

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.12246 of 2017,
and WMP Nos.13040, 16113, 16115, 16116 & 16119 of 2017,
W.P.Nos.12424 and 12425 of 2017,
and WMP Nos.13183 to 13186 & 16114 of 2017,
W.P.Nos.12582 to 12585 of 2017,
and WMP Nos.13382, 13384, 13386 & 13388 of 2017,
W.P.Nos.12382 to 12386 of 2017
and WMP Nos.13134 to 13138 of 2017
and
W.P.No.13088 of 2017
and WMP No.13974 of 2017

DR.PRANEETHA.S ... PETITIONER in WP.12246 of 2017
DR.RAJESH WILSON ... PETITIONER in WP.12424 of 2017
DR.NIVETHA.R ... PETITIONER in WP.12425 of 2017
DR..KARTHIKEYAN ... PETITIONER in WP.12582 of 2017
DR. K.ARTHI ... PETITIONER in WP.12583 of 2017
DR.A.R.VENKATESA KUMAR ... PETITIONER in WP.12584 of 2017
DR.K.RAMYA ... PETITIONER in WP.12585 of 2017
DR.G.KANNAN ... PETITIONER in WP.12382 of 2017
DR.TAMILMANI ... PETITIONER in WP.12383 of 2017
DR.D.SARAVANAN ... PETITIONER in WP.12384 of 2017
DR.G.SARAVANAN ... PETITIONER in WP.12385 of 2017
DR.D.R.BRINDHA ... PETITIONER in WP.12386 of 2017
Dr.G.MUTHAMIZH ... PETITIONER in WP.13088 of 2017

Vs

- 1.STATE OF TAMIL NADU
REP BY SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
ST GEORGE FORT CHENNAI-09
 - 2.THE DIRECTOR OF MEDICAL EDUCATION
THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI-10
 - 3.THE SELECTION COMMITTEE
THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI-10
 - 4.THE MEDICAL COUNCIL OF INDIA
REP BY SECRETARY POCKET 14 SECTOR 8
DWARKA PHASE I NEW DELHI-110 077
 - 5.THE TAMIL NADU DR.MGR MEDICAL UNIVERSITY
NO.69 ANNA SALAI
LITTLE MOUNT GUINDY CHENNAI-32
 - 6.THE TAMILNADU GOVERNMENT DOCTORS ASSOCIATION
REP BY STATE SECRETARY
DAOS QUARTERS GOVERNMENT STANLEY
MEDICAL COLLEGE CHENNAI-01
- ... RESPONDENTS in WP.12246 of 2017

- 1.THE SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
ST. GEORGE FORT CHENNAI 600 009.
 - 2.THE DIRECTOR OF MEDICAL EDUCATION
THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI 600 010.
 - 3.THE SELECTION COMMITTEE
THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI 600 010.
 - 4.THE MEDICAL COUNCIL OF INDIA
REP. BY ITS SECRETARY POCKET 14 SECTOR 8
DWARKA PHASE I NEW DELHI.
- ... RESPONDENTS in WPs.12423, 12424 & 12425 of 2017

- 1.THE SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
FORT ST. GEORGE CHENNAI- 600 009.
- 2.THE DIRECTOR OF MEDICAL EDUCATION
THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI - 600 010.

3.THE SELECTION COMMITTEE

THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI - 600 010.

... RESPONDENTS in WPs.12582, 12583, 12584,
12585, 12382, 12383, 12384, 12385 & 12386 of 2017

1.STATE OF TAMIL NADU

REP. BY ITS SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
ST. GEORGE FORT CHENNAI 600 009

2.THE DIRECTOR OF MEDICAL EDUCATION

THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI 600 010

3.THE SELECTION COMMITTEE

THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI 600 010

4.THE MEDICAL COUNCIL OF INDIA

REP. BY ITS SECRETARY POCKET 14 SECTOR 8
DWARKA PHASE I NEW DELHI 110 077

5.THE TAMILNADU DR. MGR MEDICAL UNIVERSITY

NO.69 ANNA SALAI
REP. BY REGISTRAR LITTLE MOUNT
GUINDY CHENNAI 600 032

... RESPONDENTS in WP.13088 of 2017

Writ Petitions filed under Article 226 of the
Constitution of India praying for the issuance of Writ of
Certiorarified Mandamus,

W.P.No.12246 of 2017 : Calling for the records of the impugned
G.O.(D)No.1052, dated 05.05.2017, passed by the first
respondent herein culminating into impugned Merit List
published by the third respondent herein pertaining to
admission to Post Graduate Degree/ Diploma Courses in Tamil
Nadu Government Colleges, Government Seats in Self-financing
Medical Colleges affiliated to the fifth respondent University
and seats in Rajah Muthiah Medical College (Annamalai
University) for the Academic Year 2017-2018 and quash the same
and consequently, direct the respondents 1 to 3 herein to
admit the petitioner herein in a PG Degree Course. ***

*** Prayer amended as per order dated 09.06.2017
in WMP No.15682/2017 in WP No.12246/2017

W.P.No.12423 of 2017 : Calling for all the records pertaining
to the issue of prospectus dated 27.03.2017 on the files of
the respondents 1 to 3 and quash the clauses 10(b) and 10(f)
so far as it relates to the petitioner and consequently direct
the respondents 1 to 3 to receive the petitioners application

for admission to the PG Degree Course for academic year 2017-2018 and assign appropriate place in the State Rank List by considering the petitioners service in the remote and difficult area (Hilly Area) as defined in the prospectus annexure VII.

W.P.No.12424 of 2017 : Declaring the State Merit List published on 7.5.2017 for PG Medical Courses admission for the Academic Year 2017-2018 as null and void and consequently direct the respondents 1 to 3 to prepare and publish the State Merit List, strictly in accordance with the Regulation 9(iv) Proviso, by including the notified remote and difficult area as per the Annexure(vii) of the Prospectus and as directed by order dated 6.5.2017 in W.A. No.484 of 2017

W.P.No.12425 of 2017 : Declaring the State Merit List published on 7.5.2017 for PG Medical Courses admission for the Academic Year 2017-2018 as null and void and consequently direct the respondents 1 to 3 to prepare and publish the State Merit List, strictly in accordance with the Regulation 9(iv) Proviso, by including the notified remote and difficult area as per the Annexure vii of the Prospectus and as directed by order dated 6.5.2017 in W.A. No.484 of 2017

W.P.No.12582 of 2017 : Call for the records on the file of the respondents 1 and 3 relating to the merit list prepared by the 2nd and 3rd respondent dated 07.05.2017 on the file of the 3rd respondent as rife with infirmities, error in law apparent on the face of records and illegal and quash the same and direct the respondents 1 to 3 to prepare a merit list as envisaged in G.O. (D) No.704 Health and Family Welfare (MCA-1) department dated 27.03.2017 and the prospectus thereon

W.P.No.12583 of 2017 : call for the records on the file of the respondents 1 and 3 relating to the merit list prepared by the 2nd and 3rd respondent dated 07.05.2017 on the file of the 3rd respondent as rife with infirmities, error in law apparent on the face of records and illegal and quash the same and direct the respondent 1 to 3 to prepare a merit list as envisaged in G.O. (D) No.704 Health and Family Welfare (MCA-1) department dated 27.03.2017 and the prospectus thereon

W.P.No.12584 of 2017 : call for the records on the file of the respondents 1 and 3 relating to the merit list prepared by the 2nd and 3rd respondent dated 07.05.2017 on the file of the 3rd respondent as rife with infirmities, error in law apparent on the face of record and illegal and quash the same and direct the respondent 1 to 3 to prepare a merit list as envisaged in G.O. (D) No.704 Health and Family Welfare (MCA-1) department dated 27.03.2017 and the prospectus thereon

W.P.No.12585 of 2017 : call for the records on the file of the respondents 1 and 3 relating to the merit list prepared by the 2nd and 3rd respondents dated 07.05.2017 on the file of the 3rd respondent as rife with infirmities, error in law apparent on the face of records and illegal and quash the same and direct the respondent 1 to 3 to prepare a merit list as envisaged in G.O. (D) No.704 Health and Family Welfare (MCA-1) department dated 27.03.2017 and the prospectus thereon

W.P.No.12382 of 2017 : directing the respondents to consider the Government Villupuram Medical College Hospital, Mundiampakkam Village as a remote/ difficult area and thereby allot incentive marks to the petitioner as per the Medical Council of India Post Graduate Medical Education Regulations, 2000 for admission to Post Graduate Degree/ Diploma in Tamilnadu Government Medical Colleges, Government Seats in self financing medical colleges affiliated to the Tamilnadu Dr.MGR Medical University & Rajah Muthiah Medical College (Annamalai University) 2017-2018 session

