

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WA.No. 803 of 2015 (C) IN WP(C).7422/2015

AGAINST THE JUDGMENT IN WP(C) 7422/2015 DATED 27-03-2015

.....

APPELLANTS/PETITIONERS :

1. DR.ABHILASH KUMAR M.P
COMMUNITY HEALTH CENTRE, MEPPADI, WAYANAD DISTRICT
2. DR.LAKSHMY.M,
COMMUNITY HEALTH CENTRE, MEPPADI, WAYANAD DISTRICT
3. DR.PRINSON GEORGE,
COMMUNITY HEALTH CENTRE, MEENANGADI, WAYANAD DISTRICT
4. DR.SHAJI E.JOB,PUBLIC HEALTH CENTRE,NOOLPUZHA,
WAYANAD DISTRICT

BY ADV. SRI.KRISHNAN VENUGOPAL(SR.)
SRI.C.P.MOHAMMED NIAS

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO THE GOVERNMENT
HEALTH & FAMILY WELFARE DEPARTMENT, GOVT.SECRETARIAT
THIRUVANANTHAPURAM-695 001
2. THE DIRECTOR OF MEDICAL EDUCATION,THIRUVANANTHAPRUAM-695 001
3. THE COMMISSIONER FOR ENTRANCE
EXAMINATION,THIRUVANANTHAPURAM-695 001

4. DHANYA S
ASSISTANT SURGEON, COMMUNITY HEALTH CENTRE
IRIVERI P.O, MOWANCHERY, KANNUR

R1 TO R3 BY SR.GOVERNMENT PLEADER, SRI.ROSHAN D ALEXANDER
R4 BY ADV. SRI.KALEESWARAM RAJ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28-05-2015, ALONG
WITH WA. 880/2015, WA. 938/2015, WA. 944/2015, WA. 945/2015, WA. 946/2015,
WA. 947/2015, WA. 948/2015, WA. 949/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

'C.R'

**ASHOK BHUSHAN, C.J.
&
A.M.SHAFFIQUE, J.**

**W.A.Nos.803, 938, 944, 945,
946, 947, 948, 949 and 880 of 2015**

Dated this the 28th day of May, 2015

JUDGMENT

Ashok Bhushan, C.J.

All these Writ Appeals (except W.A.No.880 of 2015) have been filed against the common judgment dated 27th March, 2015 rendered by the learned Single Judge in a batch of Writ Petitions. All these Writ Appeals can be conveniently divided into four categories. First category includes only one Writ Appeal being W.A.No.803 of 2015 arising out of W.P(C).No.7422 of 2015. Second category includes maximum number of Writ Appeals, i.e., W.A.Nos.938, 944, 945, 946, 947 and 949 of 2015. The third category includes only one Writ Appeal, i.e.,

W.A.No.938 of 2015. Fourth category includes only one Writ Appeal, i.e., W.A.No.880 of 2015. The Writ Appeals have been included in different categories due to different reliefs claimed in the above four categories of Writ Appeals and the different submissions, which have been made by the parties in the aforesaid four categories of Writ Appeals. The learned Single Judge has referred to the pleadings in W.P(C).No.8273 of 2015 for deciding all the Writ Petitions, hence, the pleadings in W.P(C).No.8273 of 2015 as referred by the learned Single Judge shall also be referred in this batch of Writ Appeals. W.A. No.947 of 2015 included in the second category has been filed against the judgment of the learned Single Judge dated 27.03.2015 in W.P(C). No.8273 of 2015.

2. The main question which has arisen for consideration in this batch of Writ Appeals is **whether for admission in Post Graduate Medical Courses,**

the in-service candidates are entitled to weightage of marks for the services rendered in “remote and/or difficult areas” or they are also entitled for weightage of marks for “rural service”.

3. The brief facts and sequence of events, which are necessary for deciding the Writ Appeals are:

The Government of Kerala, Directorate of Medical Education, issued a prospectus for admission to Medical Post Graduate Degree/Diploma Courses, 2015. The Commissioner for Entrance Examination is the authority for selection and allotment in the State quota of 259 seats in Post Graduate Degree Courses and 78 seats in Post Graduate Diploma Courses. Clause 4.4 of the prospectus provided for qualifying criteria to the effect that all candidates seeking admission to Post Graduate Medical Degree/Diploma courses in the State of Kerala for the academic year 2015-16 shall have to qualify the

Post Graduate Medical Entrance Examination-2015 and in order to be eligible for admission in any Post Graduate Medical Course for the year 2015-16, it shall be necessary for a candidate to obtain a minimum score of 50% in the PG Medical Entrance Examination-2015. 40% was earmarked as service quota. These appeals relate to only in-service quota, hence it shall be relevant to note the relevant clauses of prospectus pertaining to eligibility for in-service quota. Clause 7.1.1 provided that only those candidates are entitled to apply for service quota, who have completed a minimum period of two years on duty within a continuous period of three years under regular appointment. Clause 7.1.2 provided that inter se seniority of actual physical service, excluding leave without allowance with acquirement of eligibility in the PG Medical Entrance Examination-2015 will be the criterion for selection. Clause 7.1.3 provided for weightage. The clause contemplated a single seniority

list for candidates under service quota. It also contemplated weightage for rural and difficult rural service. For rural service, one year was to be added for every completed three years of rural service subject to maximum five years as bonus. For difficult rural service, one year was to be added for every completed one year subject to maximum eight years as bonus. The State Government laid down the above criterion for in-service candidates taking into consideration the provisions of the Kerala Medical Officers' Admission to Post Graduate Medical Courses Under Service Quota Act, 2008 (hereinafter referred to as 'the 2008 Act') and the law declared by a Division Bench of this Court in ***Mohammed Riaz v. State of Kerala*** (2011(2) KLT 294). The Division Bench in the above case had held that if the in-service candidates gets qualified in the Common Entrance Test, selection will be based on their inter se seniority. Against the above judgment of the

Division Bench a Special Leave Petition was filed in the Supreme Court, which was decided in Civil Appeal Nos.297-298 of 2015 along with connected Civil Appeals by judgment dated 12.01.2015. The Apex Court held that admission of in-service candidates is not permissible on the basis of seniority as provided in Section 5(4) of the 2008 Act, rather it should be made on the basis of merit of in-service candidates in the Common Entrance Examination, however, weightage for such service candidates is permissible while determining the merit of the candidates in terms of the third Proviso to Regulation 9 of Regulations 2000 framed by the Medical Council of India, namely, the Medical Council of India Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as 'the Regulations, 2000'. After laying down the above proposition, the appeals were dismissed by the Apex Court. Thus, the Government of Kerala issued a Government order dated

3.2.2015 purporting to implement the judgment of the Apex Court dated 12.01.2015. Several clauses of the prospectus were modified, including clauses 7.1.2 and 7.1.3. The modified clause 7.1.3 provided that the merit list for candidates in-service quota under Health Service will be prepared by the Commissioner after awarding due weightage marks for the rural service put in by the candidates qualifying the entrance examination. The entrance examination was held on 08.2.2015 and the result was published on 06.03.2015. With regard to service quota, the following note was appended:

“Note - The merit list for candidates in service quota under health service will be prepared by the CEE after awarding due weightage marks for the rural service put in by the candidates qualifying the entrance examination”.

4. The Government issued Government order dated 11.03.2015 for giving weightage of marks to service quota candidates. The Government Order dated

11.03.2015 stated that though the intention was to give weightage to all those who are working in remote and difficult areas as ordered by the Supreme Court, it was only specified as 'rural areas' in clause 7.1.2 while issuing Government order dated 03.02.2015 in compliance with the direction of the Supreme Court. The Government Order further stated that the term 'rural area' appeared in clause 7.1.2 of the Medical PG Prospectus is corrected as 'difficult rural area' and this benefit will be given as per Government Order dated 15.02.2014.

5. After the Government Order dated 11.03.2015, the Commissioner for Entrance Examinations published a rank list of service quota candidates by adding weightage for 'difficult rural areas'. After issuance of the Government Order dated 11.03.2015 and the rank list was issued on 12.03.2015, Writ Petitions were filed by those in-service candidates, who had to their credit rural

service. W.P(C).No.8273 of 2015 and other Writ Petitions included in second category as well as third category were the Writ Petitions filed by in-service candidates having to their credit rural service for which benefit of weightage was not provided in the Government Order dated 11.03.2015.

6. Pleadings and facts in W.P(C).No.8273 of 2015 need to be noted in detail. The petitioner's case was that he entered into service as Assistant Surgeon as per advice memo dated 03.06.2010 and he worked in the Department of Health Services, at Community Health Centre, Mayyanadu from 12.08.2010 to 03.08.2011 and he is now working as Assistant Surgeon in Primary Health Centre, Vallicode from 27.03.2012. The petitioner stated that clause 7.1.3 of the prospectus stipulates the manner in which weightage for rural and difficult service will be given. The petitioner submitted on-line application in pursuance of the advertisement. The

Division Bench in ***Mohammed Riaz's case (supra)*** held that the selection can be made based on the seniority, provided the candidate also qualifies in the entrance examination. Against the said judgment, Civil Appeal Nos.299-300 of 2015 was filed and the Supreme Court by its judgment dated 12.01.2015 (***Sudhir N. & others v. State of Kerala & others***) decided the appeals. The Government issued Order dated 03.02.2015 implementing the judgment of the Apex Court dated 12.01.2015, which Government Order made provisions for weightage of rural service. The above amendment was in tune with the judgment of the Apex Court. Entrance Examination was held thereafter on 08.02.2015 and provisional rank list was published on 06.03.2015. It is stated that the Government thereafter came with Government order dated 11.03.2015, Exhibit P7, which was per se arbitrary and was issued to take away the benefit of rural service. Weightage of rural

service was also well defined in Section 6 of the 2008 Act. The rank list dated 12.03.2015 published on the basis of the Government Order dated 11.03.2015 was produced as Exhibit P8. Exhibit P9 notification dated 12.03.2015 was issued for allotment to Medical PG Degree/Diploma Courses publishing schedule for first phase of allotment. In the above background, the petitioner filed W.P(C).No.8273 of 2015 praying for the following reliefs:

- i) Call for the records of the case leading upto Exhibit P9 and to quash Exhibit P7 by the issuance of a writ of certiorari or such other writ order or direction.*
- ii) Call for the records of the case leading upto Exhibit P9 and to quash Exhibit P8 in so far as it does not give weightage of marks to the petitioner for the service rendered by him in rural areas, as contemplated in Clause 7.1.3 of Exhibit P1 prospectus as well as in Exhibit P3.*
- iii) Direct the respondents 1 and 2 to prepare the rank list for the in-service candidates after giving due weightage to their service in Rural Areas and Difficult Rural Areas and to proceed*

with the allotment of seats on the basis of a rank list thus prepared.

iv) Permit the petitioner to implead the 3rd respondent in a representative capacity, to represent the interests of the persons who are likely to be affected, if the reliefs 1 to 3 prayed for are allowed by this Hon'ble Court."

