

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-05-2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

AND

THE HONOURABLE Mr.JUSTICE P.D.AUDIKESSAVALU

W.A.Nos.1051, 1117 to 1124 of 2018 and
C.M.P.Nos.8833, 9054 to 9069 of 2018

W.A.No.1051 of 2018

- 1.The State of Tamil Nadu,
Rep by its Principal Secretary to
Government,
Health and Family Welfare
Department,
Secretariat, Fort St.George,
Chennai 600 009.
 - 2.The Director of Medical Education,
Kilpauk, Chennai 600 010.
 - 3.The Secretary,
Selection Committee,
The Directorate of Medical Education,
Kilpauk, Chennai 600 010.
- ... Appellants

Vs

1.Dr.P.Pravin

2.Dr.M.Mahesh

3.Dr.G.Ramesh Kumar

4.Dr.T.Rengaraj

5.The Government of India,
Rep by its Secretary to
Government,
Ministry of Health and Family Welfare,
Room No.348, 'A' Wing,
Nirman Bhavan,
New Delhi 110 011.

6.The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwarka,
New Delhi 110 077.

... Respondents

PRAYER : These appeals are preferred under Clause 15 of the Letters Patent, seeking to set aside the order of the learned single Judge passed in W.P.Nos.7231 of 2018 etc., dated 18.04.2018.

For Appellants in : Mr.Mani Shankar, AAG, assisted by
W.A.Nos.1051, 1117 to Mr.T.N.Rajagopalan,
1123 of 2018 Government Pleader

For Appellant in : Mr.P.Wilson, Senior Counsel for
W.A.No.1124 of 2018 Mr.Richard Wilson

For Respondents in : Mr.G.Sankaran for
W.A.Nos.1051 of 2018 Mr.S.Nedunchezhiyan for RR1 to 4
: Mr.V.P.Raman, for RR5 & 6

For Respondents in : Ms.Nalini Chidambaram, (SC) for
W.A.Nos.1117 to 1123 Mr.R.Kannan for R1
of 2018 : Mr.V.P.Raman for R2

For Respondents in : Mr.G.Sankaran for
W.A.No.1124 of 2018 Mr.S.Nedunchezhiyan for RR1 to 4
: Mr.Mani Shankar, AAG assisted by
Mr.T.N.Rajagopalan,
Government Pleader for RR6 to 8

COMMON JUDGMENT

V.PARTHIBAN, J.

All these Appeals arise out of order passed by the learned Single Judge in a batch of Writ Petitions touching upon the action taken by the Government towards implementation of proviso to Sub-clause (V) of Regulation 9 of the Post Graduate Medical Education Regulations, 2000 (hereinafter referred to 'the Regulations 2000').

2. The brief facts and the circumstances which necessitated the filing of the present Appeals need to be stated in order to understand the background of the

controversy which came up for consideration before the learned Single Judge as well as before this Bench.

3. Tracing back the recent history and the genesis of controversy from the last academic year 2017-18, seeds of controversy were sown by litigious Doctors in challenging the implementation of proviso to Sub-clause IV of Regulation 9 of the Regulations 2000 for the last academic year 2017-18. It appears that originally a Doctor had approached this Court by filing the Writ Petition seeking to implement the proviso to Sub-clause IV of Regulation 9 of the Regulations 2000. The proviso to Sub-clause IV of Regulation 9, including Sub-clause and Regulation 9 is extracted below:

"9. Procedure for selection of candidate for post-graduate courses shall be as follows:

I) to III)

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.

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."

4. It appears that the Writ Petitions were allowed and thereafter, the Writ Appeals were filed by the aggrieved parties and the learned Division Bench of this Court gave a split verdict by its judgment dated 03.05.2017 and hence the matter was referred to a learned third Judge, who in turn had given his judgment on 6.5.2017 holding that there was no proper implementation of proviso to Sub-clause IV of Regulation 9 of Regulations 2000. In pursuance of the orders passed, the Government had approached the Hon'ble Supreme Court of India by way of Special Leave Petitions, we are informed that notice was ordered in the S.L.Ps.