W.P.No.12383 of 2017 : directing the respondents to consider the Government Villupuram Medical College Hospital, Mundiampakkam Village as a remote/ difficult area and thereby allot incentive marks to the petitioner as per the Medical Council of India Post Graduate Medical Education Regulations, 2000 for admission to Post Graduate Degree/ Diploma in Tamilnadu Government Medical Colleges, Government Seats in self financing medical colleges affiliated to the Tamilnadu Dr.MGR Medical University & Rajah Muthiah Medical College (Annamalai University) 2017-2018 session

W.P.No.12384 of 2017 : Directing the respondents to consider the Government Villupuram Medical College Hospital, Mundiampakkam Village as a remote/ difficult area and thereby allot incentive marks to the petitioner as per the Medical Council of India Post Graduate Medical Education Regulations, 2000 for admission to Post Graduate Degree/ Diploma in Tamil Nadu Government Medical Colleges, Government seats in Self Financing Medical Colleges affiliated to the Tamil Nadu Dr.MGR Medical University & Rajah Muthiah Medical College (Annamalai University) 2017-2018 session

W.P.No.12385 of 2017 : Directing the respondents to consider the Government Villupuram Medical College Hospital, Mundiampakkam Village as a remote/ difficult area and thereby allot incentive marks to the petitioner as per the Medical Council of India Post Graduate Medical Education Regulations, 2000 for admission to Post Graduate Degree/ Diploma in Tamil Nadu Government Medical Colleges, Government seats in Self Financing Medical Colleges affiliated to the Tamil Nadu Dr.MGR Medical University & Rajah Muthiah Medical College (Annamalai University) 2017-2018 session

W.P.No.12386 of 2017 : Directing the respondents to consider the Government Villupuram Medical College Hospital, Munidyampakkam Village as a remote/ difficult area and thereby allot incentive marks to the petitioner as per the Medical Council of India Post Graduate Medical Education Regulations, 2000 for admission to Post Graduate Degree/ Diploma in Tamil Nadu Government Medical Colleges, Government seats in Self Financing Medical Colleges affiliated to the Tamil Nadu Dr.MGR Medical University & Rajah Muthiah Medical College (Annamalai University) 2017-2018 session

W.P.No.13088 of 2017 : directing the respondents herein to prepare the fresh merit list for admission to Post-Graduate Degree/Diploma Courses in Tamil Nadu for the academic year 2017-2018 providing weightage marks to in service candidates strictly in compliance with the prospectus and its annexures issued for admission to Post Graduate Degree/Diploma Courses in Tamil Nadu Government Medical Colleges, Government Seats in Self-Financing Medical Colleges Affiliated to the Tamil Nadu Dr.MGR Medical University, Raja Muthiah Medical College (Annamalai University) for 2017-18 session, in Compliance with the Judgement rendered by this Honourable Court in W.A.Nos. 453, 484, 490, 491, 498/2017 vide a judgment dated 06.05.2017

For Petitioner in W.P. : Mr.T.R.Rajagopalan,
No.12246/2017 Senior Counsel
for M/s.A.Dev Narendran

For Petitioner in W.P. : Mr.G.Justin
Nos.12424 & 12425/2017

For Petitioner in W.P. : Mr.M.A.Balasubramanian
Nos.12582 to 12585/2017

For Petitioner in W.P. : Mr.K.S.Karthik Raja
No.12382 to 12386/2017

For Petitioner in W.P. : Mr.G.Rajkumar
No.13088/2017

For Petitioners in WMP : Mr.K.M.Vijayan,
No.16113/2017 Senior Counsel
for M/s.K.V.Sanjeev Kumar

For Petitioners in WMP : Ms.G.Thilagavathy,
Nos.16114/2017 Senior Counsel
for M/s.K.V.Sanjeev Kumar

For Petitioner in WMP : Mr.R.N.Amarnath
Nos.16115/2017

For Petitioners in WMP : Mr.G.Sankaran
Nos.16116 to 16119/2017

For Respondents in all : Mr.C.Mani Shankhar,
these writ petitions Additional Advocate General
assisted by
Mr.T.N.Rajagopalan
Special Government Pleader
for Education
State Government

: Mr.V.P.Raman
for Medical Council of India

: Mr.D.Ravichander
for TN Dr.MGR Medical
University

: Mr.G.Sankaran for T.N.
Government
Doctors Association (R6)

C O M M O N O R D E R

(Order of the Court was made by RAJIV SHAKDHER,J.)

1. This is a batch of writ petitions, which presents us with a classic situation, which is, that many times policy matters embarked upon with best of intentions can go awry, during implementation.

1.1. In a sense, this is a second round of litigation, at least, for some of the litigants before us.

2. The core issue, which, we are called upon to consider is : as to whether the official respondents, i.e., respondents 1 to 3, (hereafter collectively referred to as "the State Government"), have acted in accordance with the proviso to Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000 (hereafter referred to in short "PG Regulations of 2000").

2.1. The proviso to Regulation 9(IV) of PG Regulations of 2000 requires, or rather, empowers the State Government to grant weightage-marks, while determining the merit of the candidates, who are either in its service or in the service of public authorities.

2.2. The weightage, which the State Government can accord, as per the said proviso, spans between 10% and 30% of the marks, obtained by a candidate in the National Eligibility-cum-Entrance Test Post Graduate (in short "NEET-PG").

2.3. The weightage so given is inextricably tied-in with the number of years of service rendered by a candidate in a

"remote and/or difficult areas". The proviso also makes it clear, in no uncertain terms, that the State Government shall have the power to define what are remote and/or difficult areas.

2.4. It is, in fact, as indicated above, the nub of the problem.

3. The assertion made by various petitioners before us, is that in preparing the final merit list, the State Government has accorded weightage, without providing a criteria for identifying "remote and/or difficult areas". Therefore, if, the remote and/or difficult areas are not identified, based on a known, reasonable and/or rationale criteria, according to the petitioners, there is every chance that weightage-marks being given to undeserving candidates.

3.1. As a matter of fact, the charge levelled by the petitioners is that weightage has been given to candidates, who are in Government service and have served in areas, which do not qualify as remote and/or difficult areas.

4. Before we proceed further, we may also indicate that the baseline for us, is, the judgement of the Supreme Court rendered in : State of Uttar Pradesh and another V. Dinesh Singh Chauhan, 2016 (9) SCC 749. This was a case, in which, the Supreme Court was dealing with the appeals, which arose out of two separate judgements, rendered by the Allahabad High Court and a petition filed under Article 32 of the Constitution.

4.1. In the course of the adjudication, the Supreme Court was called upon to deliberate on the issue as to whether the norm specified in Regulation 9 of PG Regulations of 2000, for according weightage, was excessive and/or unreasonable. In the context of this issue, the Supreme Court, inter alia, made the following observations : (i) That Regulation 9 was a complete code. (ii) That no State or any Authority could enact any law, much less, issue an executive instruction, which may undermine the procedure for admission to postgraduate medical courses, as envisaged under the Central Legislation and Regulations framed thereunder. The Court, in this behalf, rooted the power of the Parliament in Entry 66 of List I in Schedule VII of the Constitution. (iii) Regulations had been framed by an expert body, i.e., the fourth respondent [the Medical Council of India (in short, 'MCI')], based on the past experience. In other words, the Court granted its seal of approval to the proviso, which incentivised rendering of service by Doctors in the notified remote and/or difficult areas of the State. (iv) Lastly, the proviso to clause (IV) of Regulation 9 passed the test of Article 14 of the Constitution, as it was held to have been engrafted in the Regulation in the larger public interest.

4.2. While, coming to this conclusion, the Court emphasised that the duty as well as the obligation to identify remote and/or difficult areas rested with the respective State

Governments/ competent authorities. As a matter of fact, the Court observed that the proviso to Regulation 9(IV) met the test of Article 14, based on its belief that the respective State Governments would discharge their duties, as was expected of them in law.

4.3. This is evident from the following apposite observations made by the Supreme Court in paragraph 44 :

"44.... The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing healthcare facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level ; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to postgraduate medical courses. Not even one instance has been brought to our notice to show that some areas which are remote or difficult areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to clause (IV) is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to clause (IV) in particular is just, proper and reasonable and also fulfils the test of Article 14 of the Constitution, being in larger public interest."

(emphasis is ours)

4.4. It is, because of these observations, we began, by saying that, while the intention of the policy-formulators was to reach a noble or just goal, the result reached in the instant case shows that the opposite happened. It is palpably clear that in this case, the manner in which, the State Government has exercised its powers to identify remote and/or difficult areas, by design or, otherwise, has led to unfair and inequitable results.