7. W.P(C).No.7422 of 2015 was filed by four petitioners, who claimed to be serving in "difficult rural areas". The petitioners, i.e., Dr.M.P.Abhilash Kumar and three others pleaded that although Section 6 of the 2008 Act contemplated giving of weightage to rural area service and difficult rural area service, the Regulations, 2000 contemplate weightage only for remote or difficult area service. The petitioners relied on the judgment of the Apex Court in ***Sudhir N's case (supra)*** decided on 12.01.2015 for the proposition which the Apex Court had laid down that weightage is permissible in terms of third proviso to Regulation 9. Hence, the weightage given to rural service by Government Order dated 03.02.2015 is

not correct. The judgment of the Supreme Court has not been correctly implemented. Exhibit P2 Government order dated 03.02.2015 was challenged in the Writ Petition and the following reliefs were sought for:

- "i) To issue a writ of certiorari or other appropriate order or direction to quash Exhibit P2 in so far as it provides for weightage to candidates from all rural areas in Cl:7.1.2 of the Prospectus.*
- ii) To issue a writ of mandamus or other appropriate order or direction to direct the respondents to confine the benefit of weightage proposed to be given under Cl:7.1.2 of the Prospectus, only to candidates from remote and difficult rural areas only."*

8. W.P(C).No.7422 of 2015 was also heard and decided along with W.P(C).No.8273 of 2015 and other connected Writ Petitions filed by the petitioners belonging to rural service. Against the judgment in W.P (C).No.7422 of 2015, W.A.No.803 of 2015 has been filed. It belongs to first category.

9. Third category is W.A.No.938 of 2015 filed

against the judgment dated 27.03.2015 in W.P(C). No.8273 of 2015, which was filed by one Anish Jose belonging to in-service candidates claiming rural service.

10. W.A.No.880 of 2015 arises out of judgment dated 08.04.2015 in W.P(C).No.27209 of 2014. W.P(C). No.27209 of 2014 has been filed by Dr.RNK Sankar and four other doctors, who were working for the last 15 to 20 years. The petitioners' case in the Writ Petition was that the admission to PG Medical Courses for in-service candidates should be held only on the basis of seniority in terms of Section 5(4) of the 2008 Act. The petitioners' case was that the requirement in the prospectus dated 15.12.2014 that in-service doctor has also to qualify in PG Entrance Examination by acquiring 50% is not correct and the said clause deserves to be struck down from the prospectus. The petitioners have prayed for the following reliefs in the Writ Petition:

"i) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to make admission to the Medical Post Graduate courses under the service quota strictly as per seniority in terms of Section 5(4) of the Kerala Medical Officers Admission to Post Graduate Medical courses under Service Quota Act, 2008 in the absence of any existing Union legislation providing for minimum eligibility criteria.

ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to take up, consider and pass orders on Exhibit P1 representation for making admission to the Medical Post Graduate Courses under the Service Quota strictly as per seniority in terms of Section 5 (4) of the Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008 in the absence of any existing Union legislation, providing for minimum eligibility criteria, before issuing prospectus for admission to the Medical Post Graduate Courses for the year 2015.

ii)(a) Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Exhibit P2 and quash clause 4.4 of Exhibit P2 to the extent it requires all candidates belonging to service quota as well to qualify the Post Graduate Medical Entrance Examination 2015 for

seeking admission to Post Graduate Medical Degree/Diploma courses in the State of Kerala, in breach of section 5(4) of the Kerala Medical Officers Admission to Post Graduate Medical courses under Service Quota Act, 2008 Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008.

ii)(b) Declare that clause 4.4 is illegal to the extent it requires the candidates belonging to service to well to qualify the Post Graduate Medical Entrance Examination 2015 for seeking admission to Post Graduate Medical Degree/Diploma courses in the State of Kerala, in breach of section 5(4) of the Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008 Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008."

11. The learned Single Judge dismissed W.P(C). No.27209 of 2014 by judgment dated 08.04.2015 holding that minimum 50% of marks was necessary for qualifying for entrance examination in the case of service quota candidates. The judgment of the Apex Court dated 12.01.2015 in **Sudhir N's case (supra)** has also been relied on by the learned Single Judge for

coming to the conclusion that admission in the PG Medical Examination has to be on merit and not on seniority.

12. The Writ Appeals belonging to second category are filed by the appellants, who were not parties to the Writ Petition and who belong to in-service candidates having difficult rural area service to their credit. With leave of the Court, they have preferred the Writ Appeals against the judgment of the learned Single Judge dated 27.03.2015.

13. The learned Single Judge vide judgment dated 27.03.2015, after hearing the parties, disposed of all the Writ Petitions (except W.P(C).No.27209 of 2014) by a common judgment. The learned Single Judge, after hearing the parties, came to the conclusion that Regulation 9 which provided for weightage of marks for service in remote and/or difficult area has been struck down by the Apex Court in ***Christian Medical College,***

Vellore and others v. Union of India and others

(2014(2) SCC 305). There is no central legislation enacted with reference to the power of the Central Legislature under Entry 66 of List I of 7th Schedule of the Constitution. The weightage can be given to both rural area service as well as difficult rural area service as per Section 6 of the 2008 Act. The Government Order dated 11.03.2015 was set aside by the learned Single Judge and a direction was given to the State to consider the matter in the light of the observation and stipulate appropriate extent of weightage, to be given separately in respect of rural areas and difficult rural areas.

14. In W.A.No.803 of 2015, which was filed against the judgment dated 27.03.2015, this Court although directed the State Government, in pursuance of the judgment dated 27.03.2015, to issue appropriate orders as directed in paragraph 17 of the judgment and the competent authority may also proceed with the process

of admission to in-service quota candidates in accordance with such orders, but final admission list shall not be published or issued and that was directed to be kept in a sealed cover. The said interim order was dated 07.04.2015. The State, thus, has not issued any final admission list in compliance with the interim order passed in W.A.No.803 of 2015.

15. In pursuance of judgement of the learned Single Judge dated 27.03.2015 and the interim order of this Court dated 07.04.2015, the State has come up with Government Order dated 09.04.2015, by which clause 7.1.2(A) was added, which provided an incentive at the rate of 5% of the marks obtained for each year of service in rural area upto maximum of 30% in the marks obtained. Another subsequent order was issued by the State Government on 21.05.2015, where again clause 7.1.3 was amended providing for weightage separately for rural service and difficult rural service. For rural

service incentive at the rate of 5% of the marks obtained for each year of service upto a maximum of 30% of the marks obtained was provided, whereas for difficult rural areas an incentive at the rate of 10% of marks obtained for each year of service in difficult rural area upto a maximum of 30% of the marks obtained was provided.

16. We have heard Sri.Krishnan Venugopal, Senior Counsel appearing for the appellants, assisted by Advocate Sri.C.P.Mohammed Nias in the appeals included in the first and second categories. Advocate Sri.George Poonthottam has been heard for the appellants in W.A.No.938 of 2015 (included in the third category) and respondents in W.A.No.947 of 2015 included in the second category. Sri.P.K.Suresh Kumar, Senior Advocate appeared for the first respondent in W.A.No.944 of 2015. Advocate Sri.Kaleeswaram Raj appeared for the respondents in W.A.Nos.803, 946 and

948 of 2015. Advocate Sri.Santhosh Mathew was heard for the first respondent in W.A.No.949 of 2015 and Advocate Sri.T.B.Hood appeared for the first respondent in W.A.No.945 of 2015. Advocate Sri.C.S.Manu has appeared for the appellants in W.A.No.880 of 2015. We have also heard Sri.Roshan D.Alexander, learned Senior Government Pleader and Sri.Titus Mani Vettom, Standing Counsel for the Medical Council of India.

17. The real contest in this batch of appeals is between two sets of in-service Doctors, i.e., (i) Doctors, who have rural service to their credit and who claim weightage of marks on the basis of rural service; and (2) those who have difficult rural service to their credit and who claim that weightage is only to be provided to difficult rural service and not to rural service candidates. Majority of Writ Petitions were filed by those candidates, who belonged to the stream of rural service whose petitions have been disposed of vide judgment dated

27.03.2015 by setting aside Government Order dated 11.03.2015, which provided for weightage only for difficult rural service. Thus, the candidates belonging to rural service, who had filed W.P(C).No.8273 of 2015 and other Writ Petitions as noted above included in second and third categories are referred to as 'writ petitioners'. Majority of the appeals has been filed by the candidates, who belongs to the stream 'difficult rural service" and who have filed the appeal after taking leave of the Court. They shall be referred to herein as appellants. W.A.No.880 of 2015 has been filed by Dr.RNK Sankar and four other in-service candidates, who claim admission only on the basis of seniority.

18. Sri.Krishnan Venugopal, learned Senior Counsel appearing for the appellants, in support of the Writ Appeals, contended that the judgment of the Apex Court in ***Sudhir N's case (supra)*** clearly laid down that admission to PG Medical Courses shall be done only on

the basis of merit as disclosed in the Entrance Examination and the weightage of marks to the in-service candidates is permissible as per third proviso of Regulation 9. He submits that regulation 9(b) framed by the Medical Council of India provides for weightage only to "remote and/or difficult areas", hence weightage could not have been given to the writ petitioners for rural service. He submits that the 2008 enactment, which is the State enactment, cannot be relied on by the writ petitioners claiming weightage for rural service. The Medical Council of India Act, 1956 and the Regulations framed thereunder are legislation referable to entry 66 of the list I under the 7th Schedule of the Constitution of India and the State has no power to make any legislation contrary to legislation referable to entry 66 of the list I. He submits that the provisions of 2008 Act, which provided for admission to PG Medical Course on the basis of seniority will be inoperative. He submits

that in view of the law laid down by the Apex Court in ***Sudhir N's case (supra)***, it is only in-service Doctors working in remote and/or difficult area, who are eligible for weightage in marks. He submits that the State Government is well aware of the in-service Doctors, who are working in the remote and/or in difficult area. Thus, weightage of marks was entitled to be given only to the candidates, who are included in the list dated 15.02.2014 of difficult rural area. He submits that the judgment of the Apex Court dated 12.01.2015 in ***Sudhir N's case (supra)*** was to be implemented by the State in its true spirit. Government Order dated 03.02.2015 issued by the State of Kerala providing weightage to in-service Doctors in the rural area was not in accordance with the law laid down by the Apex Court in ***Sudhir N's case (supra)***. The Government realised its mistake and corrected its Order dated 03.02.2015 by subsequent Government Order dated 11.03.2015 wherein it

provided weightage in marks only to candidates working in difficult rural area as specified in the Government Order dated 15.02.2014. He submits that Government Order dated 11.03.2015 was in accordance with the law laid down by the Apex Court in ***Sudhir N's case (supra)*** and the learned Single Judge committed error in quashing the Government Order. It is further submitted by Sri.Krishnan Venugopal, learned Senior Counsel that the learned Single Judge proceeded on a wrong premise that there is no central legislation under entry 66 of list 1 of 7th schedule holding the field, hence, the State is free to provide for weightage as per Section 6 of the 2008 Act. He submits that on coming to the aforesaid conclusion, the learned Single Judge has relied on the judgment of the Apex Court in ***Christian Medical College, Vellore's case (supra)***. He submits that in the aforesaid case the Apex Court has struck down the provision of Regulation 9, which relates to

Common Entrance Test for all institutions, including minority institutions and private institutions. It is submitted that for argument sake if it is accepted that regulation 9 as was in existence at the time of the judgment of the Division Bench in ***Mohammed Riaz's case (supra)***, out of which the appeal was filed in the Apex Court was set aside, by subsequent amendment made in regulation 9 dated 15.02.2014 a proviso was added in regulation 9 after sub-clause (iv), which proviso cannot be said to have struck down by the Apex Court in ***Christian Medical College, Vellore's case (supra)*** and the said proviso being a substantive provision providing for weightage only to remote and/or difficult areas still holds the field. He submits that the learned Single Judge proceeded on the wrong premise in holding that there is no central legislation on the subject of weightage. He submits that the Medical Council of India having provided weightage in marks to the in-service

candidates only from remote and/or difficult areas, no other weightage can be permitted and the candidates belonging to rural areas are not entitled for weightage. He further submits that in the State of Kerala, where rural areas are well developed with all facilities providing weightage to in-service candidates from rural area shall defeat the purpose and object of the MCI Regulations. He submits that in view of the judgment dated 12.01.2015 and ***Sudhir N's case (supra)*** the provisions of the 2008 Act cannot be relied for giving weightage to the rural areas. He submits that the appellants, who are working in difficult remote areas are serving in areas which are really difficult and they are not similarly situated as those of candidates in the urban area and rural area. He submits that the learned Single Judge has erred in not following the law laid down by the Apex Court in ***Sudhir N's case (supra)***. He submits that the Writ Appeal filed by the rural area

service doctors deserves to be dismissed.