5. In the mean while, the Government had re-done the exercise of identifying the class of persons entitled to the benefit envisaged under proviso to Sub-clause IV of Regulation 9 and issued a Government Order in G.O.Ms.No.1054 dated 06.05.2017. The said G.O was also put to challenge in a batch of Writ Petitions. When the matter came up for consideration before the Division Bench

of this Court, questioning the correctness of the G.O.Ms.No.1054 dated 06.05.2017 in W.P.No.12246 of 2017, wherein, the learned Division Bench of this Court accepted the contentions put forth on behalf of the doctors/petitioners therein and quashed the said G.O. to the extent indicated in its judgment dated 16.6.2017 which reads as under:

"That G.O.Ms.No.1054, dated 06.05.2017, is quashed to the extent that amendments to Prospectus dated 27.3.2017 which allow the State Government to grant weightage in terms of proviso to Regulation ((IV) qua PHCs located in rural areas and to the Government Hospitals/Primary Health Centres/Government Medical College Hospitals located in TNR Districts.

Against which, the Government has once again approached the Hon'ble Supreme Court of India by filing Special Leave

Petitions. It appears that Hon'ble Supreme Court of India has granted stay of the judgment passed by the High Court and in view of the stay granted by the Hon'ble Supreme Court, the admissions for the academic year 2017-18 had been completed, on the basis of the then existing instructions/Court orders.

6. While matters stood thus, the Hon'ble Supreme Court of India in the connected S.L.P(Civil Appeal) Nos.16380 and 16381/2017, disposed of the appeals vide its order dated 31.01.2018 on the basis of submissions made by the Government that the State has initiated the process of identifying the remote and difficult areas for grant of weightage of marks for the in-service candidates for the academic year 2018-19. After recording the submissions, the Hon'ble Supreme Court of India had directed the Government to complete the said process by 10.03.2018 and notify the remote and difficult areas in terms of its earlier decisions rendered in ***"State of Haryana and***

another versus Dr.Narendra Soni and others" reported in (2017) 14 SCC 642 and "***Dr.Amit Bagra and others Vs. State of Rajasthan"*** made in S.L.P.No.11692 of 2017 batch, dated 15.12.2017.

7. During the pendency of the above Special Leave Petitions, the Government had already constituted a Committee through G.O.Ms.No.466 dated 11.12.2017 for the purpose of identifying and re-defining the remote and difficult areas for the purpose of awarding incentive marks to the in-service candidates who seek for admission to the Post Graduate degree/Diploma courses for the academic year 2017-18. In the said G.O, the Committee comprising following members were constituted:

1. Dr.P.Umanath, IAS,
Managing Director,
Tamil Nadu Medical Services
Corporation ... Chairman
2. The Director of Public Health
& Preventive Medicine,
Chennai-10 ... Member

3. The Director of Medical Education,
Chennai-10 ... Member
4. The Director of Medical and Rural
Health Services, Chennai-06. ... Member
5. One Demography expert from the
University of Madras/Anna University
/Department of Statistics as decided
by the Chairman
6. Additional Director of Medical Education
/Secretary, Selection Committee, O/o
the Director of Medical Education,
Chennai-10. ... Member

The terms of reference for the Committee have also been set out, which are reproduced as under:

"(i) The Committee can get suggestions from the Head of Departments, Tamil Nadu Government Doctors Association and other Associations and interested stake holders on finding out the remote/difficult areas for awarding incentive marks to the service Doctors in the said areas in consonance with the Medical Council of India's Post Graduate Regulations.

(ii) The Committee would give the

report/recommendations, for identifying the remote/difficult areas for awarding incentive marks to Service Doctors to Government within a month's time.

(iii) The Committee would also look at tightening the rules vis-a-vis deputation/diversion as well as Post Graduate Service after acquiring the degree."