5. Before we proceed further, we may also indicate that because the State Government had issued the prospectus dated 27.03.2017, for academic year 2017-2018, which contained, inter alia, clauses qua grant of weightage to in-service candidates, which were completely contrary to the provisions of Regulation 9(IV), that a challenge was laid by way of writ petition under Article 226 of the Constitution, before a Single Judge of this Court. It is relevant to note that the challenge was confined to weightage-marks to be given to the in-service candidates. The aspect pertaining to identification of remote and/or difficult area was not in issue.

5.1. The learned Single Judge of this Court, vide the judgement rendered in the matter of : Dr.Rajesh Wilson Vs. The Secretary to Government, Health and Family Welfare Department and others, 2017 (3) CTC 337, ruled that the admissions to the postgraduate degree and diploma courses could only be made in accordance with the provisions of Regulation 9(IV) of the PG Regulations of 2000.

5.2. Against the said judgement, several appeals were filed before a Division Bench comprising of Hon'ble Mr.Justice K.K.Sasidharan and Hon'ble Mr.Justice S.M.Subramaniam. Since, there was a difference of opinion, the matter was referred to a third Judge, i.e., Hon'ble Mr.Justice M.Sathyanarayanan. Hon'ble Mr.Justice M.Sathyanarayanan, via his judgement, agreed, almost in entirety, with the view taken by Hon'ble Mr.Justice S.M.Subramaniam, save and except with regard to the observations made qua identification of hilly and remote/difficult areas. Pertinently, Hon'ble Mr.Justice S.M.Subramaniam, in his judgement, issued the following operative directions :

"..... Accordingly, the reliefs in these Writ Appeals are moulded as hereunder:

1. Clauses 16, 17 and 33(b) under "Chapter VI merit list" of the prospectus issued by the Government of Tamil Nadu are declared inconsistent / repugnant to Regulation 9 of the Post Graduate Medical Regulation, 2000 issued by the Medical Council of India and accordingly quashed.

2. The Government of Tamil Nadu is directed to formulate the procedure for admission process in accordance with Regulation 9 and 9(IV) of the Post Graduate Medical Regulation, 2000 issued by the Medical Council of India.

3. Accordingly, the Government of Tamil Nadu is directed to prepare merit rank list for admission to Post Graduate Degree/Diploma Courses in Tamil Government Medical Colleges, Government seats in self-financing colleges affiliated to Dr. MGR Medical University and Annamalai University for the Academic Year 2017-2018.

4. The Government of Tamil Nadu is directed to conclude the merit rank list as per the above directions and proceed with the admission process as per the time frame, already fixed."

5.3. As indicated above, Hon'ble Mr. Justice M. Sathyanarayanan, while agreeing with the view of Hon'ble Mr. Justice S.M. Subramaniam, made the following, pertinent, observations in the operative part of his judgement :

"..... 191. The Hon'ble Mr. Justice S.M. Subramaniam had taken note of various decisions of the Hon'ble Supreme Court of India, especially, the decision reported in 2015 [6] SCC 685 [Sudhir's case] and the decision reported in 2016 [9] SCC 749 [Dinesh Singh Chauhan's case] and had held that Clause Nos. 16, 17 and 33[b] of the Prospectus are declared inconsistent / repugnant to Regulation 9 of the Post Graduate Medical Education Regulations, 2000. Though the learned Judge in paragraph No. 68 of the order observed that in-service candidates are bound to get the benefit of the incentive marks, it is to be observed that the term "in-service candidates" is referable to the candidates who are serving in remote/hilly/difficult areas as per the proviso to Regulation 9[IV]. This Court, in the earlier paragraphs had pointed out that the first appellant thought fit to define the words "hilly/remote/difficult areas" and the identification of the place as well as the non-inclusion of the medical officers serving in rural areas which is the subject matter of challenge in WA.Nos. 506 & 527/2017 and felt that counter affidavit is to be filed by the State Government justifying the identification of the areas. Insofar as rural areas is concerned, this Court had taken note of the fair submission made by Mr. T.N. Rajagopalan, learned Special Government Pleader on instructions that the doctors who are serving in Primary Health Centres in Rural areas, will be considered under the category and strictly in accordance with the Prospectus insofar as defining and identification of the said areas are concerned. The said submission is placed on record.

192. It is to be noted at this juncture that the crucial date expires on 07.05.2017 and in the event of holding that the said identification is not in consonance with the said proviso, it may create hardships to the

successful candidates who had cleared NEET and even otherwise, the proviso gives discretion to the State Government / competent authority to define remote and difficult areas and to that extent, the said identification for the academic session 2017-2018, warrants no interference.

193. The result of the above said discussions / findings is that the appellants are bound to strictly follow and implement Regulation 9 and more particularly, Regulation 9[IV] and proviso therein and ensure full compliance.

194. This Court, on an exhaustive analysis and thorough consideration and appreciation of the materials placed before it and also on independent application of mind, is of the considered opinion that the directions given in the judgment dated 03.05.2017 of the Hon'ble Mr. Justice S.M.Subramaniam, are in consonance with the settled legal position except with regard to identification of hilly and remote/difficult areas for the reasons assigned in paragraph No.74.

195. In the result, W.A.Nos.453, 484, 490, 491, 498, 499, 536 and 537 to 546 of 2017 are dismissed and the directions issued / moulded reliefs granted by the Hon'ble Mr. Justice S.M.SUBRAMANIAM, in paragraph No.71 of the common Judgment dated 03.05.2017, except with regard to identification of hilly and remote / difficult areas done by the appellants in WA.No.484/2017 in terms of proviso to Regulation 9[IV] of the Post Graduate Medical Education Regulations, 2000; are to be implemented forthwith. W.A.Nos.506 and 527 of 2017 are de-linked. No costs. Consequently, the connected miscellaneous petitions are also dismissed."

6. Given this background, in our view, there are two issues, which arise for consideration : (i) First, which, in a sense, is a larger issue, as to whether given the fact that the State Government has made no attempt, whatsoever, to define and/or provide a criteria for identifying remote and/or difficult areas, can the weightage granted to in-service candidates pass muster of Regulations 9(IV) of the PG Regulations of 2000 ? (ii) Second, if, the answer to the first issue is in the affirmative, whether the merit list, as generated, should be set aside in its entirety ?

6.1. There is no denying that the date of counselling has passed, which was fixed as : 31.05.2017. There is also no denying that the candidates have taken admission and stand

enrolled in their respective postgraduate courses allotted to them, albeit, with a caveat that the validity of their admission is subject to the final outcome of the present proceedings. Having said so, there is also no denying that, if, we were to agree with the petitioners, there will be a large number of candidates, who would get impacted by what would be a flawed merit list. Added to this quandary, is the observation contained in the judgement of Hon'ble Mr. Justice M. Sathyanarayanan that, since, the proviso gives discretion to the State Government/competent authority to define remote and difficult areas, the identification carried out for the academic session 2017-2018, warrants no interference.

7. We have been taken through the material placed before us by the parties.

8. What emerges there from, in so far as the issue at hand is concerned, is as follows : The State Government, as indicated above, issued the prospectus on 27.03.2017. By which time, the NEET-PG merit list had already been published. The prospectus was appended, inter alia, with Annexure VII. Annexure VII contained three lists, i.e., List A, List B and List C. List A comprised of Primary Health Centres (in short, "PHCs") located in hill areas, under the Directorate of Public Health (in short, "DPH"). List B referred, once again, to PHCs, located in hill areas, albeit, functioning under the Directorate of Medical and Rural Health Services (in short, "DM & RHS"). List C comprised of Government Hospitals, working under the DM & RHS, located in remote and difficult areas.

9. It has been argued before us by Mr. C. Manishankar, the learned Additional Advocate General (AAG) that even prior to the issuance of the prospectus, for the current academic year 2017-2018, the State Government has been issuing Government Orders (G.Os), from time to time, to incentivise in-service candidates seeking admission to postgraduate courses, by giving them various concessions, including by awarding extra marks.

9.1. In this behalf, reliance has been placed by the learned AAG on G.O. (Ms) No. 456, Health and Family Welfare (MCA-1) Department, dated 19.12.2007; G.O. (Ms) No. 332, Health and Family Welfare (EAP1/1) Department, dated 24.11.2010; G.O. (Ms) No. 29, Health and Family Welfare (MCA-1) Department, dated 08.02.2017; G.O. (Ms) No. 86, Health and Family Welfare (MCA-1) Department, dated 23.03.2017; G.O. (Ms) No. 704, Health and Family Welfare (MCA-1) Department, dated 27.03.2017; and lastly, G.O. (Ms) No. 1054, Health and Family Welfare (MCA-1) Department, dated 06.05.2017 (hereafter collectively referred to as G.O.s).