19. Learned counsel appearing for the writ petitioners, refuting the submission of the learned Senior Counsel Sri.Krishnan Venugopal, contended that the learned Single Judge has rightly directed for giving weightage to both Doctors working in rural area and remote and/or difficult area. It is submitted that regulation 9 on which reliance is being placed by the appellants is no more in existence having been struck down in ***Christian Medical College, Vellore case (supra)***. There being no provision referable to entry 66 of the list I under the 8th Schedule of the Constitution of India, Section 6 of the 2008 Act has rightly been relied on by the State Government as well as the learned Single Judge. It is submitted that the Government order was issued after understanding the judgment of the Apex Court by the Prospectus Committee by fully complying with the judgment of the

Supreme Court in ***Sudhir N's case (supra)***. It is submitted that the examination has been held on 08.02.2015 and the result was published on 06.03.2015 the State Government could not have come with the Government Order dated 11.03.2015 confining weightage only to difficult rural area, which is nothing but changing the rule of game after the game is over. It is submitted that the Government could not have issued Government Order dated 11.03.2015 tinkering the prospectus. The prospectus was accepted by all the candidates appearing in the examination. There being no change in the prospectus, no subsequent amendment could have been made. The weightage cannot be treated as constitutional right. The Supreme Court in ***Sudhir N's case (supra)*** has referred to the regulation of the Medical Council of India as noted by this Court on 30.03.2011 and the Supreme Court in ***Sudhir N's case (supra)*** thus, was considering

regulation 9, which was already struck down in ***Christian Medical College, Vellore case (supra)***. It is submitted that the candidates claiming to be from difficult rural area are estopped from challenging the Government Order dated 03.02.2015 after having participated in the examination. The State Government cannot be given any power to give marks after examination is over which shall lead to arbitrariness. The decision dated 03.02.2015 is in consequence of the judgment of the Supreme Court and has to be accepted. Section 6 of the 2008 Act was not under challenge in ***Sudhir N's case (supra)***. The weightage of marks to rural area candidates is the vested right under the 2008 Act. There being no regulation of the Medical Council of India contrary to the 2008 Act, the said Act has been correctly relied on in the Government Order dated 03.02.2015. Section 6 of the 2008 Act, which has not been struck down, has to be relied on. It is further

contended that since the affected parties were not before the Court in W.P(C).No.7422 of 2015, no relief could have been granted to the petitioner by quashing the Government order dated 03.02.2015.

20. They further submitted that the Regulations, 2000 cannot mean that the State is denuded with all powers to lay down any criteria. Some weightage to rural service can be given, which is not prohibited by the Regulations, 2000. The quantum of weightage can be decided only by the Prospectus Committee. The Government Order dated 03.02.2015 was although issued in consultation with the Prospectus Committee, Government Order dated 11.03.2015 was not issued in consultation with the Prospectus Committee.

21. Sri.Roshan D.Alexander, learned Government Pleader appearing for the State contended that none of the candidates has challenged the prospectus. Section 6 is still in force of the 2008 Act. ***Sudhir N's case***

(supra) had only considered Section 5(4). Regulations 9 of Regulations, 2000 was amended with effect from 28th October, 2008, whereas the 2008 Act was in force with effect from 24.10.2008 after obtaining the Presidential assent. The Government order dated 09.04.2013 as well as 21.05.2015 were issued in pursuance of the interim order passed by this Court in W.A.No.803 of 2015, however, no select list has been issued in pursuance thereof.

22. Now we proceed to notice the submissions made by the appellants in W.A.No.880 of 2015. The appeal has been filed against judgment dated 08.04.2015 by which W.P(C).No.27209 of 2014 filed by the appellants has been dismissed. The appellants had filed the Writ Petition pleading that they have Government service of 15 to 20 years. The appellants' case is that they, after having 15 to 20 years of service, are virtually detached from the theoretical studies and

cannot compete with fresh medical graduates, who take up entrance test to qualify for the entry into the Post Graduate Course. It is submitted that as per Section 3 of the 2008 Act, selection of candidates under service quota to be made notwithstanding anything contained in the Medical Council Act or regulation framed thereunder and the selection has to be strictly on the basis of the seniority as provided under Section 5(4) of the 2008 Act. It is submitted that weightage for rural service has to be given as provided under Section 6 of the Service Quota Act. The 2008 Act does not contemplate any entrance test. It is submitted that a Division Bench of this Court in ***Fenny K.P (Dr) and another v. State of Kerala*** (2014(3) ILR 361) has already held that Regulation 9 of the MCI Regulations does not exist after having been struck down by the Apex Court in ***Christian Medical College, Vellore case (supra)***.

23. The Writ Petitions filed by the

petitioners/appellants have been opposed by the State by filing a counter affidavit and it has been stated that admission to Post Graduate Medical Course for in-service candidates cannot be made on the basis of seniority. Reference to the judgment of the Apex Court dated 12.01.2015 in ***Sudhir N's case (supra)*** has also been made by the State.

24. The Medical Council of India has also filed a statement to the effect that the field is occupied by the Central legislation. Although the learned Single Judge took the view that the Regulation is no more in existence in view of the judgment in ***Christian Medical College, Vellore case (supra)***, the eligibility criteria and mode of selection are to be prescribed by the Prospectus Committee. Hence, it was provided in clause 4.4 of the prospectus making it obligatory for all candidates for qualifying in the Entrance Examination. Relying on the judgment in ***Mohammed Riaz's case***

(supra) of this court as well as the judgment of the Apex Court dated 12.01.2015 in Civil Appeal Nos.297-298 of 2015 along with connected Civil Appeals, in **Sudhir N's case (supra)** it was held that admission is to be made on the basis of merit, which is the primary consideration. After making the above observation, the Writ Petition filed by Dr.RNK Sankar and four other Doctors has been dismissed.

25. Learned counsel for the appellants Sri.C.S.Manu has submitted that selection of in-service candidates for Post Graduate Courses has to be made on the basis of seniority as per Section 5(4) of the 2008 Act, since there is no conflicting regulation.

26. Learned counsel for the parties have relied and placed reliance on various judgments of the Apex Court and this Court in support of their submissions, which shall be referred to while considering the submissions in detail.

27. From the submissions made by learned counsel for the parties and pleadings on record, following are the issues, which arise for consideration in this batch of Writ Appeals:

I. Whether proviso to Regulation 9 of the Regulations, 2000 framed by the Medical Council of India providing for weightage of marks to the "remote or/and difficult area" still continues even after striking of Regulation 9 by the judgment of the Apex Court in Christian Medical College, Velloor's case (supra)?

II. Whether the State can rely on Section 6 of the 2008 Act for giving weightage to in-service candidates both serving in "remote and/or difficult areas" or "rural areas"?

III. Whether for admission to the Medical Post Graduate Courses for in-service candidates the weightage of marks is entitled to be given to doctors serving in "remote or/and difficult area" alone or weightage is to be given also to doctors serving in "rural areas"?

IV. Whether the GO dated 11th March,

2015 confining the weightage of marks to difficult rural areas alone was justified ?

V. Whether the law laid down by the Apex Court in Sudhir N's case (supra) still holds the field for applicability of proviso to regulation 9 of the Regulation, 2000 on weightage of marks to be given to in-service candidates serving in "remote and/or difficult areas" ?

VI. Whether the GO dated 11th March, 2015 amounted to change in the rules of game after examination was over, which is not permissible in law ?

VII. Whether in W.P.(C) No.7422 of 2014 the relief of quashing Ext.P2, ie; GO dated 03.02.2015 providing weightage of marks to in-service candidate for 'rural area' service could not have been granted due to non-joinder of in-service candidates having 'rural area' service ?

VIII. Whether admission of in-service candidates in PG course is to be made only on the basis of seniority of the inservice candidates as per Section 5(4) of 2008 Act and the provision in prospectus requiring inservice candidates to secure 50% mark in Common Entrance Examination Test deserves to be

struck down ?

28. Before we proceed to consider the above issues, it is necessary to note certain clauses of the prospectus. The contents of the Government Orders dated 03.02.2015 and 11.03.2015, relevant statutory regulations from the Medical Council of India and the provisions of the 2008 Act. As noted above, the prospectus for admission to Medical Graduate Degree/Diploma Courses, 2015 was issued by the Government on 15.12.2014. Clause 4.4 provides for qualifying criteria, which is quoted as below:

"4.4 Qualifying Criteria:

All candidates seeking admission to Post Graduate Medical Degree/Diploma courses in the State of Kerala for the academic year 2015-16 shall have to qualify the PG Medical Entrance Examination-2015 (PGM-2015) conducted by the Commissioner for Entrance Examinations, Government of Kerala. In order to be eligible for admission in any Post Graduate Medical course in 2015-16, it shall be necessary for a candidate to obtain a minimum score of 50% in the PG Medical Entrance Examination-

2015. However in respect of candidates belonging to Scheduled Caste (SC), Scheduled Tribes (ST), Socially and Educationally Backward Classes (SEBC) and Service Quota the minimum percentage shall be 40. In respect of candidates with locomotory disability of lower limbs, the minimum percentage shall be 45."

Clause 7.1 contained the provisions pertaining to **"eligibility for service quota"**. Clauses 7.1.2 and 7.1.3, which are relevant for the present case, are quoted as below:

*"7.1.2- The total service will be reckoned as on the date of notification for inviting application by CEE for admission to the courses. **Unauthorised absence or absence due to Leave without Allowance (including leave on medical ground) and the deputation periods of the candidates will not be counted for the purpose of calculating the minimum service and for the seniority.** However the period of deputation of Health Service Department candidates to autonomous institutions/ projects/ societies/ other agencies under the administrative control of Health Department*

*will be counted as eligible service under State Service Quota. **Inter se seniority of actual Physical service, excluding leave without allowance with acquirement of eligibility in the PG Medical Entrance Examination-2015 will be the criterion for selection.** The length of seniority of actual physical service in the concerned department excluding LWA will be the criterion. If there is tie in their actual physical service, the PSC seniority will be the criterion.*

7.1.3- Preparation of Seniority list under Health Service Quota:- A single seniority list for candidates under Health Service Quota will be prepared by the DHS. Weightage for Rural and Difficult Rural Service will be given as follows:

Rural Service: One year will be added for every completed 3 years of Rural service subject to a maximum of 5 years as bonus.
Doctors working in approved Casualty Units in the Government Hospitals are also eligible for claiming Rural Service Quota.
Difficult Rural Service: One year will be added for every completed **1 year** subject to a maximum of 8 years as bonus.