8. Thereafter, the committee had examined and deliberated on the terms of reference and submitted its report. The Government, by its letter dated 26.02.2018, had uploaded the report on the website also. The Committee has given various recommendation and as far as these appeals are concerned, what is relevant is the recommendations in relation to the implementation of proviso to Sub-clause IV of Regulation 9 of the Regulations 2000, which are stated as under:

"Category (A): Posts eligible for 100% of the maximum permissible incentive marks:

1. Posts in all Government health institutions located in hilly areas, notified earlier in the prospectus for ADMISSION TO POST GRADUATE DEGREE/DIPLOMA/6 YEARS M.Ch. (NEURO-SURGERY COURSES 2016-17 session (As per G.O.(D) No.1680, Health and Family Welfare (ME) Department dated 31.12.2015) and subsequent additions for new institutions in such areas, if any.

2. All posts in all Government institutions in backward districts with difficult areas, having low density of doctors, high vacancies and poor health indicators, as per Annexure-I, except those posts excluded under Category (C).

3. Posts in all CEMONC/Trauma/Accident/Emergency care/NICU/SNCU units, irrespective of the location of such units in any type of institution, district and geography.

Category (B): Posts eligible for 40% of the maximum permissible incentive

marks.

Posts in all Government Institutions, except such institutions coming under Category (A) and (C).

Category (C): Posts not eligible for any incentive marks.

1. Posts in all medical college hospitals, except such specific difficult areas of functions as defined in Category (A.3)

2. Posts in all Government Health Institutions located within municipal and corporation limits except such areas defined under category (A)."

9. In pursuance of the Committee's recommendations, the Government had issued G.O.Ms.No.75 dated 09.03.2018, accepting the recommendations and identified the places for conferment of benefit envisaged under proviso to Sub-clause IV of Regulation 9 of the Regulations 2000 and the list of places so identified were annexed to the said Government Order. The said order is one of the subject

matters of challenge before the learned Single Judge. Subsequently, it appears that the Government had issued another G.O. on 23.03.2018, namely G.O.Ms.No.96, Health and Family Welfare (MCA-1) Department, revising the list of areas originally notified in G.O.Ms.No.75 dated 09.03.2018. This order was also put to challenge in the Writ Petition.

10. In the mean while, the Government has issued Gazette Notification, setting out the admission schedule on 20.02.2018 for the academic year 2018-19 for admission to the Post Graduation Degree/Diploma courses for the State of Tamil Nadu. As per the notification, the last date for closure of admission is 31.05.2018. A Prospectus was also issued by the Government and as per Clause 16 of the Prospectus, the additional weightage of marks as contemplated under proviso to Sub-clause IV of Regulation 9 of Regulations 2000 was also provided. The Clause 16 of the Prospectus is extracted as follows:

"16. The service candidates shall

be awarded an additional weightage marks upto 10% of the marks secured in the NEET PG 2018 per year of completion of service in remote/difficult areas as notified in G.O.(Ms.) No.75 Health and Family Welfare (MCA1) Department, dated 09.03.2018 to maximum of 30% of marks secured in NEET-PG-2018. Fractional values of a year will not be counted for awarding weightage marks."

11. Aggrieved by the categorization of posts which are entitled for the additional weightage of marks as provided for under the proviso to Sub-clause IV of Regulation 9 of Regulations 2000 as spelt out in G.O.Ms.No.75 dated 09.03.2018, the doctors have approached this Court. The categorization as spelt out in the Government Order which was premised on the recommendations of the expert committee is once again extracted hereunder:

"Category-(A) – Posts eligible for 100% of the maximum permissible

incentive marks.

1. Posts in all Government Health Institutions located in hilly areas. The list of Primary Health Centres comes under the Directorate of Public Health and Preventive Medicine and the list of Government Hospitals comes under the Directorate of Medical and Rural Health Services is annexed to this Order in Annexure - II.

2. All posts in all Government Institutions in backward districts with difficult areas, having low density of doctors, high vacancies and poor health indicators. The list of backward districts is annexed to this Order in Annexure - I. The list of Primary Health Centres comes under the Directorate of Public Health and Preventive Medicine and the list of Government Hospitals comes under the Directorate of Medical and Rural Health Services is annexed to this Order in Annexure - II. -7-

3. Posts in all CEmONC/ Trauma/Accident/Emergency care

/NICU/SNCU Units, irrespective of the location of such units in any type of institution, district and geography. The list of Government Hospitals comes under the Directorate of Medical and Rural Health Services and the list of Government Medical College Hospitals comes under the Directorate of Medical Education, wherever the CEmONC/ Trauma/ Accident/ Emergency care /NICU/SNCU Units functioning is annexed to this Order in Annexure - II.