9.2. Based on these G.O.s, learned AAG has submitted that the State Government has identified not only remote and difficult areas, but also hilly and rural areas. It is, in

sum, the submission of the learned AAG that, it is in this background, that three lists, referred to above, got incorporated in Annexure VII, appended to the prospectus dated 27.03.2017, and, as also, the rural PHCs, which, admittedly, do not find a mention in the said Annexure. In addition to the same, weightage has been given by the State Government even with respect to PHCs, Government Hospitals and Government Medical College Hospitals, located in Thiruvavur, Nagapattinam and Ramanathapuram districts (hereafter referred to as "TNR Districts").

9.3. In support of his submissions, relied upon the following judgements:

1. Kumari Chitra Ghosh & anr. V. Union of India, (1969) 2 SCC 228
2. State of Madhya Pradesh V. Gopal D. Tirthani & Ors, (2003) 7 SCC 83
3. Judgment of Madras High Court in W.P. No. 6385 of 2016 dated 07.03.2016
4. Dr. R. Murali V. Dr. R. Kamalakannan and Ors., 1989 (III) CTC 675 (FB)
5. Dr. M. Ashiq Nihmathulla V. The Govt. of T.N. and Ors., (2005) 5 CTC 26 (Mad)
6. Order of the Hon'ble Supreme Court in I.A. Nos. 7 and 8 in W.P. (C). No. 76 of 2016 and W.P. (C). No. 314 and 328 of 2015 dated 18.01.2016- Ashish Ranjan & Ors.
7. Order of the Hon'ble Supreme Court in W.P.(C). No. 296 of 2017 dated 27.04.2017 - Dr. Vikas Gupta and Ors.
8. Modern Dental College V. State of M.P., (2016) 7 SCC 353 (CB)
9. State of U.P. V. Dinesh Singh Chauhan, (2016) 9 SCC 749.

9.4. Besides these, reliance was also placed on the judgement of the single judge in W.P. No. 6031 of 2017 and Ors. dated 17.04.2017-Dr. Rajesh Wilson & Ors. V. the Secretary to Government and 3 others, 2017 (3) CTC 337 and the Judgement of the Full Bench in W.A.No.453 of 2017 and Ors. Batch -Preethiswary & Ors. V. G. Kamaleshwaran and Ors., MANU/TN/1489/2017, to which we have already made a reference above.

9.5. While, we are dealing with the submission advanced by the learned AAG, in the context of various G.O.s issued by the State Government, we may also note that as a matter of fact, G.O.(Ms)No.29, Health and Family Welfare (MCA1) Department, dated 08.02.2017, was challenged by way a batch of writ petitions preferred under Article 226 of the Constitution. These writ petitions were disposed of by a learned Single Judge of this Court vide judgement dated 20.03.2017, the lead matter being : W.P.No.6094 of 2017, titled : Dr.G.Kamaleshwaran Vs. The Principal Secretary to Government, Health and Family Welfare Department and others.

9.6. These writ petitions were disposed of, based on the stand taken by the State Government that it would not include new areas in the academic year 2017-2018, and that, G.O.(Ms)

No.29, Health and Family Welfare (MCA1) Department, dated 08.02.2017, would not be implemented. In other words, the State Government portrayed to the Court that no new areas would be taken into consideration for awarding incentive marks and that only those areas, which are adverted to in the prospectus dated 27.03.2017, alone would be taken into account for awarding weightage in terms of Regulation 9(IV), in so far as the academic year 2016-2017 was concerned.

9.7. In this behalf, the Government, as noted in the order of the learned Single Judge, placed on record, a communication dated 20.03.2017, issued under the hand of the Secretary, Health and Family Welfare Department. As a matter of fact, the State Government, admittedly, issued a formal Government Order, i.e., G.O.(Ms)No.86, Health and Family Welfare (MCA1) Department, dated 23.03.2017, encapsulating therein, the stand taken before the learned Single Judge.

9.8. Interestingly, in paragraph 2 of the said G.O., the State Government adverted to the fact that it had decided to "re-examine the places notified in the Government Order", i.e., G.O.(Ms)No.29, Health and Family Welfare (MCA1) Department, dated 08.02.2017, and had decided to keep the same in "abeyance" for the present. This assertion was followed by an assertion made in paragraph 3 of the very same G.O. that the Selection Committee had been directed to follow the procedure, which was in place for the previous year, i.e., 2016-2017, for the purposes of awarding weightage to in-service candidates, while admitting them to postgraduate medical and dental courses for the academic year 2017-2018.

9.9. It appears that somewhere down the road, the State Government forgot the contents of its own G.O. Neither did the Government carry out the exercise of re-examining the areas, which they had notified by its previous G.O., to which, we have made a reference above, nor did it formulate any criteria for identifying areas in terms of Regulation 9(IV). The haste displayed by the State Government in finalising the merit list is discernible from the fact that the judgement of Hon'ble Mr.Justice M.Sathyanarayanan came to be delivered on 06.05.2017, at about 4.45 p.m and the impugned Government Order, i.e., G.O.(Ms)No.1054, Health and Family Welfare (MCA1) Department, dated 06.05.2017, got issued, immediately thereafter, which, in effect, seeks to amend the prospectus, as against notifying/identifying, with specificity, remote and/or difficult areas.

10. In this context, it may be relevant to note that the State Government, inter alia, did two things. First, it reiterated the three lists, to which we have made a reference above, i.e., Lists A, B and C, adverted to in Annexure VII of the prospectus, and secondly, included by a side wind within remote and difficult areas, the following :

"1) Primary Health Centres located in Rural areas which were already part of the existing prospectus and were incentivized to encourage

Government Doctors to take posting in such areas in view of the Difficulty in getting Doctors to work in such Government institutions.

2) Any Government Hospitals, Primary Health Centres and Government Medical College Hospitals of Thiruvallur, Nagapattinam and Ramanathapuram Districts which were already part of the existing prospectus and were incentivized to encourage Government Doctors to take posting in such areas in view of the Difficulty in getting Doctors to work in such Government institutions."

10.1. In sum, the Government added to the list of areas, which stood already reflected in the prospectus, by including within it not only PHCs located in rural areas but also Government Hospitals, PHCs and Government Medical College Hospitals, located in TNR Districts.

10.2. Upon the learned AAG being queried, he was unable to explain as to how PHCs located in the rural areas would, per se, fall within the ambit of the expression "remote and/or difficult areas". The learned AAG's only explanation was that, since, the practice of including rural PHCs for the purposes of according additional marks to in-service candidates, who applied for postgraduate degree and diploma courses was in place, since, 1992, the said practice was continued for the present academic year, i.e., 2017-2018 as well.

10.3. Furthermore, when, asked as to why no criteria had been formulated for identifying remote and/or difficult areas, the learned AAG submitted, since, an assurance had been given to the Supreme Court in the matter of : Dr.Vikas Gupta and Others V. Union of India and others, [Writ Petition (Civil) No.296 of 2017], that time lines would be adhered to, that was not any leeway available to carry out such an exercise. Reliance, in this behalf, was placed on the order dated 27.04.2017.

10.4. We may have, ordinarily, accepted this explanation proffered by the learned AAG, but given the fact that the State Government used the circumstance to bring within the fold of remote and/or difficult areas, areas, which were not even adverted to in the prospectus dated 27.03.2017, had us conclude to the contrary.

10.5. Apart from anything else, the grant of weightage to in-service candidates, by linking it to their experience in rural PHCs is suspect, for the reason that, ordinarily, rural areas are defined as those, which are areas falling outside the municipal areas. Therefore, one could be faced with a situation, where a rural PHC may abut municipal limits and consequently, the candidate, while serving in such a rural area would suffer no difficulty, as he would be located next to a municipal area. Since, such a candidate would be serving in a rural PHC, he would, according to the present dispensation, be entitled to weightage.

10.6. Similarly, every hilly area, as indicated above, by us, cannot be classified as remote and/or difficult area. For example, in the District of Nilgiris, the District Headquarters Hospital, located at Uthagamandalam (Ooty), cannot be described as remote and/or difficult area by any stretch of imagination. One can take judicial notice of the fact that Ooty is a hilly destination, which has all the facilities of a township, and is easily accessible by road. The record would show that Ooty has been shown at Sl No.2, in List B to Annexure VII, appended to the prospectus.

10.7. The fact that there has been a complete non-application by the State Government is demonstrable by another example. Amongst the list of 1747 rural PHCs, is the PHC located in Othakadai (Sl.No.17 in HUD : 14 Madurai), which is geographically located, at the outskirts of Madurai, where, in fact, the Madurai Bench of Madras High Court is situate. Clearly, the said PHC, though, classified as rural PHC, is neither remote nor difficult area. (See Dr.Narayan Sharma and another V. Dr.Pankaj Kr.Lehkar, (2000) 1 SCC 44.)