The list of Government Allopathic Medical institutions designated as Rural stations in Kerala is as mentioned in the Standardised list of Government Allopathic Medical Institutions-2013 prepared by Health Information Cell (DHS) and approved vide GO(ms)No.443/2-13/H&FWD dated 16.11.2013.

*The list of Government Allopathic Medical Institutions in Difficult Rural Areas in Kerala is as mentioned in G.O(MS)No.55/2014/H&FWD dated 15.02.2014 (**Annexure XI**)."*

The prospectus contained Clause 7.1.2, which was in accordance with law as laid down by the Division Bench of this Court in **Mohammed Riaz's case (supra)** where the Division Bench had held that in-service candidates have to secure minimum 50% marks in the entrance examination and thereafter their selection shall be on the basis of seniority. Section 5(4) of the 2008 Act was read down to the above extent.

29. The judgment of the Apex Court dated 12.01.2015 in **Sudhir N's case (supra)** laid down that selection of in-service candidates cannot be made on

the basis of seniority and Section 5(4) is in teeth of Regulation 9 framed by the Medical Council of India and it was held that selection of in-service candidates can be made only on the basis of merit, i.e., marks disclosed in the entrance examination plus weightage of marks as provided in third proviso to Regulation 9. After the judgment of the Apex Court the State Government, purporting to comply with the judgment of the Apex Court, issued Government Order dated 03.02.2015. It is useful to extract certain parts of the order and the modification made in Clauses 7.1.2 and 7.1.3 of the prospectus. The Government Order dated 03.02.2015 and the modification in Clauses 7.1.2 and 7.1.3 are as follows:

"7.1.2 - In determining the merit in the entrance test for postgraduate admission weightage in the marks will be given as an incentive at the rate of 10% of the marks obtained for each year of service in rural area upto a maximum of 30% in the marks obtained".

7.1.3 - Preparation of rank list under Health service Quota. The merit list for candidates in service quota under Health Services will be prepared by the CEE after awarding due weightage marks for the rural service put in by the candidates qualifying the entrance examination."

30. Before rank list could be published after giving weightage to the in-service candidates, the Government issued another Order dated 11.-3.2015, where it modified clause 7.1.2 of the prospectus confining weightage of marks only to difficult rural areas as per Government Order dated 15.02.2014. It is useful to extract the Order dated 11.03.2015, which is to the following effect:

"As per the Government Order read as 1st paper above Government have specified the list of difficult rural areas eligible for weightage to service quota candidates for Medical Post Graduate Admission. The hon'ble Supreme Court in its judgment read above had specified that weightage for service rendered in remote and difficult areas is made permissible at the rate of 10% of marks obtained for each year in service in remote or difficult area upto a maximum of

30% of the marks obtained.

In the light of the judgment of the Hon'ble Supreme Court, Government have examined the matter in detail and ordered to modify Clause 7.1.2 of the Medical PG Prospectus by giving weightage in the marks at the rate of 10% of the marks obtained each year of service in 'Rural Areas' up to a maximum of 30% of the marks obtained. Though the intention was to give weightage to all those who are working in remote and difficult areas as ordered by the Hon'ble Supreme Court, it was only specified as 'Rural Areas' in Clause 7.1.2 while issuing Government Order read as 3rd paper above in compliance to the direction of the Hon'ble Supreme Court.

In the circumstances the term 'Rural Area' appeared in Clause 7.1.2 of the Medical PG Prospectus is corrected as 'Difficult Rural Areas' and this benefit will be given as specified in Government Order read as 1st paper above."

31. The Writ Petitions comprised in second category, including W.P(C).No.8273 of 2015, which has been referred by the learned Single Judge in detail were filed challenging Government Order dated 11.03.2015.

32. Now we proceed to note the provisions of the

Regulations, 2000. The Regulations, 2000 have been framed in exercise of power under Sections 19(A) and 33 of the Indian Medical Council Act, 1956. Clause 9(1) of the Regulations, 2000 was substituted by notification dated 28.10.2008, which is to the following effect:

"9. (1)(a) Students for postgraduate medical courses shall be selected strictly on the basis of their inter se academic merit.

(b) 50% of the seats in postgraduate diploma courses shall be reserved for medical officers in the government service, who have served at least three years in remote and difficult areas. After acquiring the PG diploma, the medical officers shall serve for two more years in remote and/or difficult areas."

By subsequent notification dated 21.10.2010, Regulation 9 of the Regulations, 2000 was substituted as under:

"9. Procedure for selection of candidates for Postgraduate courses shall be as follows:

I. *There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance test for admission to Postgraduate Medical Courses' in each academic year. The*

overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct 'National Eligibility-cum-Entrance Test for admission to Postgraduate courses'.

II. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%.

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college / institution as per the statutory time schedule for admissions.

III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to

obtain minimum of 50% (Fifty Percent) marks in 'National Eligibility-cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum percentage marks shall be 40% (Forty Percent) and in respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (Forty Five Percent) in the National eligibility-cum-Entrance Test:

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate courses, the central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

IV. The reservation of seats in medical colleges/institutions for respective categories

shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only.

- V. *No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub Clause (II) above shall be admitted to any Postgraduate courses in the said academic year.*
- VI. *In non-Government medical colleges/ institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned medical colleges/ institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test."*

33. By further notification dated 15.02.2012, Regulations 2000 were further amended. By Clause 5 of the notification dated 15.02.2012, a proviso was added after sub-clause (IV) of clause 9. It is useful to quote

clause 5 of the notification dated 15.02.2012 as under:

"5. Clause 9 under the heading 'SELECTION OF POSTGRADUATE STUDENTS', as amended vide notification No.MCI.18(1)/2010-Med/49070 dated 21st December 2010, following shall be added after sub-clause IV which is as under:-

"Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by State Government/Competent authority from time to time."

34. Now we proceed to notice the provisions of the 2008 Act. The reasons for enactment of the above Act are fully stated in the statement of objects and reasons, which are to the following effect:

"STATEMENT OF OBJECTS AND REASONS

As per the practice hitherto followed in Post Graduate Medical Admission, forty percent of seats available in the State were earmarked to service

candidates, which consist of doctors of Health services Department, Medical college Lecturers and Employees' State Insurance doctors of the State. Admissions to these seats were made on the basis of seniority of service candidates in each category.

As per regulation 9 of the Post Graduate Medical Education Regulations of Medical Council of India 2000, it is mandatory for all candidates seeking admission to Post Graduate Medical Courses, to appear for Common Entrance Examination. In order to get qualified for admission to Post Graduate Medical Courses general category candidates have to secure fifty percent marks and SC/ST candidates have to secure forty percent marks in the Common Entrance Examination. The Hon'ble High Court of Kerala has also upheld the above stand of the Medical Council of India.

Accordingly from the year 2004 onwards Common Entrance Examination was made applicable to service candidates also. Hence they had to qualify with a minimum of fifty percent marks in the Entrance Examination for getting admission to Post graduate Courses.

Requests from many quarters were received by Government pointing out that the in-service candidates are working round the clock for the health care of the public even in remote rural areas and

they hardly get time to update their knowledge and hence they cannot compete with general merit candidates so as to secure fifty percent of marks in the Common Entrance Examination to qualify for admission to Post Graduate Courses. Government have therefore decided to frame a legislation to overcome the difficulties faced by the in-service candidates for admission to the Post Graduate Courses by setting apart forty percent of the total seats available to State quota for selection of Medical Officers under service quota considering their service under the government.

The bill seeks to achieve the above object."

The object of the 2008 Act was thus to provide admission to in-service candidates taking away the requirement of securing 50% marks in any entrance examination. Section 2(a) defines "difficult rural area service" and Section 2(i) defines "rural area service", which are to the following effect:

"2. Definitions.- In this Act, unless the context otherwise requires,-

(a) 'difficult rural area service' means the service rendered by a Medical Officer in a rural area declared by the Government as 'difficult rural area';

XX

XX

XX

(i) 'rural area service' means the service rendered by a Medical Officer in an area declared by the Government as 'rural area';"

Sections 5 and 6 of the 2008 Act provide for procedure for selection, which are to the following effect:

"5. Procedure for selection.- (1) *The Government may set apart seats not exceeding forty percent of the total seats available to state quota in an academic year, for selection of Medical Officers under service quota considering their service under the Government for admission to Post Graduate Medical Courses in the Medical Colleges of the State in such manner as may be prescribed.*

(2) The academic qualification for admission to the Post Graduate Course shall be M.B.B.S degree with minimum fifty percent marks and the other qualifications shall be such as may be prescribed.

(3) The details of eligibility for admission, the duration of courses, allotment, fee to be paid, reservations of seats and such other details shall be published every year in the prospectus before the commencement of admission.

(4) The Postgraduate Course Selection Committee shall finalise the selection list strictly based on the seniority in service of the Medical Officers and

following such other criteria as may be prescribed.

(5) The selection list finalised under sub-section (4) shall be published by the Post graduate Course Selection Committee for the information of the applicants.

6. Weightage for rural service.- *Every Medical Officer who has 'rural area service' or 'difficult rural area service', as the case may be, in the State shall be given weightage in selection in such manner as may be prescribed."*

35. After having noted the relevant clauses of the Prospectus and the statutory provisions, now we proceed to consider the issues which have arisen in this batch of Writ Appeals.

36. Issue Nos.I to V are interconnected, hence are taken together.

37. The Indian Medical Council Act, 1956 (for short, "the 1956 Act") has been enacted by the Parliament which is referable to entry 66 of List No.I of 7th Schedule of the Constitution of India. The Parliament under entry No.66 legislates on the said co-ordination

and determination of standards in institutions for higher education or research and scientific and technical institutions. Section 19A empowers the Medical Council of India to prescribe the minimum standards of medical education. In exercise of the powers under Sections 19A and 33 of the 1956 Act, Regulations have been framed, namely, Post Graduate Medical Education Regulations, 2000. Clause 9 of Regulations 2000 relates to “selection of postgraduate students”. Regulation 9 has been amended from time to time as has already been noted above. The 2008 Act has been enacted by the State Legislature which is referable to entry 25 of List III of the 7th Schedule of the Constitution of India. The 2008 Act was enacted after obtaining Presidential assent and the Act was enforced with effect from 24.10.2008. The statement of objects and reasons of the 2008 Act as quoted above clearly gives reasons for bringing the enactment. The Government felt that in-

service candidates who were working around the clock cannot compete so as to secure the 50% in the common entrance examination to qualify for admission to postgraduate course. Section 3 of the 2008 Act begins with “notwithstanding anything contained in the Indian Medical Council Act, 1956 or any rule or regulation issued thereunder....”. Thus the clear intentment of the 2008 Act was to override the contrary provisions in the 1956 Act and the Regulations framed thereunder. Section 5(4) provided for finalising the selection list based on the seniority in the service of Medical Officers and following such other criteria as may be prescribed. The Act clearly thus depart from the method of appointment of admission to the postgraduate course as prescribed by the Medical Council of India.

38. Issue of conflict between legislation referable to entry 66 of List I and the State legislation referable to

entry 25 of List III has been considered time and again by the Apex Court. In **State of Tamil Nadu v. Adhiyaman Edu. & Research Institute** ([1995] 4 SCC 104) conflict between Parliamentary legislation "All India Council for Technical Education Act, 1987 and State Legislation, namely, Tamil Nadu Private Colleges (Regulation) Act came up for consideration. The Apex Court after referring to the relevant constitutional provisions laid down the following proposition in paragraphs 41(i), (ii) and 43:

"41. What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent

what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

As a result, as has been pointed out earlier, the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the derecognition by the State Government of the, disaffiliation by the, State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.