Category (B), Posts eligible for 40% of the maximum permissible incentive marks. Posts in all Government Institutions, except such institutions coming under Category (A) and (C). The list of Government Hospitals comes under the Directorate of Medical and Rural Health Services is annexed to this Order in Annexure-V and the Medical Officers working in these institutions can get the 40% of the marks out of 10% of marks per year at a maximum of 30% is annexed to this

order in Annexure - III.

Category (C) : Posts not eligible for any incentive marks.

1. Posts in all medical college hospitals, except such specific difficult areas of functions as defined in Category (A-3)

2. Posts in all Government Health Institutions located within municipal and corporation limits, except such areas defined under Category (A) is annexed to this order in Annexure - IV.

17. The list of the Places identified for getting incentive marks according to the categories (A), (B) and (C) mentioned in para 16 above are annexed to this orders in Annexure-II, III and IV respectively",

In the above background, what we could deduce is the controversies hover around the implementation of the proviso to Sub-clause IV of Regulation 9 of the Regulations 2000.

12. The issues broadly placed for consideration before the learned Judge, were that the recommendations of the expert Committee had not done their exercise properly and correctly and yardstick adopted by them for identifying the remote and difficult areas, has been flawed and the yardstick as such adopted by the Committee was not in consonance with the proviso to the Regulations 2000 and with the specific directions given in this regard by the Hon'ble Supreme Court of India. As far as the issues which are placed for consideration before the learned Judge and before this Bench, three Supreme Court orders appear to be relevant, viz., i) ***"State of Uttar Pradesh and others versus Dinesh Singh Chauhan"*** reported in (2016) 9 SCC 749; ii) ***"State of Haryana and another versus Dr.Narendra Soni and others"*** reported in (2017) 14 SCC 642 and ***"Dr.Amit Bagra and others Vs. State of Rajasthan"*** made in S.L.P.No.11692 of 2017 batch, dated 15.12.2017. As we could see the main thrust of arguments that had come up for consideration before the learned Judge

was that, the Committee had taken into consideration the extraneous factors and recommended the categorization which are eligible for the benefit envisaged under proviso to Sub-clause IV of Regulation 9 of Regulations 2000 and therefore, the adoption of the recommendations of the Committee by the Government as conveyed through G.O.Ms.No.75 dated 09.03.2017 is not in fulfilment of the proviso to the Regulations 2000, but the same runs contrary to the same and also contrary to the specific directions given by the Hon'ble Supreme Court of India as to the identification of the areas which can be defined as remote or difficult. Although, it appears from the Hon'ble Supreme Court of India that the definition of remote and difficult areas was not available in definite terms, yet the Hon'ble Supreme Court of India, has given broad guidelines as to how such areas to be identified and categorized. According to the aggrieved parties in the face of such direction and the guidelines which were evolved by the Hon'ble Supreme Court, the Committee has evolved its own agenda and

parameters for identifying the areas as remote and difficult in the State of Tamil Nadu, ignoring the directions of the Hon'ble Supreme Court.

13. Apart from the above, there were certain Writ Petitions filed by some of the doctors for their inclusion in the weightage category since they were excluded from the beneficial categorization of either A(1)(2)(3) or B and placed in C categorization, where no such weightage is provided for. The learned Judge, after adverting to various submissions and materials placed on record, has finally disposed of all the Writ Petitions by his order dated 18.04.2018. The learned Judge allowed the Writ Petitions challenging G.O.Ms.No.75, Health and Family Welfare Department, dated 09.03.2018 and G.O.Ms.No.96 Health and Family Welfare Department dated 23.03.2018 along with Clause 16 of the prospectus. According to the learned Judge, the identification was not properly done in terms of the directions issued by the Hon'ble Supreme Court of India

and also in terms of the proviso to Sub-clause IV of Regulation 9 of the Regulations 2000. The learned Judge after taking note of the fact that the large number of areas have been brought within the zone of categories A and B, thereby providing the weightage to almost all in-service candidates, and therefore, held that such identification cannot be countenanced both in law and on facts. In fact, the learned Judge has clearly observed in more than one paragraphs that almost the entire state was brought in within the frame work of weightage concession and therefore, such identification cannot be sustained both in terms of proviso to Sub-clause IV of Regulation 9 of the Regulations 2000 as well as the directions issued by the Hon'ble Supreme Court of India in this regard.