10.8. We perused the counter affidavits filed by the State Government in various writ petitions. Our reading of the same leaves us no wiser as to how this exercise has been conducted.

10.9. As a matter of fact, the Government Hospitals, PHCs and Government Medical College Hospitals, located in TNR Districts, do not, admittedly, find place in Annexure VII to the prospectus. PHCs, Government Hospitals and Government Medical College Hospitals, located in the TNR Districts find mention in clause 17(b) of the prospectus, which is one of the clauses that Hon'ble Mr.Justice S.M.Subramaniam quashed, while passing his judgement. It would, therefore, be relevant to extract clause 17(b), as it would provide the setting, in which, reference is made to the Government Hospitals/PHCs/Government Medical College Hospitals, located in the TNR Districts :

"17 (a)

(b) Service candidates shall be awarded, one mark per year of service in rural areas, two marks per year of service in hilly and remote/difficult areas and two marks per year of service in any Government Hospitals, Primary Health Centres and Government Medical College Hospitals of Thiruvarur, Nagapattinam and Ramanathapuram Districts limited to a maximum of 10 marks. Altogether the total marks awarded for experience will be restricted to 10 marks to all candidates including candidates from rural, hilly and remote/difficult areas and the three districts mentioned above."

(emphasis is ours)

11. It is the submission of the learned AAG that, only, that part of clause 17(b) would stand excised, which relates

to the aspect of marks to be awarded for according weightage, as that aspect is not in consonance to Regulation 9(IV). In other words, the submission is that, in so far as the TNR Districts, referred to in clause 17(b) is concerned, the same would not get impacted, in view of the judgement of Hon'ble Mr. Justice M. Sathyanarayanan.

11.1. Learned counsel for the petitioners, however, argued to the contrary.

11.2. To our minds, even, if, one were to accept this submission of the learned AAG, it would not pass muster as no material has been placed before us, which would demonstrate that the PHCs/Government Hospitals/Government Medical College Hospitals, located in TNR Districts fall within the definition of "remote and/or difficult area".

11.3. This conclusion is reached, de hors, our observation that, as a matter of fact, there is no criteria, generally, formulated by the State Government to identify remote and/or difficult areas.

11.4. Besides this, in the G.O.Ms.No.29, Health and Family Welfare (MCA1) Department, dated 08.02.2017, on which, reliance was placed by the learned AAG to defend the State Government's action of including rural PHCs adverts only to the following in Annexure-I, "All Primary Health Centres in rural areas and Hospital on wheels attached to the rural Primary Health Centres".

11.5. We must indicate herein that the learned AAG has informed us that hospital on wheels attached to the PHCs have not been taken into account, while, granting weightage. As would be obvious, Annexure-I to the G.O.Ms.No.29, dated 08.02.2017, does not set out the location of the rural PHCs. When asked during the course of the hearing how rural PHCs stood incorporated in the impugned G.O., i.e., G.O.Ms.No.1054, dated 06.05.2017, the learned AAG produced a list of 1747 PHCs, which included 386 upgraded PHCs.

11.6. This list was not, admittedly, placed on record, when, the matter was heard by the Division Bench comprising of Hon'ble Mr. Justice K.K. Sasidharan and Hon'ble Mr. Justice S.M. Subramaniam, or by the third Judge Hon'ble Mr. Justice M. Sathyanarayanan. We must also indicate that this list, which was produced before us, concededly, did not form part of any of the G.Os. referred to above, which were issued prior to or post G.O.Ms.No.29, dated 08.02.2017. As a matter of fact, as alluded to above, G.O.Ms.No.29, dated 08.02.2017, was not only put in abeyance by the State Government, but that it had categorically indicated in the subsequent G.O.Ms.No.86, dated 23.03.2017 that it would re-examine the issue. Therefore, to our minds, the State Government could not have taken into account the 1747 rural PHCs for according weightage to in-service candidates in terms of proviso to Regulation 9(IV).

11.7. At this juncture, we may also deal with the learned AAG's submission that the PHCs, Government Hospitals, Government Medical College Hospitals, located in TNR

Districts, were taken into account for the purposes of granting weightage to in-service candidates, as these districts, which were hit by tsunami.

11.8. According to us, the explanation given is completely untenable for the following reasons : First and foremost, the point to be noted is that, the tsunami hit the State of Tamil Nadu on 26.12.2004. The Districts which were effected were seven (7) in number, i.e., Cuddalore, Thiruvavur, Nagapattinam, Pudukottai, Ramanathapuram, Thoothukudi and Kaniyakumari. The State Government, while, according weightage, has taken into account, only three (3) out of the seven (7) districts, which were effected by tsunami. Secondly, as in the case of rural PHCs, nothing has been placed on record to demonstrate as to why after a lapse of nearly thirteen (13) years the State Government holds the view that the TNR Districts can be classified as remote and/or difficult areas. Thirdly, if, the explanation offered had any merit, the said TNR Districts ought to have been straight away included in List C of Annexure VII appended to the prospectus, which relates to remote and/or difficult areas. As a matter of fact, the said districts, fall in a sui generis class, as even in clause 17(b), the TNR Districts are not classified, either, as rural or, hilly or, even as remote and/or difficult areas.

11.9. Therefore, whether it is the rural PHCs or the TNR Districts, referred to in clause 17(b), at best, all that the State Government can be heard to say, in the background of observations made by Hon'ble Mr. Justice Sathyanarayanan, that these had to be considered and identified in line with the three lists referred to in Annexure VII of the prospectus.

12. That the State Government is required to formulate a criteria in respect of remote and/or difficult areas stands expounded by the Supreme Court in its recent judgement rendered on 25.05.2017, passed in a batch Civil Appeals, the lead appeal being : Civil Appeal No.8179 of 2017, titled : State of Haryana and another etc. V. Dr.Narender Soni and others (hereafter referred to as "Dr.Narendra Soni-I").

12.1. The Supreme Court, in respect of the issue that has arisen before us, which was, as indicated above, also the issue, before it, made the following crucial observations :

"7. The respective submissions have been considered. On 16.03.2017, the admission procedure for 2017-2018 was notified. There had been no identification of remote and/or difficult areas by the State government at this stage. It was only after the order of the High Court dated 21.04.2017 that the authorities woke up from stupor and constituted a Committee on 04.05.2017, days before the first counselling to be held on 07.05.2017. The notification dated 21.09.2005, which is stated to be the basis for the notification dated 05.05.2017, pertained to a general transfer policy. The criteria for

transfer/postings and for grant of weightage to incentivise working in remote and/or difficult areas to serve a dual purpose cannot be the same. The submission that the impugned notification is not a reproduction but the outcome of a truncated version of the former by application of mind does not appeal. To identify an area as remote and/or difficult on the basis of unwillingness of Doctors to join at those places, which can be for myriad reasons, cannot be held to be a valid and relevant criteria. Similarly vacancies at any particular place can again be for various reasons and cannot be directly and conclusively related to unwillingness of Doctors to join at such places. The State is first required to identify remote and/or difficult areas, and then analyse the lack of availability of Doctors at these locations. To first identify locations where Doctors are reluctant to be posted and then classify them as remote or difficult areas is reversing the entire decision making process, akin to placing the cart before the horse. The High Court has noticed that several of them were located where municipal committee/council exists, 10 places are such which are subdivisions in the Districts concerned and many of the Community Health Centres and Primary Health Centres were located on National Highways or State Highways including in cities with large population which could not be said to be remote and/or difficult areas, observing that Haryana was a developed State with good road communications. Additionally, the impugned notification was implemented and acted upon in the 1st counselling even before its publication in the Gazette, only after which it could have come into force as mentioned in the same.

8. The flawed implementation, by a hasty identification of remote and/or difficult areas is further evident from the fact that out of 150 Community Health Centres, 68 of them have been identified as remote and/or difficult, which amounts to 60 per cent of the total. Likewise, 54 per cent of the Primary Health Centres have been identified as remote and/or difficult areas. It strongly conflicts with the status of Haryana as a developed State and severely reduces the chances of other candidates who may not be entitled to such weightage.

9. The identification, moreover, has been done only for the purposes of admission in postgraduate courses, contrary to the guidelines

in D.S. Chauhan (supra) that it must be based on general criteria applicable to other Government schemes also. The report of the Committee was submitted in one day and immediately accepted. The conclusion of the High Court that it was done in great haste, therefore, cannot be faulted with.

10. The word remote and/or difficult areas has not been defined anywhere. In common parlance, identification of the same would require considering a host of factors, such as social and economic conditions, geographical location, accessibility and other similar relevant considerations which may be a hindrance in providing adequate medical care requiring incentivization. A cue may be had from the "Concept and Process Document for Incentivisation of Skilled Professionals to work in inaccessible most difficult and difficult rural areas (draft note)" published by the National Health Systems Resource Centre, Ministry of Health and Family Welfare. It outlines the rationale and objectives of a scheme for providing a package of incentives for attracting and retaining skilled service providers that are categorised as inaccessible, most difficult and difficult.

11.

12.

13. It is, therefore, apparent that the Notification dated 05.05.2017 is based on a completely flawed process of identification, applying irrelevant criteria and ignoring relevant considerations. The High Court has rightly observed that the State power for transfer and posting is sufficient to take care of the unwillingness of Doctors to join at specified locations. The identification and criteria, will naturally vary from State to State to some extent, despite identification of certain common criteria.

14. We, therefore, find no reason to interfere with the order of the High Court.

15. The conduct of the State in issuance of the notification dated 05.05.2017 based on no data, formulation of the same in a day, implementation before publication in the Gazette, after publication of the NEET, reflects inadequate preparation by the State, acting more in the nature of a knee jerk reaction to situations. It does not meet the approval of the Court. The proviso to Regulation 9(IV) is not a compulsion but an enabling provision vesting

discretion in the State. Any discretionary power has to be exercised fairly, reasonably and for the purpose for which the power has been conferred. The observations of the High Court meet our approval.”

(emphasis is ours)

12.2. The Supreme Court also made observations as to what could be the possible criteria. In that behalf, the Supreme Court relied upon the criteria evolved by the National Health System Resource Centre (NHSRC), at the behest of the Union Ministry of Health and Family Welfare.

12.3. Therefore, having regard to the observations made by the Supreme Court in Dr.Narender Soni-I, we need not burden our discussion in the present proceedings with other judgements, which clearly, enunciate that in matters like this, where, discretionary power is vested in an authority to accord benefits to a defined section of persons/entities, it is obliged to put in place, a reasonable, fair and a just criteria.

12.4. We may, however, in order to demonstrate the constitutional limitation on the discretionary power vested in the State vis-a-vis admission matters, refer to one of the many judgements rendered by the Supreme Court, i.e., the judgement rendered in : Suman Gupta Vs. State of J & K, AIR 1983 SC 1235. In this case, the Court was called upon to adjudicate qua a challenge to the nominations made by the State Governments of J & K and Andhra Pradesh with respect to the seats reserved in medical colleges located in other states. It appears that with a view to bring about national integration, 10% of the seats in every participating medical college (other than those, which related to admissions which were planned on All India basis) were retained for such nominees. While, dealing with this aspect of the matter, the Supreme Court made the following apposite observations :

“..... 6. For the purpose of these cases, we shall proceed on the assumption that national integration, which is undeniably in itself a highly commendable and laudable objective, will be effectively served by a policy encouraging the admission of candidates of one State to seats in the medical colleges of another State. After considering the matter carefully, we confess, we are unable to subscribe to the view that the selection of candidates for that purpose must remain in the unlimited discretion and the uncontrolled choice of the State Government. We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason – relevance in relation to the object

which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : AIR 1978 SC 597 : (1978) 2 SCR 621, has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason. To contend that the choice of a candidate selected on the basis of his ability to project the culture and ethos of his home State must necessarily be left to the unfettered discretion of executive authority is to deny a fundamental principle of our constitutional life. We do not doubt that in the realm of administrative power the element of discretion may properly find place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether. Proceeding from there, it is evident that if the State Government desires to advance the objective of national integration it must adopt procedures which are reasonable and are related to the objective. In this age of reason, all law must measure up to that standard, and necessarily so also must all executive acts. Viewed in this context, the claim of the State Government in these cases that the nature of the objective and the means adopted to serve it entitle it legitimately to vest in itself an absolute power in choosing candidates for nomination cannot be allowed to prevail. It is incumbent on the State Government to adopt a criterion or restrict its power by reference to norms which, while designed to achieve its object, nevertheless confine the flow of that

power within constitutional limits. We are not convinced that an adequate system of standards cannot be devised for that purpose. Tested on the touchstone of our constitutional values, the claim of the State Government to the content of the power assumed by it must, in our opinion, be declared invalid.

7. Now, the selection of an appropriate procedure lies ordinarily within the domain of administrative policy, and when the objective can be fulfilled by more than one constitutionally valid method, the selection must be left to administrative choice. The courts are generally concerned merely with the legal validity of the choice made. We think it desirable, therefore, to leave it to the Medical Council of India to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in medical colleges outside the State. The problem is one which needs to be tackled at the national level, having regard to the objective which is sought to be achieved and to the circumstance that it calls for reciprocal arrangements between medical colleges throughout the country. Until a policy is so formulated and adopted and concrete criteria are embodied in the procedure to be selected, we direct that nominations be made by following the procedure of selecting candidates strictly on the basis of merit, the candidates nominated being those, in order of merit, immediately next below the candidates selected for admission to the medical colleges of the home State."

(emphasis is ours)

12.5. In so far as the judgements of the Supreme Court (see paragraph No.9.3), relied upon by the learned AAG are concerned, we may only say that the principles laid down therein, cannot be quibbled with. The point raised is, whether they are applicable to the facts and circumstances, obtaining in the instant case. None of the judgements, cited by the learned AAG, deal with the point in issue.

13. We may, at this point, also advert to submissions made by Mr.K.M.Vijayan and Ms.Thilakavathy, learned Senior Advocates. Both counsels appeared for in-service candidates, who, evidently, have benefited from weightage accorded by the State Government in respect of PHCs located in rural and hilly areas. As a matter of fact, impleadment applications were pressed by these counsels, which were kept in abeyance, as issuance of notice and calling for replies would have led to delay in adjudicating upon the matters. In any event, we are

of the view that in matters like these, what has to be examined in the first instance is the action of the State authorities, based on which, one or the other set of people reap benefit. If, a Court comes to a conclusion, that the action of the State authority is bad in law, no further purpose would be served in hearing those, who have benefited from such illegal action. The beneficiaries of the State action should swim or sink, with the result of the challenge to such a action. In any event, we have heard the counsel for the applicants. Notice to others in the given facts and circumstances, in our view, was not necessary. Furthermore, in any event, we heard respondent No.6, i.e., Tamil Nadu Government Doctors Association.

13.1. Continuing with the narrative, thus, apart from general submissions made by the learned counsels, which supported the stand of the State Government, reliance was placed by them on the order dated 08.06.2017, passed by the Supreme Court in W.P.No.403 of 2017 in the matter of Dr.Narendra Soni and others V. The State of Haryana and others (hereafter referred to as, "Dr.Narendra Soni-II"), in support of their submissions that complete status quo should be maintained vis-a-vis the impugned merit list.

13.2. The Supreme Court, in this matter, passed a final order in an Article 32 petition filed before it, which emanated from directions issued by the Court in Dr.Narendra Soni-I. As noted above, the Supreme Court in Dr.Narendra Soni-I, directed the State of Haryana to draw up a fresh merit list after formulating a criteria for identifying remote and/or difficult area as postulated under Regulation 9(IV). In the petition filed under Article 32, the petitioners, inter alia, assailed the action of the State of Haryana in holding counselling for seats to be allotted qua PG Medical courses without notifying remote and/or difficult areas.

13.3 The stand of the State of Haryana was that, since, the judgement in Dr.Narendra Soni-I case was delivered on 25.05.2017, it did not have enough time available with it to issue a fresh notification identifying remote and/or difficult areas. The State of Haryana went on to contend that because of this difficulty they had done away with the discretion vested upon it, to accord weightage to in-service candidates, who had worked in remote and/or difficult areas. In other words, the State of Haryana took the stand before the court that it had relied upon the inter se merit as amongst the in-service and non-service candidates, sans weightage, in allotting seats for PG Medical courses.

13.4. Given the circumstances, the Supreme Court accepted the stand of the State of Haryana by noting that the proviso to Clause (IV) of Regulation 9 vested the State Government with an enabling power and if, it chose not to exercise that power, then, the course adopted by it could not be found fault with.

13.5. According to us, this judgement in no way furthers the cause of those candidates, who have benefited from the

faulty and/or erroneous approach adopted by the State Government in according weightage to them, i.e., in-service candidates. As a matter of fact, the Supreme Court reiterated its view, which was taken in Dr.Narendra Soni-I. If, we were to adopt the same measure, which in any event, the State Government would be entitled to, as it is law declared under Article 141, then, the State Government would be expected to reconfigure the merit list, sans weightage granted to in-service candidates.

13.6. Apart from anything else, the other argument, which is ordinarily put forth by the State Governments/statutory authorities and/or candidates, who have benefited from actions taken in admission matters, which do not fall in line with the declared law, is that, once the timelines fixed for such like matters is crossed and admissions have taken place, the status quo ought not to be disturbed. We must indicate that the Courts have, more often than not, accepted this argument, because interest of students are involved. Having said so, Courts have also carved out an exception to such like situations, in circumstances in which they have come to the conclusion that no fault could be attributed to the aggrieved students, who had approached the Court within time and their challenge to the alleged infraction stood sustained. In other words, the Supreme Court has held even though, ordinarily, time lines fixed qua admission matters ought not to be crossed, merit cannot be sacrificed at the altar of expediency, where no fault could be attributed to the aggrieved candidate. In this behalf, we may extract the apposite observations of the Supreme Court made in *Asha V. Pt.B.D.Sharma University of Health Sciences and others*, 2012 (7) SCC 389 :

"..... 30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the

MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. (Refer *Arti Sapru v. State of J & K*, (1981) 2 SCC 484, *Chhavi Mehrotra v. DG, Health Services*, (1994) 2 SCC 370 and *Arvind Kumar Kankane v. State of U.P.*, (2001) 8 SCC 355.")

(emphasis is ours)

14. As indicated above, there is no criteria which the State Government has put in place, and therefore, we have no hesitation in coming to the conclusion that the entire exercise of according weightage to the in-service candidates, in terms of the proviso to Regulation 9(IV), is flawed.

14.1. Even, if, we were to ignore the factum of absence of criteria and accept the lists incorporated in Annexure VII to the prospectus, it is quite evident that *stricto sensu* only List C could have been accepted, which pertains to Government Hospitals under the control of DMRHS, which are, according to the State Government, located in remote and difficult areas.

14.2. As per the State Government's own document, i.e., prospectus, the other two lists pertain to PHCs located in hilly areas, which are under the DPH and DM & RHS. The State Government has put no material before us, which would demonstrate that the hilly areas, adverted to in List A and List B, are remote and/or difficult areas.

14.3. To our minds, a hilly/rural area can be a remote and/or difficult area, but every hilly/rural area need not, necessarily, be a remote and/or difficult area.

14.4. The State Government ought to have carried an exercise of examining closely as to whether the institutions, which are located in the districts, referred to List A and List B, can be classified as remote and/or difficult areas.

15. This brings us to the other issue as to whether or not, the State Government could have included, generally, PHCs, located in rural areas. Here again, the same principle, to our minds, would apply, which is that, unless the State Government is able to demonstrate that the PHCs, which are located in rural areas can be classified as remote and/or difficult areas, no weightage could have been given to the in-service candidates, who have rendered service in such PHCs.

15.1. During the course of arguments, learned AAG put before us a statistics pertaining to the numbers of seats, which were allocated in PG Degree and Diploma courses to in-service and non-service candidates. The statistics given to us, present, a startling state of affairs. PG degree course, which comprises of twenty four (24) specialities, admitted 700 in-service candidates, as against 34 non-service candidates in Government Colleges. The position was no better with regard to the self-financing colleges, in which, 124 in-service candidates were admitted, as against 19 non-service candidates. Similarly, with respect to the PG Diploma course offered in Government Colleges, qua 15 speciality courses, 299 in-service candidates were admitted, as against 33 non-service candidates. As against this, in self-financing colleges, 11 in-service candidates were admitted, whereas, only 5 non-service candidates were admitted.

15.2. The learned AAG sought to explain this huge distortion by advancing the argument that a lot many candidates, who would have not got admittance into the speciality course of their choice would have opted for the All India Quota as against State quota. In this behalf, learned AAG submitted that nearly 391 candidates belonging to State of Tamil Nadu, had sought admission in PG Degree Course under the All India quota. Even, if, we were to assume that this was the reason, though, this submission was vehemently opposed by the learned counsel for the petitioners, it still presents a skewed ratio. We must also state that this argument of the learned AAG is not supported by specific details as to what were the ranks obtained by the said 391 candidates in the common merit list. Without this crucial detail, this argument cannot be accepted.

15.3. As a matter of fact, if, proper criteria had been formulated and applied, common experience would show, of which, we can take judicial notice, that the candidates would have preferred to seek admission under the State quota, as it would have enabled them to stay close to their home and hearth.

15.4. Today in Court, we were provided, another set of statistics by the learned AAG. This showed that in 13 medical colleges under All India Quota 727 seats were available, out of which, 383 seats were filled by students from Tamil Nadu. Furthermore, out of the 383 seats, 8 were filled by in-service candidates and 375 seats were filled by non-service candidates. We have, quite clearly, a number of meritorious candidates have opted for the All India Quota, as they have

been denied their chosen speciality, on account of award of weightage to in-service candidates by unfairly identifying areas, which did not fall under the category "remote and difficult areas". The enormity of the damage caused by the State Government by its unfair actions is apparent from the following statistics, which we had asked for and were placed before us by the learned AAG. Due to paucity of space, we do not wish to incorporate in the judgement the entire material. Therefore, for the sake of brevity, we are giving some examples, as to how the failure on the part of the State Government to correctly identify remote and difficult areas has damaged the interest of meritorious candidates.

15.5. For this purpose, we had asked the State Government to produce before us, the rank obtained by the candidates, whose names appear in the merit list by factoring in both the weightage, as given by the State and by excluding the same. To cite a couple of examples, the following is noted:

Grade	NAME	WORKING STATION	Working Under	NEET MARKS	A	B	C	RURAL	TNR Districts	% of INCENTIVE	..	...	Rank, if excluded Rural & TNR
1	Buvaneshwari	Govt. PHC, Jangalpatti	DPH	1143.4007				3		30			69
2	Aiswarya Suyambulingam	Govt. UPHC, Pangudi	DPH	1115.4211				3		30			158
3	Pradhap P	Veerapandy PHC, Mugayur Block, Kallakurichi, Villupuram	DPH	1112.1014				3		30			172
4	Srinivasan M	Reddiarpatti UPHC, Tirunelveli	DPH	1102.4278				3		30			208
5	Pon Shankar Anandaraja	Govt. PHC, Thulukarpatti, Tirunelveli.	DPH	1100.3633				3		30			219
6	Karthkrajan R	UPHC, Vellalore, Madurai.	DPH	1093.5046				3		30			261
7	Subramanian A	S.R. in Radiology CMC, Chengalpattu	DME	1086.5959				3		30			308
8	R Venkateshwaran	Govt. PHC, Anthanallur, Trichy.	DPH	1077.9377				3		30			364
9	Jayaraja D	PHC, Komarakudi, Thiruvavur	DPH	1077.0494					3	30			370
10	Rohit K	Govt PHC, Ottanatham, Kovilpatti.	DPH	1076.1581				3		30			380
11	Arul Alex K	Govt. PHC, Muttam, Nagarkoil	DPH	1072.2717				3		30			409
12	Sathiya R	Govt. PHC, Vaniyankaval, Ariyalur.	DPH	1069.5486				3		30			430
13	Sivakumar G	Skkirankottai, Tirunelveli.	DPH	1068.9002				5		30			437

15.6. Besides this, we may also indicate that in certain cases, the State Government has shown that when incentive marks are excluded has improved, instead of becoming worse. This is because, the exclusion of weightage marks has only been done, in cases where the candidates were served either in rural PHCs or TNR Districts. In cases, where candidates had served in places referred to in List A, B and C contained in the Annexure VII of the Prospectus, the adjustment of weightage marks has not been carried out in the last column. This is contrary to what we had asked for. Some of the examples are as follows:

Grade	NAME	WORKING STATION	Working Under	NEET MARKS	A	B	C	RURAL	TNR Districts	% of INCENTIVE	..	...	Rank, if incentive is excluded
61	Lakshmanan C	Asst. Surg. G.H.Q.H. Ooty	DMS	1103.7935		2				20			2
77	R Hari Hara Subramanian	Asst. Surg. G.H.Q.H. Ooty	DMS	1083.686		2				20			3

15.7. It is important to note that, in all, statistics is given in respect of more than 4328 candidates. There are scores of such examples. We have noted only some of them, to highlight the extent of distortion that has taken place in drawing up the merit list.

15.8. We may also refer to a summarised statistics, as to how many in-service candidates have benefited, according to the State Government, by virtue of the methodology followed by it.