39. Constitution Bench of the Supreme Court in **Dr.Preeti Srivastava v. State of M.P.** ([1999] 7 SCC 120) had occasion to consider the Regulations framed

under the 1956 Act and the State enactment, Uttarpradesh Postgraduate Medical Education (reservation for SC/SCT and other backward classes) Act, 1997. Rules framed by the State of Madhya Pradesh, Madhya Pradesh Medical Entrance Examination also came up for consideration. After noticing the relevant circumstances and constitutional entries, the following was laid down by the Supreme Court in paragraph 35 and 52.

"35. The legislative competence of the Parliament and the legislatures of the States to make laws under Art.246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List-II gave to the States as exclusive power to legislate on "Education including universities subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List-III."

Entry 11 of List-II was deleted and Entry 25 of List-III was amended with effect from 3.1.1976 as a result of the Constitution 42nd Amendment Act of 1976. The Present entry 25 in the Concurrent List is

as follows:-

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I: vocational and technical training of labour."

Entry 25 is subject, inter alia, to Entry 66 of List-I, Entry 66 of List-I is as follows:-

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government, Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect

the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Art.254.

52. *Mr. Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of post graduate medical education. In the exercise of its powers under S.20 read with S.33 the Indian Medical Council has framed Regulations which govern post graduate medical education. These Regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List-III, make rules and regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for post graduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List-I, the exercise of that power is exclusively within the domain of the Union*

Government. The power of the States under Entry 25 of List-III is subject to Entry 66 of List-I."

The Constitution Bench struck down the 1997 Act and the Rules framed by the State of Madhya Pradesh which impinged upon the Regulation framed under the 1956 Act.

40. To the similar effect is the judgment of the Apex Court in **Medical Council of India v. State of Karnataka** ([1998] 6 SCC 131 where in paragraph 24, the following has been laid down:

"24. The Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entries 25 or 26 of List III (Concurrent List). Regulations framed under S.33 of the Medical Council Act with the previous sanctions of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in S.33. If a regulation falls within the purposes referred under S.33 of the Medical Council Act, it will

have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 w.e.f. August 27, 1992) and Clauses (j), (k) and (l) of S.33."

41. In **Sudhir N's case (supra)** the Apex Court had occasion to consider Regulation 9 as well as the 2008 Act. The matter was taken to the Supreme Court in **Sudhir N's case** against the judgment of this Court in **Mohammed Riaz's case (supra)**.

42. Writ Petition in **Mohammed Riaz v. State of Kerala** was filed in the High Court seeking a declaration that Section 5(4) of the 2008 Act in so far as it laid down admission to the postgraduate shall be on the basis of seniority is arbitrary and illegal. As noted above, the 2008 Act was enacted by the State Legislature to relieve in-service candidates from obtaining 50% marks in the common entrance examination as was required by the Regulation framed by the Medical Council of India. The said Act by virtue of

Section 3 gave it overriding effect to the Act over any regulation framed under the 1956 Act. The argument that since Presidential assent has been obtained for enactment of the 2008 Act, it shall be followed in the State Government was also considered by the Division Bench and repelled. The Division Bench relying on the decision in **Dr.Preeti Srivastava's case (supra)** has held that the State cannot enact a law which may impinge upon the standards of institution. It is useful to quote paragraphs 5, 6 and 7:

"5. The impugned State Act stands with assent of the President in terms of Art.254(2) of the Constitution. When a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing law with reference to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. This provision deals only with possible repugnancy

between provisions of laws made by the Parliament and the laws made by the State with reference to any particular entry in the Concurrent List, i.e., List III. Recourse to Presidential assent under Art.254(2) is not curative of the absence of legislative competence in terms of the provisions of Art.246 and Seventh Schedule of the Constitution. Therefore, the support of Presidential assent in terms of Art.254 (2) would not save the impugned provisions of the State legislation if the subject dealt with therein falls within the Union List.

6. Hence, the crucial question would be whether the subject of the State Act, to the extent impugned, is one that falls within Entry 66 of the Union List. If it is so, the State Act to the extent impugned, would fail on ground of lack of legislative competence. If that subject falls within Entry 25 of the Concurrent List, it stands.

7. In *Dr. Preeti Srivastava v. State of M.P.*, 1999 KHC 735 : 1999 (7) SCC 120 : 1999 (3) KLT SN 32 : AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 (5) JT 498 : 1999 (4) SCALE 579 : 1999 (7) Supreme 81, it was held that the State cannot, while controlling education in the State, impinge on the standards in the institutions for higher education, because this is exclusively within the purview of the Union. Having regard to Entry 25 of List III and

Entry 66 of List I, it was laid down that a State has the right to control education, including medical education so long as the field is not occupied by any Union legislation. While prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union under Entry 66 of List I. From 1977, education including, inter alia, medical and university education, is in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in that field, except as provided in Art.254. The Apex Court noted that it would not be correct to say that the norms for admission have no connection with the standards of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on standards of education. Though State can make rules for admission, they have to be consistent with and without adversely affecting the standards of education, as are prescribed by the Union in exercise of powers under Entry 66 of List I. It was further held that standards of postgraduate medical education in terms of S.20(1) of the IMC Act would include guidance regarding the minimum qualification or eligibility criteria for admission. It

was also held that S.20(1) empowers the Medical Council to prescribe standards of postgraduate medical education and the scheme of the IMC Act does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. It was found that prescription of eligibility conditions was within the domain of the MCI. In State of M. P. v. Gopal D. Tirthani, 2003 KHC 1512 : 2003 (7) SCC 83 : AIR 2003 SC 2952 : JT 2003 (6) SC 204, the Apex Court upheld the allocation of a percentage of seats for in - service candidates holding that such classification only constitutes a separate source or channel of admission and is not by way of reservation. It was contended by the in - service candidates before the Apex Court in that case, that having done graduation and having then entered into Government service, they were detached from theoretical studies and therefore, it would be too much to expect from them such theoretical knowledge of medical science as would enable them to compete with fresh medical graduates taking up pre - PG test and to qualify for entry into postgraduate courses. It was also suggested by them that there should be two separate examinations for the two groups and that would not prejudice the open category candidates. This contention was repelled by the Apex Court

holding as follows:

'25. The eligibility test, called the entrance test or the pre - PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go - by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common

entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and / or the Medical Council of India and make out a case of justification consistently with the afore - quoted observation of this Court in Dayanand Medical College and Hospital case, 2001 (8) SCC 664.

27. The in - service candidates may have been away from academics and theories because of being in service. Still they need to be assessed as eligible for entrance in PG. For taking up such examination, they must either keep updating themselves regularly or concentrate on preparatory studies to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services."

43. The Division Bench also held that in-service candidates have to obtain 50% in the common entrance test. Thereafter it held that after a candidate obtains

the minimum eligibility, admission shall be made on the basis of seniority. The last paragraph of the judgment laid down the above which is quoted below:

“The conclusion is that the provision in S.5(4) of the State Act that the select list of in - service medical officers for postgraduate medical education shall be strictly on the basis of seniority is subject to the requirement that such selection can be made only from among those in - service medical officers who have undergone the common entrance test for postgraduate medical education and have obtained the minimum eligibility bench mark in that test in terms of the MCI Regulations. It is so declared.”

44. Against the judgment of the Division Bench in **Mohammed Riaz's case (supra)** which was decided on 30.03.2011, the matter was taken in the Apex Court and the Apex Court delivered the judgment on 12.01.2015 in Civil Appeal Nos.297 and 298 of 2015 along with other connected civil appeals in **Sudhir N. and Others v. State of Kerala and Others**, the Apex Court examined the provisions of Regulation 9 of the

2000 Regulations as well as the 2008 Act in detail. The Constitutional provisions including legislation under entry 66 of List I and entry 25 of List III were elaborately considered. The Apex Court also referred to and relied on the earlier Constitution Bench decision of the Supreme Court in **Dr.Preeti Srivastava's case (supra)**. Regulation 9 of the 2000 Regulations was quoted in paragraph 12 of the judgment. A perusal of the regulation quoted in paragraph 12 indicate that the said Regulation was as was in existence prior to substitution of the Regulation by Notification dated 21.10.2010. The Apex Court also noticed the 3rd proviso to Regulation 9 and held that admission to postgraduate course was to be made only with academic merit of the candidates. The following was laid down in paragraphs 13 and 14.

“13. The above leaves no manner of doubt that admissions to post-graduate medical courses have to be made only on the basis of academic merit

of the candidates. It is clear from sub-Regulation (2) (supra) that for determining the "academic merit" the university/institution can adopt any of the methodologies stipulated therein. In terms of proviso (1) to Regulation 9, general category candidates must secure 50% marks while those belonging to SC/ST and other backwards classes are required to secure at least 40% marks in the entrance test in order to be eligible for admission. In terms of the third proviso to Rule 9 (supra) weightage for service rendered in remote and difficult areas is made permissible at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto a maximum 30% of the marks.

14. Regulation 9 is, in our opinion, a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions. To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9. Suffice it to say that but for the impugned legislation making an attempt to change the basis on which admissions

can be made, such admissions must, in all categories, be made only on the basis of merit as determined in terms of the provision extracted above. That method, however, is given a go-bye by the impugned legislation when it provides that in-service candidates seeking admission in the quota reserved for in-service doctors shall be granted such admission not on the basis of one of the methodologies sanctioned by Rule 9(2) of the Rules but on the basis of inter se seniority of such candidates. The question is whether the State was competent to enact such a law. Our answer to that question is in the negative. The reasons are not far to seek. As noted earlier, the subject is fully covered by several pronouncements of this Court to which we shall presently refer but before we do so we may extract Article 246 of the Constitution which reads as under:

"246. Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the

Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List')

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List"

45. In paragraph 14, the Apex Court clearly held that the State was not competent to enact a law for admission of in service candidates on the basis of inter se seniority. The Apex Court also relied on the judgment in **State of M.P. & Ors. v. Gopal D.Tirthani & Ors** ([2003] 7 SCC 73) referring to which the following was laid down in paragraph 19:

“19. We may also at this stage refer to the decision of this Court in Gopal D. Tirthani case (supra). That was a case where the State defined the percentage at post-graduation level for degree and diploma course exclusively for in-service candidates. The reservation came under challenge but was upheld by this Court holding that the setting apart of 20% seats in post-graduate course for in-service candidates was not a reservation but a separate and exclusive channel of entry or source of admission, the validity whereof cannot be determined on the constitutional principles applicable to communal reservation. In-service candidates and those who are not in-service are two classes based on an intelligible differentia. The purpose sought to be achieved by such classification was a laudable purpose as such candidates would, after they acquire higher academic achievements, be available to be posted in rural areas by the State Government. Having said that, this Court held that there can be no relaxation for in-service candidates in so far as the common entrance test is concerned and MCI regulation could not be relaxed for that purpose. The argument that in-service candidates are detached from theoretical study and cannot, therefore, compete with other candidates was

rejected by this Court. The following passages, in this regard, are apposite:

"25. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the

Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification consistently with the aforequoted observation of this Court in Dayanand Medical College and Hospital case." emphasis supplied)

46. The conclusions were recorded by the Apex Court in paragraph 20 of the judgment where it held that admission to in service candidates on the postgraduate course can be made only on the basis of inter se merit of the candidates as determined in common entrance test and further held that "weightage for such service is permissible while determining the merit of the candidates in terms of the third proviso to Regulation 9 (supra). Suffice it to say that Regulation 9

remains as the only effective and permissible basis for granting admission to in service candidates provisions of Section 5(4) of the impugned enactment notwithstanding.” The Apex Court held that the 2008 Act cannot be utilised for admission of in-service candidate on any other criteria except those laid down in Regulation 9.