14. The learned Judge after holding as such, has directed the Government to re-do the entire exercise with the consultation of the expert Committee. Aggrieved by the order passed by the learned Judge, the appellants are

before this Court. The principal appellant before this Court is Government of Tamil Nadu. According to the Government, the learned Judge's order setting aside the impugned Government Orders and directing the Government to re-do the exercise with the consultation of the expert Committee, is flawed for more than one reason. Firstly, according to the Government, the categorization has been done only on the basis of the recommendations of the expert Committee, the question of once again re-doing the exercise with the consultation of the expert Committee does not arise at all. Secondly, the committee which was constituted for the specific purpose of identifying the remote and difficult areas, had finally recommended only on the basis of much deliberation and after taking note of various factors like density of doctors in the area, vacancy position and poor health indicators, etc., and therefore, such consideration by the Committee cannot be faulted with since the factors which were weighed with the expert Committee were quite material and relevant and cannot be

brushed aside as being completely extraneous or irrelevant. According to the Government, the Committee took note of various factors on the basis of the geographical conditions of the State and also with reference to the type of medical facilities which were available in the State. Therefore, the impugned G.O. which adopted the expert Committee's recommendations, cannot said to be unreasonable or arbitrary, warranting interference by the learned Single Judge. According to the Government, which was represented by the learned Additional Advocate General, the learned Judge has elaborately substituted his views in the place of the views of the Committee and proceeded principally on the reasoning that many areas have been included for grant of additional weightage for in-service candidates. According to the learned Additional Advocate General, such approach by the learned Judge, which was fact oriented, may not be correct, since the categorization had taken place only on the basis of the opinion of the expert Committee which was specifically constituted in

order to set right the earlier identification which was the subject matter of the challenge in the last academic year. The learned Advocate General would further submit that unless the recommendations of the Committee were completely out of the tune with the object which was sought to be achieved, the same did not call for any interference, particularly, when the last date for closure of admission is fixed on 31.05.2018.

15. That apart, Mr.P.Wilson, learned senior counsel would support the contentions of the Government, stating that there was nothing wrong or extraneous about the recommendation of the Committee and the learned Judge cannot sit in judgment over the recommendations of the expert Committee. He would also point out the fact that the finding of the learned Judge that out of 2816, Primary Health Centres, 2207 have been classified as remote and difficult areas including of all the hospitals and medical colleges in 16 Districts out of 32 Revenue Districts, is

factually incorrect. According to the learned Senior Counsel, only 977 primary health centres were located in remote and difficult areas, out of 2236 Primary Health centres and 809 Primary Health centres would be eligible for 4% of the incentive marks as they are categorized in rural areas under category B. Therefore, the learned Judge has erred in coming to the conclusion in favour of the challenge in the Writ Petition on the basis of incorrect facts and materials. According to the learned Senior Counsel, the learned Judge has taken one or two samples of identification and held the entire categorization was bad and directed to re-do the exercise. According to both the Additional Advocate General and Mr.P.Wilson, learned Senior Counsel, it would be too late in the day to re-do the exercise as that would completely upset the process of admission of Post Graduation Degree and Diploma courses for this academic year 2018-19, as admittedly, the last date of admission is 31.05.2018.

16. According to Mr. Wilson, learned senior counsel appearing for some of the doctors who are categorized as A(3), that there is nothing wrong in the Committee's recommendation for bringing the doctors into the fold of the weightage benefit on the basis of the areas of specialisation like trauma care, accident, etc., According to him, the doctors who were in such specialisation were burdened with onerous duties as compared to other general practitioners. