01.2023. They were allowed 4(four) days leave to appear in the said exam. They resumed their duties after expiry of 4(four) days and claimed to have qualified to pursue PG course in their respective streams. Thereafter, their application for granting of 'No-Objection Certificate' (NOC, for short) to appear in counseling for admission in PG course has been declined by the respondent-Director of Health Services. Therefore, they approached the Writ Court.

[3] It is the case of the petitioner that initial period of serving in a remote area was only six months as per the memorandum dated 17th December, 2015 (Annexure-1 to the writ petition) for getting NOC in the open category but vide memorandum dated 11th January, 2023 (Annexure-3 to the writ petition) it was increased to 2(two) years and, thereafter, vide memorandum dated 3rd May, 2023 (Annexure-5 to the writ petition) it was increased to 6(six) years which is wholly arbitrary and without any rational basis.

[4] Learned counsel for the writ petitioners submits that if the pre-condition of working for 6(six) years in a remote area is prescribed then the carrier of these young medical officers, who are bright and promising, would be ruined. Learned Writ Court, however, refused to interfere in the matter vide impugned judgment dated 27.07.2023. Therefore, they approached this court in appeal.

[5] Learned Government Advocate submits that the prescription of the period for serving in a remote area is a policy decision and backed by empirical data, which is also placed on record by the respondents through their counter affidavit at paragraph Nos. 6, 7 and 8 which are extracted hereunder:

“6. The GDMO (General Duty Medical Officer) is the backbone of health institutions having sanction of 720 MO's (Medical Officer) but actual man in position is 637, so as per norm only 64 MO's are supposed to be allowed for PG studies but 169 MOs (27%) are undertaking PG course. The existing man power is under tremendous strain and not in a position to sustain such pressure. The existing GDMO's are constantly shuttling from place to place on deputation basis only to run and save the system but such system cannot be encouraged for long period. The indiscriminate sanction of NOC to MO's beyond the permissible limit of 10% totally affected the health system though as per record we have good number of MO's but due to NOC to MO's beyond sanction limit has entirely affected the health system.

7. As per record it appears that during 2022-23, 59 MO's are availing PG study while 41 MO's have left their station without any prior sanction of the Department and similarly during 2021-22, 55 Nos. of MO's availing PG study and a good number also left station without prior sanction of the department.

8. It is fact during this year i.e. 2023-24 it is expected that at least 60 Nos. of GDMO may get entry in PG studies and unless we put restriction as per leave reserve norm then a good number of health institutions will likely to be closed for want of GDMO and it will invite serious repercussion from the common people at large. Already delicate balance of MO's has been affected due to indiscriminate issuance of NOC and if we allow a good number of MO's to pursue PG courses this year beyond the 10% leave reserve quota then Department will be compelled to close down more health institutions. The Department for the interest of the common people cannot afford further deterioration of the existing system which purely arisen only due to good number of MO's who are pursuing PG courses without the interest of the Department. There is apprehension in the coming days that such artificial crisis of MO's particularly in periphery cum tribal areas will put a serious strain in the system and may cause eminent havoc for any epidemic, gastro enteric problem, malaria etc. in the coming days."

[6] The claim raised by the writ petitioner is pitted against the larger public interest. The absence of qualified doctors in remote areas has caused huge suffering to the inhabitants of the State. As such, the department has, after due consideration of the relevant factors, taken a policy decision to increase the period for serving in remote areas to six years for obtaining NOC to seek admission in postgraduate courses through NEET- PG. The previous criteria did not meet the desired objectives, and therefore, after 8(eight) years, the same was changed. The impugned judgment therefore does not suffer from any error warranting interference in appeal.

[7] We have considered the submissions of the learned counsel for the parties and taken note of the pleadings placed from the records, the stand of the respondents, and also perused the impugned judgment. Learned Writ Court has considered the plea raised by the writ petitioners and the stand of the respondents, which precipitated revisiting the issue in respect of granting NOC in favour of candidates/medical officers intending to pursue PG courses. The learned Writ Court was of the opinion that such a decision is taken in the exigencies of providing the required health services to the people of the State.

The State, being a welfare State governed by rule of law, is entitled 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. As such, taking into consideration all the relevant facts and circumstances and the factors which prevailed upon the State to increase the period for serving in a remote area, the writ Court refused to interfere in the matter of policy relating to public administration taken by the Government in public interest. The findings of the learned Writ Court are contained at paragraphs No. 11 to 18 and the same has been reproduced hereunder:

"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”.

[8] We have considered the submissions of the learned counsel for the parties. Grant of NOC to an intending candidate for participating in a NEET-PG exam and for admission to postgraduate courses is subject to conditions validly imposed by the State. The issue is interest of individual writ petitioners pitted against the larger public interest [See (2019) 8 SCC 607]. The previous policy decision prescribing six months of service in a remote area was of 17th December, 2015. The respondent-department, in its wisdom, has revisited the

criteria after eight years in 2023, taking into account objective factors regarding paucity of medically qualified professionals in the remote areas of the State, which affects the basic medical needs of the inhabitants of the State living in remote areas. The decision is itself a policy decision on the part of the State. The wisdom of the State in taking such a policy decision is not to be examined, though the reasonableness of the decision is subject to judicial review. However, learned Writ Court has taken into consideration all the factors which propel the State to take such a decision, while refusing to interfere in the memorandum dated 11th January, 2023 or 3rd May, 2023 as it came to cater better health services to its people. We do not find any infirmity in the impugned decision. Accordingly, the writ appeal is dismissed.

Pending application(s), if any, also stands disposed of.

(T. AMARNATH GOUD), J

(APARESH KUMAR SINGH), CJ

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