47. Learned counsel appearing for the petitioners have strenuously contended that in **Sudhir N's case (supra)** provisions of Section 6 of the 2008 Act was not under consideration, hence Section 6 can still be relied on and marks can be given to both in-service candidates having service in rural area and difficult rural area. Section 6 of the Act as noted above in the 2008 Act provided for weightage for rural service as well as difficult rural service. Section 6 provides that weightage be given in selection in such manner as may be prescribed for medical services in rural area and difficult

rural area. Rule 8 of the Rules framed under the 2008 Act prescribes the procedure for giving weightage in selection. It is useful to quote Rule 8(1):

"8. The procedure for weightage in selection for rural service:- (i) The candidates will be eligible for weightage for rural area service or difficult rural area service as per sec.6 of the Act. This will be applicable for admission to Health Service Quota only. A minimum of one year continuous service in rural area/difficult area service is necessary to get weightage. Those who have more than one year service in such areas will get more weightage. The weightage will be decided by the committee on the basis of the number of years of service in rural/difficult rural areas. The list of hospitals eligible for weightage under Rural areas/difficult rural areas will be notified by the Government from time to time. The length of service in the stations done after the date of Government Order notifying the stations only will be considering for giving weightage. The candidates shall attach certificate in this regard in such format as decided by the Government."

As noted above under Section 5(4) of the 2008 Act admission to the in-service candidates has to be made

strictly in accordance with Sections 5(4) and 6 read with Rule 8 where provision is made for giving weightage to determine seniority of eligible medical officers in rural area and difficult rural area. Thus Section 6 as well as Rule 8 were included only for the purpose of determining seniority. When it has already been laid down by the Apex Court that seniority of in service candidates cannot be reckoned for the purpose of admission in postgraduate course, weightage contemplated by Section 6 as well as Rule 8 no more can be relied on. Section 5(4) having held to impinge the Regulations 2000 and inoperative, Section 6 of the Act and also Rule 8 lose its significance and the submissions of learned counsel for the petitioners that Section 6 can still be relied on by the State for giving weightage to both rural service and difficult rural service area cannot be accepted. The 2008 Act contemplated weightage for in-service candidates only

for the purpose of seniority whereas Regulation 9 of the Regulations 2000 contemplated weightage in mark in remote or difficult area of service. Weightage of mark is entirely different from the weightage in seniority.

48. A perusal of Regulation 9 of the Regulations 2000 as amended from time to time clearly indicate that Medical Council of India contemplated weightage in marks only to remote or difficult rural area of service. Weightage of marks has been given only to limited category of in-service candidates who are serving in remote and difficult rural area. The word difficult had been defined in the 'Law Lexicon', P.Ramanatha Aiyar's in the following manner:

"Requiring effort on labour, hard, not easy".

In the New Lexicon Webster's Dictionary, the word 'difficult' had been defined as follows:

"hard to do, hard to understand or solve/ had to deal with or to please, obstinate/troublesome, worrying the quality of being difficult something

which cannot easily be done, understood or believed/an obstacle or hindrance/an objection, demurrals/ a disagreement or cause of hostility or estrangement.”

There was an object in providing weightage in marks to in service candidates in remote or difficult rural area. Due to remote/difficult posting the candidates are not in the same advantageous position regarding various facilities enjoyed by those candidates who are serving in other areas. The remote and difficult posting being adversely affecting their service conditions they were held to be entitled from some weightage in marks limited to 30% as indicated in Regulation 9 so that they can compete with other candidates who are not that disadvantageously situated. Weightage of marks was an act of pushing up the candidates posted in remote and difficult area to come up in competition with those who are disadvantageously situated. Thus confining the weightage to remote and difficult area of service

was for a purpose and object. Medical Council of India is well aware of the concept of rural service. The word rural service having not designedly used in Regulation 9 clearly indicate that weightage of mark was not contemplated to all in service doctors rather it was confined to remote and difficult area of service which were purposely and consciously done.

49. Learned counsel for the Writ Petitioners submitted that **Sudhir N's case (supra)** does not show that rural area service is not eligible for weightage rather in paragraph 14 rural service has also been used. In the above context it is useful to again refer to the observations made in **Sudhir N's case (supra)**. In paragraph 13 it was clearly laid down that in terms of the third proviso to Regulation 9 weightage for service rendered in remote and difficult areas is made permissible at the rate of 10% of the marks obtained for each year in service in remote or difficult

areas upto a maximum of 30% of the marks. It is relevant to quote the above observations in paragraph 13 which were in the following words:

“13. In terms of the third proviso to Rule 9 (supra) weightage for service rendered in remote and difficult areas is made permissible at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto a maximum 30% of the marks.”

50. On the sentence which has been relied on by the counsel for the petitioners in paragraph 14, the following was said.

“To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9”

51. Although the word rural service has been used, the same was qualified with the words “in the manner to the extent indicated in the third proviso to Regulation 9”. Thus the whole sentence has to be looked into and especially when in paragraph 13 it is

made clear that the service rendered in remote and difficult areas is made permissible, the judgment cannot be read in any other manner. More so, in the penultimate paragraph, i.e., paragraph 20, the following was laid down:

"..Weightage for such service is permissible while determining the merit of the candidates in terms of the third proviso to Regulation 9."

Third proviso to Regulation has been extracted in paragraph 12 of the judgment which is to the following effect:

"Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks be given as an incentive at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto the maximum of 30% of the marks obtained."

52. Thus we come to the conclusion that Regulation 9 proviso only contemplated weightage of marks for in service candidates who are serving in the remote or difficult area.

53. Submission which has been much pressed by the learned counsel for the Writ Petitioners is that the third proviso to Regulation 9 as was considered by the Apex Court in **Sudhir N's case (supra)** which was no more in existence when the Apex Court was considering the third proviso on 12.01.2015. It is submitted that Regulation 9 has been struck down which was substituted by Notification dated 21.10.2010 in **Christian Medical College, Vellore's case (supra)**. It is submitted that the Apex Court having struck down Regulation 9, the earlier Regulation 9 which was relied on and quoted in **Sudhir N's case (supra)** will not revive and actually third proviso of Regulation 9 was not in existence nor still is in existence so as to prohibit the State from extending the benefit to both remote/difficult rural area and rural area. It is submitted that Regulation 9 including the proviso is not on the statute book hence the Government Order dated

11.03.2015 confining weightage only to difficult rural area is illegal. It is further submitted that the learned Single Judge had relied on the judgment in **Christian Medical College, Vellore's case (supra)** and has proceeded on the premise that Regulation 9 including the proviso is no more continuing in the statute book.

54. Before we proceed further, it is relevant to notice the judgment of the Apex Court in **Christian Medical College, Vellore's case (supra)**. In the said case the challenge was made to Regulation 9 as amended by Notification dated 21.10.2010 for admission in postgraduate course by holding National Eligibility cum Entrance Test (NEET). It is relevant to notice that the provision which came up for consideration before the Apex Court. The Apex Court has extracted the relevant part of the Notification which came up for consideration. It is useful to quote paragraph 11 in which Notification was added which is

to the following effect:

"11. Similarly, by virtue of Notification No. MCI.18(1)/2010-Med./49070, in purported exercise of the powers conferred by Section 33 of the 1956 Act, the Medical Council of India, with the previous approval of the Central Government, made similar amendments to the Postgraduate Medical Education Regulations, 2000, providing for a single eligibility cum entrance examination. For the sake of reference, the portion of the notification which is relevant for our purpose is extracted hereinbelow:

No. MCI.18(1)/2010-Med./49070. - In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956(102 of 1956), the Medical Council of India with the previous approval of the Central Government hereby makes the following regulations to further amend the Postgraduate Medical Education Regulations, 2000 namely:-

1. (i) These Regulations may be called the Postgraduate Medical Education (Amendment) Regulations, 2010 (Part-II)
(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the Postgraduate Medical Education Regulations, 2000, the following additions/modifications/deletions/ substitutions, shall be as indicated therein:-

3. Clause 9 under the heading 'SELECTION OF POSTGRADUATE STUDENTS' shall be substituted as under:-

9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

I. There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses' in each academic year. The overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct 'National Eligibility-cum-Entrance Test for admission to Postgraduate courses'."

Two similar Notifications both bearing No.DE-22-2012 dated 31.5.2012 were published by the Dental Council of India for the same purpose.

55. It is relevant to note that in paragraph 11, the Apex Court has stated that "for the sake of reference portion of the Notification which is relevant for our purpose is herein below". Thus only that part of the Notification which was relevant for the case was

extracted. Reading of the judgment clearly indicate that what was under challenge and under consideration was holding the National Eligibility cum Entrance Test. Minority medical Institutions, Universities, State Governments have challenged the said Notification objecting to holding of NEET. The case of various petitioners was that they have been conducting various courses under the rights guaranteed to them under Articles 19(1)(g), 25, 26 and 30 which could not have been taken away by the Notification. The Apex Court in **Christian Medical College, Vellore's case (supra)** has ultimately struck down the Notification as quoted in paragraph 11. It is relevant to note paragraphs 177, 178 and 179 which are to the following effect.

"177. In the light of our aforesaid discussions and the views expressed in the various decisions cited, we have no hesitation in holding that the "Regulations on Graduate Medical Education (Amendment) 2010 (Part II)" and the "Post Graduate Medical Education (Amendment) Regulation, 2010

(Part II)", whereby the Medical Council of India introduced the single National Eligibility-cum-Entrance Test and the corresponding amendments in the Dentists Act, 1948, are ultra vires the provisions of Articles 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run Universities and all medical colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their M.B.B.S., B.D.S. and Post-graduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in the T.M.A. Pai Foundation case (supra), to be an integral facet of the right to administer. In our view, the role attributed to and the powers conferred on the MCI and the DCI under the provisions of the Indian Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. The role assigned to the MCI under Sections 10A and 19A(1) of the 1956 Act vindicates such a conclusion.

178. As an off-shoot of the above, we also have no hesitation in holding that the Medical Council of India is not empowered under the 1956 Act to actually conduct the NEET.

179. The Transferred Cases and the Writ Petitions are, therefore, allowed and the impugned Notifications Nos. MCI-31(1)/2010-MED/49068, and MCI.18(1)/2010-MED/49070, both dated 21st December, 2010, published by the Medical Council of India along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India and the amended Regulations sought to be implemented thereunder along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India, are hereby quashed. This will not, however, invalidate actions so far taken under the amended Regulations, including the admissions already given on the basis of the NEET conducted by the Medical Council of India, the Dental Council of India and other private medical institutions, and the same shall be valid for all purposes."