Sl. No.	Area for Incentive Marks	Number of the service candidates benefited
1	A (Hilly Primary Health Centre under Directorate of Public Health and Preventive Medicine)	0094
2	B (Hilly Government Hospitals under Directorate of Medical and Rural Health Services)	0037
3	C (Government Hospitals in Remote and Difficult area under Directorate of Medical and Rural Health Services)	0015
4	Rural Primary Health Centres	1354
5	T N R District (Thiruvarur, Nagapattinam and Ramanad Districts)	0244
	TOTAL	1744

16. At this juncture, we must also refer to another set of statistics, which was brought to our notice by the learned counsel appearing for the petitioner(s) in W.P.No.13088 of 2017. The data was supplied to us by the learned counsel,

apparently, based on a download from the website of NHSRC. This data reflected the following position vis-a-vis 39 Health Unit Districts (HUD) located in the State of Tamil Nadu: as in 2009.

Complied Date Sheet for State : Tamil Nadu									
Sl No	HUD	Number of facilities identified by State				Number of facilities identified by NHSRC			
		Inacce ssible	Most difficu lt	diffi cult	access ible	Inacc essib le	Most diffi cult	Diffi cult	acces sible
	Total	0	0	227	0	0	12	60	155

17. This brings us to the last part, as to what should be the relief that we can accord in the captioned petitions. As indicated right at the outset, Hon'ble Mr. Justice M. Sathyanarayanan, in his judgement, has indicated that the weightage given by the State Government, keeping in mind, the areas defined in the prospectus, need not be disturbed for the academic year 2017-2018. We are quite frankly hemmed-in by this observation, as otherwise, in our view, the entire merit list is flawed. Besides this, there is neither any challenge to the judgement dated 06.05.2017, nor did any of the petitioners insist on doing away with the three lists referred to in Annexure VII of the prospectus. If, we were to take the lists, as they are, in the light of the observations made hereinabove, only List C of the Annexure VII of the prospectus, would, perhaps, survive scrutiny.

17.1. However, since, the observations made in paragraphs 192 of Hon'ble Mr. Justice M. Sathyanarayanan's judgement does not proceed to discuss as to which are those areas referred to in the prospectus, that should be taken into account, while granting weightage, we would lean in favour of the candidates qua the present academic year, having regard to the areas mentioned in Lists A, B and C of Annexure VII appended to the prospectus. We have been persuaded to hold to this path, also for the reason that the learned AAG has informed us that a Committee has been formed by the State Government, which has already commenced the task of formulating criteria for identifying remote and/or difficult areas for academic year 2018-2019, in line with Regulation 9(IV).

17.2. Therefore, in so far as those areas, which are not referred to in the three lists contained in Annexure VII, in our view, cannot qualify as remote and/or difficult areas even for academic year 2017-2018, as they are, (even, if, greatest latitude is given), not covered, in our view, by the judgement of Hon'ble Mr. M. Sathyanarayanan. The identification and corresponding weightage to in-service candidates has been based, as it appears, on a mere ipse dixit. As indicated above, by the State Government's own admission, nearly 1747 areas, where, rural PHCs are located, have been taken into account, while, granting weightage to the in-service

candidates. The three lists referred to in Annexure VII to the prospectus advert to only 114 areas.

17.3. Therefore, weightage granted to the candidates working in rural PHCs, Government Hospitals and Government Medical College Hospitals, located in TNR Districts, will, accordingly, have to be reconfigured.

18. Before we conclude, we may also like to record that Mr.V.P.Raman, who appeared for MCI, was called upon to give MCI's perspective, having regard to the state of affairs, which got brought to light during the course of hearing. As a matter of fact, yesterday, i.e., 15.06.2017, we had, by a specific direction, called upon MCI to formally respond to the issues raised in the matters, as no counter affidavit has been filed on its behalf.

18.1. Mr.Raman, very helpfully, had short notice, did try to obtain instructions from MCI. We must record that we were tad disappointed by the response of MCI, as the MCI merrily stated that the responsibility to identify remote and/or difficult areas lay with the concerned State Government.

18.2. To our minds, one cannot quibble with this stand, if, one were to concentrate only on the literal language of the proviso to Regulation 9 (IV). However, since, MCI, under the Indian Medical Council Act, 1956, has been charged, inter alia, with the responsibility of maintaining the higher standards of medical education in the Country, having regard to the ground reality obtaining in the instant case, it ought to have, in our view, at least taken a stand, as to whether the situation, as it obtains, would further or dilute the professional standards, in the field of medicine. While there is no gainsaying that incentives have to be given, to ensure that, in the very least, primary health care is made available in remote and/or difficult areas, it cannot be done in a manner, that it completely erodes merit. Our sense of the matter is, in the instant case, merit has been given a complete go-by.

19. It may be relevant to note that when, the matter came up for hearing for the first time on 25.05.2017, it was made clear that admission, if made, or, to be made, would be subject to the final outcome of the writ petitions. As a matter of fact, because of the urgency, the petitions were placed before the Division Bench. On 09.06.2017, when, the petitions came up for hearing before us, the official respondents were directed not to fill up any seats, which were lying vacant on that date, i.e., 09.06.2017. This order has continued to date. We were, in fact, assured by the learned AAG that the interim order, issued by the Court, in the first instance, was made known to the candidates, who sought admission to postgraduate courses.

20. Before we proceed to reliefs, we may indicate that in W.P.Nos. 12246, 12424, 12425 and 12582 to 12585 of 2017,

challenge is, inter alia, laid to the merit list dated 07.05.2017. As a matter of fact, in W.P.No.12246 of 2017, by way of an amendment, challenge was also laid to G.O.Ms.No.1054, dated 06.05.2017. In W.P.Nos.12382 to 12386 of 2017, a direction has been sought qua the State Government to include hospitals located in Mundiampakkam Village, Villupuram District, under the category of remote and/or difficult areas, and accordingly, a consequential direction has been sought for grant of weightage in terms of Regulation 9(IV).

20.1. In W.P.No.13088 of 2017, a direction has been sought qua the State Government to prepare the merit list by providing weightage to in-service candidates, strictly in compliance with the prospectus, annexures and the judgement rendered in:W.A.Nos.453, 484, 490, 491 and 498 of 2017.

20.2. There is also one more writ petition filed, which is W.P.No.12423 of 2017, in which, challenge has been laid to clauses 10(b) and 10(f) contained in prospectus dated 27.03.2017. This writ petition along with pending applications, we intend to deal with by a separate order.

21. Thus, having regard to the reliefs sought for in various petitions and the foregoing discussion on the matter, we are inclined to grant the following reliefs :

(i) That G.O.Ms.No.1054, dated 06.05.2017, is quashed to the extent that amendments to prospectus dated 27.03.2017, which allow the State Government to grant weightage in terms of proviso to Regulation 9(IV) qua PHCs located in rural areas and to the Government Hospitals/PHCs/Government Medical College Hospital located in TNR Districts.

(ii) The merit list dated 07.05.2017, as drawn up, though, is completely flawed, is saved to the extent weightage is granted to in-service candidates, who have worked in areas/districts in List A, B and C in Annexure VII to the prospectus dated 27.03.2017.

(iii) Given the urgency in the matter, the State Government will reconfigure the merit list in the light of the discussion hereinabove, within a period of three (3) days, and act accordingly.

22. The writ petitions, referred to in paragraph Nos.20 and 20.1, are disposed of, in terms of the aforesaid directions. Resultantly, all pending applications shall stand closed, including W.M.P.Nos.16115 to 16119 of 2017. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gg/sl

To

1. The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Director of Medical Education,
The Directorate of Medical Education,
Kilpauk, Chennai-600 010.
3. The Selection Committee,
The Directorate of Medical Education,
Kilpauk, Chennai-600 010.
4. The Secretary,
Medical Council of India,
Pocket 14 Sector 8,
Dwarka Phase I, New Delhi-110 077.
5. The Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai,
Little Mount, Guindy,
Chennai-600 032.
6. The State Secretary,
TamilNadu Government Doctors Association
DAOS Quarters, Government Stanley Medical College,
Chennai 01.

+1cc to Mr.A.Devanarendearan, Advocate, S.R.No.42753
+1cc to Mr.D.Ravichander, Advocate, S.R.No.42754
+1cc to Mr.V.P.Raman, Advocate, S.R.No.42751
+1cc to the Government Pleader, S.R.No.42755
+1cc to Mr.G.Sankaran, Advocate, S.R.No.42778 (19/06/2017)
+2cc to Mr.R.N.Amarnath, Advocate, SR.No.42777 (19/06/2017)
+1cc to Mrs.S.R.Anitha, Advocate, SR.No.42908 (22/06/2017)
+1cc to Mr.M.A.Balasubramanian, Advocate,
S.R.No.43059 (30.06.2017)

Writ Petition Nos.12246 of 2017, etc. batch

PPA, SKS & PVS (CO)
CA (16/06/2017)