56. It is thus clear that the judgment of the Apex Court in **Christian Medical College, Vellore's case (supra)** has held that NEET cannot be held and to that extent the Notification dated 21.10.2010 was set aside. There was no discussion regarding any other part of the notification including the proviso to the Notification contained in Regulation 9 which provided for weightage of

marks to candidates in remote or difficult area of service. Learned counsel for the petitioners submitted that Notification dated 21.10.2010 having been struck down which was the Notification substituted as Regulation 9, the earlier Regulation 9 shall not revive. Reliance has been placed by the learned counsel for the petitioners on the various judgments of the Apex Court and this Court, i.e., **Firm A.T.B. Mehtab Majid and Co. v. State of Madras & Another** (AIR 1963 SC 928), **Sile Singh v. State of Haryana and Others** ([2004] 8 SCC 1 and **Joint Action Committee of Airline Pilots' Association of India and Others v. Director General of Civil Aviation and Others** ([2011] 5 SCC 435). It was submitted that the concept is that when a competent legislation nullifies a law which was brought by way of substitution, as and when the new law is struck down, since the legislation is competent to decide afresh whether the old should be revived or not, the court

does not revive it while striking the new law. There cannot be any dispute to the above proposition as laid down by the Apex Court in the above mentioned cases.

57. Another judgment which has been placed reliance by the learned counsel for the petitioners is **Fenny, K.P (Dr.) and another v. State of Kerala and Others** (ILR 2014 [3] Kerala 361). It is submitted that in the said case the Division Bench was considering admission for in service candidates including Regulation 9 providing for minimum qualifying score and decision of the State Government to reduce the qualifying marks. It is submitted that the Division Bench took into consideration the judgment of the Apex Court in **Christian Medical College, Vellore's case (supra)** and held that in view of the setting aside of Regulation by the Apex Court on 13.07.2013, earlier Regulation 9 was not revived. Specific reference has been made to paragraph 49 of the judgment which is to the following

effect:

“49. Admittedly, in Medical Council of India Regulations of 2000 Regulation 9 refers to the procedure for selection of candidates for post - graduate courses. It came to be substituted by 2010 Regulations prescribing common entrance examination of NEET, a uniform examination for the entire country. This came to be declared as unconstitutional by Honourable Apex Court in CMC Velloor case by judgment dated 18/07/2013. Regulation 9 of 2010, by substitution, disappears from the field with the quashing of said provision by the Apex Court. As Regulation 9 was by way of substitution, previous Regulation 9 will not automatically revive. This is the law declared by the Apex Court in Firm A.T.B. Mehtab Majid & Co. v. State of Madras, 1963 KHC 568 : 1963 Supp (2) SCR 435 : AIR 1963 SC 928 : 1964 (1) MLJ (SC) 115 : 1963 (14) STC 355, paragraph 20, Zile Singh v. State of Haryana, 2004 KHC 1552 : 2004 (8) SCC 1 : AIR 2004 SC 5100 : 2004 AIR SCW 5842 : 2004 (8) Scale 659 : JT 2004 (8) SC 589 and Joint Action Committee of Air Lines Pilots & ½ Assn. of India v. Director General of Civil Aviation, 2011 KHC 4457 : 2011 (5) SCC 435 : 2011 (2) KLT SN 106 : AIR 2011 SC 2220 (Para 23). When new regulation ceases to exist by virtue of judgment of the Apex

Court and in the absence of revival of earlier Regulation 9 of 2000, one has to see what happen to 2012 Regulations. So far as 2012 Regulations, being a sub-regulation under Regulation 9, modification to earlier Regulation 9 by virtue of 2010 Regulations also will not survive. Therefore, so far as qualifying score, MCI Regulations are silent for academic year 2014-15."

58. The Division Bench of this Court having taken the above view that Regulation 9 which was existing prior to its substitution by Notification dated 21.10.2010 shall not revive, we do not intend to take any contrary view. Although, as noted above, in **Christian Medical College, Vellore's case (supra)** the Apex Court shall be deemed to have quashed the Notification as extracted in paragraph 11 confining to NEET.

59. An alternate submission which has been raised by the learned counsel for the appellant shri Krishnan Venugopal that even if it is accepted that Regulation 9 as was existing prior to 21.10.2010 shall not revive on quashing the Notification dated

21.10.2010, a proviso was subsequently added by Notification dated 15.02.2012 by clause 5 of the Notification dated 15.02.2012. It is submitted that Notification by which proviso was added after sub-clause (iv) in the Notification shall not be deemed to be quashed by the judgment in **Christian Medical College, Vellore's case (supra)**. It is useful to recaptulate clause 5 of Notification dated 15.2.2012.

"5. Clause 9 under the heading 'SELECTION OF POSTGRADUATE STUDENTS', as amended vide notification No.MCI.18(1)/2010-Med/49070 dated 21st December 2010, following shall be added after sub-clause IV which is as under:-

"Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by State Government/Competent authority from time to

time.”

It is submitted that the proviso which was subsequently added in Regulation 9 by Notification dated 15.02.2012 shall survive and the provision for providing weightage to candidates in remote and difficult area of service shall still survive and continue. We find sufficient force in the above submission of the learned counsel. Proviso which was added subsequently by Notification dated 15.02.2012 shall continue despite the setting aside of the Notification dated 21.10.2010 especially for the reason that there was no reference in the judgment in **Christian Medical College, Vellore's case (supra)** to the Notification dated 15.12.2012 by which proviso was added.

60. The submission which was pressed in reply by the learned counsel for the petitioners was that the entire Regulation 9 having struck down, the proviso shall also go. Although it is true that proviso is normally

introduced to qualify or create an exception to what is contained in the substantive part but in some cases proviso may also contain a substantive part of law. In this context reliance has been placed on the judgment in **Motiram Ghelabhai (deceased by LR) v. Jagan Nagar and Others** ([1985] 2 SCC 279. The following was laid down in paragraphs 7 and 9.

"7. Turning then to the second contention of counsel for the appellant defendant it is obvious that the question whether the present case falls within or outside the purview of the proviso to S.50 depends upon what is true nature and scope of the proviso introduced at the end of S.50? Is it introduced merely with a view to qualify or create exceptions to what is contained in the main provision of S..50 or does it go beyond that purpose and enact a substantive law of its own by way of providing for special savings following upon the repeal of the two earlier enactments, the 1939 Act and the 1944 Act? That a proviso could be of either type was not disputed before us by counsel for the appellant defendant. In fact in *Shah Bhojraj's case* (1962 (2)

SCR 159 : AIR 1961 SC 1596) (supra) this Court after referring to two English decisions and a passage in Craies on Statute Law (5th edition) at page 166 (of SCR) : (at P. 1600 of AIR) has observed thus:

"The law with regard to provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily a proviso is not interpreted as stating a general rule. But provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be considered as controlled by the section."

The question is in which category the instant proviso together with latter part thereof falls. It may be stated that this very question was hotly debated before the Court in that case but was not decided and kept open because of the view taken by the Court on the contention pertaining to proper interpretation of S.12(1) of the Act and since the Court held that S.12(1) is retrospective in operation and covers suits pending on the date when Part II was applied to the particular area it granted relief to the tenant appellant against eviction. We might

observe, however, that the same result would have obtained even if the case were considered under the proviso to S.50 because under it suits and proceedings pending at the date when Part II is made applicable are required to be decided by applying the 1947 Act to them. Since the question raised before us relates to the applicability of the 1947 Act to a pending appeal we shall have to decide the question pertaining to the true nature and scope of the proviso to sec. 50 in this case.

9. Bearing in mind the aforesaid legislative amendments we shall proceed to consider the question as to what is the true nature and scope of the proviso. For that purpose it will be necessary to read as a whole the entire provision, namely, the substantive part of S.50, the proviso thereto and the new paragraph added at the end of the Proviso. So read, two aspects stand out very clearly. In the first place, it is clear that under the substantive part of S.50 on the coming into force of the Act (the 1947 Act) the two earlier enactments (the 1939 Act and the 1944 Act) stand repealed. If nothing more was said then S.7 of the Bombay General Clauses Act, 1904 would have come into play and would have had the effect of saving the legal proceedings or remedies in respect of any right, privilege,

obligation or liability' acquired, accrued or incurred under the repealed enactments. In other words, all suits and proceedings including execution proceedings and appeals arising therefrom which were pending on the relevant date and which were governed by the provisions of these respective repealed Acts would have been saved and the rights and obligations of the parties thereto would have been worked out under the relevant provisions of the repealed Acts. But here a clear intention to deviate from the normal rule which applies to the repeal of enactments is clearly evinced by the Legislature by the manner in which the proviso was enacted initially or as it now stands after the amendments. Either under the proviso as it originally stood or under the new separate paragraph enacted by way of an amendment the legislative intent was and is quite clear that only suits and original proceedings between a landlord and tenant (of the description or categories specified therein) which were pending on the relevant date are required to be decided and disposed of by applying the provisions of the 1947 Act while execution proceedings and appeals arising out of decrees or orders passed before the coming into operation of the Act are denied the benefits of the provisions of the Act and have been directed to

be decided and disposed of as if this Act had not been passed, that is to say, such execution proceedings and appeals would be continued to be governed by and shall be disposed of in accordance with the law that was then applicable to them. In other' words, it is clear that the proviso was and has been enacted to provide for special savings which suggests that it has not been introduced merely with a view to qualify or create exceptions to what is contained in the substantive part of S.50. Secondly, it does appear that the Legislature while framing the Act (the 1947 Act) was enacting certain provisions for the benefit of tenants which conferred larger benefits on them than were in fact conferred by the earlier enactments which were repealed, (and this would be clear if regard be had to the wider definition of the expression 'tenant' adopted in S.5 (11) of the Act) and therefore, the legislature thought it advisable that in regard to pending suits and original proceedings also (of course of the description or categories specified therein) in which the decrees and orders were not passed the provisions of the Act should be made applicable. It is with this intention that the proviso to S.50 has been enacted in the manner it has been done. What is more, while so extending the larger benefits of the Act (the 1947 Act) to tenants the Legislature

has used a very wide expression, namely, "all suits and proceedings between a landlord and a tenant" so as to include within that category suits and proceedings filed under the repealed Acts ' as also under the general law or Transfer. of Property Act. Deliberate use of such wide expression clearly shows that the benefit of the Act was intended to be given to all tenants who were parties to all suits and proceedings filed either under the repealed Acts or under the general law or Transfer of Property Act and were pending at the relevant date. It is therefore, clear that the proviso read with the separate paragraph added thereto will have to be regarded as an independent provision enacting a substantive law of its own by way of providing for special savings and Counsel's contention that the same has been added merely with a view to qualify or to create an exception to what is contained in the main provision of S.50 has to be rejected. We might refer to a Bombay High Court decision in Shankarlal Ramratan, v. Pandharinath Vishnu (1951 (53) Bom LR 319 : AIR 1951 Bom 385) where a similar view of the proviso to S.50 of the Act has been taken and we approve the same."

(underlined by us)

Learned counsel for the appellant has also referred to

and relied on the doctrine of severability. He submitted that when a part of the statute is held to be void, the statute shall be enforced for the rest of it. Reliance is placed on the judgment of the Apex Court in **R. M. D. Chamarbaugwalla and Another v. Union of India and Another** (AIR 1957 SC 628). It is useful to quote paragraph 21 which is to the following effect:

"21. In 1950 S C R 759: (A I R 1951 S C 118) (J), the question related to the constitutionality of S. 4 (2) of the Central Provinces and Berar Regulation of Manufacturers of Bidis (Agricultural Purposes) Act No. LXIV of 1948, which provided that, 'No person residing in a village specified in such order shall during the agricultural season engage himself in the manufacture of bidis, and no manufacturer shall during the said season employ any person for the manufacture of bidies.'" This Court held that the restrictions imposed by S. 4 (2) were in excess of

what was requisite for Achieving the purpose of the Act, which was 'to provide measures for the supply of adequate labour for agricultural purposes in bidi manufacturing areas', that that purpose could have been achieved by limiting the restrictions to agricultural labour and to defined hours, and that, as it stood, the impugned provision could not be upheld as a reasonable restriction within Art.19 (1) (g). Dealing next with the question of severability, the Court observed at p. 765 (of S C R): (at p. 120 of A I R) that:

"The law even to the extent that it could be said to authorise the imposition of restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right."

Now, it should be noted that the, impugned provision, S. 4 (2), is by its very nature inseverable, and it could not be enforced without re-writing it. The observation aforesaid must be read in the context of the particular provision which was under consideration. This really is nothing more than a decision on the severability of the particular provision which was impugned therein, and it is open to the same comment as the derision in 1950 S C R 594: (A I R 1950 S C 124) (I). That was also one of the decisions distinguished in 1951 SCR 682: (A I R 1951 S C 318)(F). The resulting position may thus be stated:When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid. It is immaterial for the purpose of this rule whether the invalidity of the statute arises by reason of its subject-matter being outside the competence of the legislature or by reason of its provision contravening constitutional prohibitions.”

61. In the above view of the matter we are of the view that by the mere quashing of Notification dated 21.10.2010, Regulation 9 proviso providing for giving weightage of marks to remote and difficult area of service cannot be wiped out and in any view of the matter by addition of proviso by Notification dated 15.02.2012 subsequent to Notification dated 21.10.2010 the said proviso being addition shall continue to hold the field.

62. Learned counsel for the petitioners also placed reliance on the judgment of the Apex Court in **State of M.P. & Ors. v. Gopal D. Tirthani & Ors.** ([2003] 7 SCC 83) and submitted that in that case the court had referred to weightage to the service rendered in rural/tribal areas. He has referred to paragraph 33 of the judgment wherein the rule providing for weightage for rural service was upheld. In paragraph 2 of the judgment relevant provision was

quoted for in-service candidate. The Apex Court in the said case was considering the Madhya Pradesh Medical and Dental Programme Rules 2002 where weightage of marks for rural service was provided which was ultimately upheld. In the said case there was no regulation of Medical Council of India providing any contrary rules referred or relied. Thus the said case was clearly distinguishable and does not help the Writ Petitioners in the present case. Learned counsel for the petitioners has placed reliance on the judgment in **Arasmeta Captive Power Co.(P) Ltd. v. Lafarge Indian (P) Ltd.** ([2013] 15 SCC 414) where it was held that the proposition of the ratio of any decision must be understood in the background of the facts of the case and the case is only an authority for what actually decides and not which logically follows. He has relied on the said judgment to support his submission that the ratio of judgment in **Sudhir N's case (supra)** need not

be read beyond what has been held. There is no dispute to the proposition laid down by the Supreme Court in the above case. However in **Sudhir N's case (supra)** the issue regarding conflict between the Regulation framed by the Medical Council of India and the 2008 enactment was directly in issue and the ratio laid down by the Apex Court in the context of 2008 Act is fully attracted on the issue which was raised in the present case regarding weightage under Section 6 of the 2008 Act.

63. Now we come to Government Order dated 11.03.2015. The Government Order as extracted above, provides that the Government came to the conclusion that intention of the Supreme Court Judgment in **Sudhir N's case (supra)** was to give weightage only to remote or difficult area whereas its earlier order dated 03.02.2015 had extended the benefit to rural service. The Government Order corrected the said

mistake and issued modification providing weightage only to remote area and difficult area. Government Order dated 11.03.2015 had been issued to correctly implement the ratio of judgment of the Supreme Court in **Sudhir N's case (supra)**. The Government Order dated 11.03.2015 was clearly in conformity with Regulation 9 proviso of the 2000 Regulation. The fact that 03.02.2013 is not in accordance with the Regulation 9 third proviso and not in accordance with the ratio of the judgment in **Sudhir N's case (supra)** the Government was not denuded with its power to correct the mistake so as to obey the binding precedent under Article 141 of the Constitution of India. In this context another submission that the Government Order dated 11.03.2015 permits change of Rules of game after examination was over shall be separately hereinafter be considered.

64. The State is well aware of both the rural

service and difficult service. In the prospectus itself in paragraph 7.1.3 the Government had referred to the list dated 16.11.2013 of the Government Medical Institutions of rural service whereas another Government Order dated 15.12.2014 was appended along with the prospectus which contained the details of the Medical Institutions in difficult rural areas in Kerala. Thus, both the stations, rural stations and difficult rural stations were identified and notified. Regulation 9 proviso entitles both the remote or difficult area/difficult rural area as Notified by the State Government on 15.12.2014 are fully eligible for weightage as per the proviso to Regulation 9.

65. In view of the forgoing discussion our answer to issue Nos.I to V are as follows:

- (i) The proviso to Regulation 9 of 2000 Regulation providing for award of

marks to the rural or difficult area of service is still continuing even after striking down Regulation 9 by the Apex Court in ***Christian Medical College, Vellore's case (supra)***.

(ii) The state cannot rely on Section 6 of the 2008 Act for giving weightage marks to in service candidates serving in rural areas.

(iii) For admission to in-service candidates award of marks is entitled to be given to Doctors serving in remote or difficult area only and no weightage is to be given to Doctors serving in rural areas.

(iv) The Government Order dated 11th March, 2015 was fully justified it having implemented the judgment of the Apex Court in ***Sudhir N's case (supra)*** and being in conformity with proviso to Regulation 9 of

the 2000 Regulations.

(iv) The law laid down by the Apex Court in **Sudhir N's case (supra)** is a binding precedent and is a declaration of law on proviso to Regulation 9 of the 2000 Regulation weightage of marks is to be given to in service candidates serving in remote or difficult areas.

66. Now we come to issue No.VI. Petitioners' submission is that Government Order dated 11.03.2015 amounted to change in the Rules of Game after entrance examination was over on 08.02.2015. Relevant provisions of prospectus have already been noted above. As noted above, the prospectus contained clause for admission to postgraduate course on the basis of seniority determined as per prospectus in service candidates subject to they have obtained 50%

marks in the entrance examination. The said was the legal position as laid down by the Apex Court in Mohammed Riaz's case (supra) dated 30.03.2011. Against the judgment of the Division Bench appeal was filed before the Supreme Court and the Supreme Court pronounced the judgment on 12.01.2015. The Supreme Court did not agree with the judgment of the High Court that seniority of in-service candidates be reckoned for purpose of admission in medical service. Apex Court held that Section 5(4) being in conflict with Regulation 9 cannot survive and seniority of candidates is irrelevant. Apex Court held that weightage of marks can be given as per the third proviso of Regulation 9. The Supreme Court having on 12.01.2015 declared the law, the law declared by the Supreme Court is binding on the State and the State has to mend its affairs accordingly. The implementation of the judgments cannot be said to be change of rule of the game. The

admissions by the State were to be concluded by the State following the law laid down by the Supreme Court in **Sudhir N's case (supra)**. It is true that immediately after the judgement dated 03.02.2015 certain modifications were made in the prospectus purported to be implementing the judgement. But as discussed above Government Order dated 03.02.2015 did neither implement the judgment of the Apex Court nor was in accordance with Regulation 9. The State itself thus came forward and corrected its mistake by issuing Government Order dated 11.03.2015. Learned counsel for the petitioners have relied on the judgments in **P.V.Indiresan (2) v. Union of India & Others** (2011) 8 SCC 441, **Paramender Kumar & Others v. State of Haryana & Others** ([2012] 1 SCC 177) and **Manjusree v. State of A.P** ([2008] 3 SCC 512). There cannot be any dispute to the general proposition that rules of game cannot be changed after the game is

over. But the present case is different where the State was bound to implement the judgment of the Supreme Court and Regulation 9, hence the issuance of Government Order 11.03.2015 cannot be said to be hit by the above general proposition. It is further relevant to note that result of the entrance examination' was declared on 06.03.2015 publishing the marks obtained by the candidates in the examination. No change is being effected on the marks obtained by the candidates in the entrance examination. The result itself contemplated that the list of in-service candidates after adding weightage shall be separately issued. Rank list after adding weightage was issued on 12.03.2015 in accordance with Government Order dated 11.03.2015 which was brought on record of the Writ Petitions. The rank list after adding weightage was first issued on 12.03.2015 in accordance with the Government Order. Thus it cannot be said that there

was any change in the rank list. We thus are of the view that on the above submission, the petitioners can obtain no benefit and there is no infirmity in the Government Order dated 11.03.2015 due to the above reason.

67. On Issue No.VII the submissions made by the learned counsel for the petitioners is that in W.P(C) No.7422 of 2015 the relief prayed for in the Writ Petition was for quashing Ext.P2, Government Order dated 11.03.2015 which provided weightage to rural area of service but no rural service candidates were impleaded. It is relevant to note that after filing of the Writ Petition No.7422 of 2015 relief claimed in the Writ Petition was granted by the State Government by issue of subsequent Government Order dated 11.03.2015 by which weightage was confined only to difficult area service. The relief prayed for in W.P(C) No.7422 of 2015 virtually had become infructuous. Further no such

relief has been granted by the learned Single Judge. Thus on the said submission, no benefit can be availed by the petitioners. It is further relevant to note that although the Writ Petitions challenged the Government Order dated 11.03.2015 and the rank list dated 12.03.2015 which was filed by the petitioners they had not impleaded those difficult area candidates who were going to be affected by the relief claimed in the Writ Petition. The Issue is answered accordingly.

68. Now we come to issue No.VIII. In view of the law laid down by the Supreme Court in **Sudhir N's case (supra)** petitioners cannot claim that admission to the postgraduate course of in-service candidates be held in accordance with Section 5(4) of the 2008 Act. The provision in the prospectus requiring in-service candidates to secure 50% in common entrance test cannot be struck down for the reasons above mentioned. Regulation 9 of the Regulations 2000 does

not permit any such mode of admission as claimed by the petitioners. In view of the forgoing discussion Issue No.VIII is also answered against the petitioners in W.P(C) No.880 of 2015.

69. Another submission which has been raised by the learned counsel for the petitioners is that Regulation 9 of the Regulations 2000 refers to admission of postgraduate course in diploma only and apportioning 40% seats in degree/diploma shall not be in accord with Regulation 9 of the Regulations 2000. In the present case the State has earmarked 40% seats for in-service quota. In none of the Writ Petitions there was any challenge to apportioning of 40% seats in degree or diploma and both the contesting parties are claiming admission on the aforesaid 40% earmarked quota in the degree and diploma course. There being no issue raised by the parties, it is not necessary for us to express any opinion on the aforesaid submission in the present Writ

Appeals.

70. In view of the forgoing discussions, the Writ Appeals are decided of as follows:

(i) Writ Appeals included in the second category being W.A. Nos.944, 945, 946, 947, 948 and 949 of 2015 are allowed. The judgment/order of the learned Single Judge dated 27.03.2015 is set aside and the Writ Petitions giving rise to the above Writ Appeals are dismissed. Government Order dated 11.03.2015 is upheld.

(ii) W.A. No.938 of 2015 is decided accordingly.

(iii) In view of the orders passed as above, no orders are necessary in W.A. No.803 of 2015 which is disposed of accordingly.

(iv) W.A. No.880 of 2015 is dismissed.

71. Before we conclude we record our appreciation to learned counsel for the parties who have placed the respective cases in clear light which enabled us to conclude the hearing and decide the controversy.

Parties shall bear their own costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

vgs/vsv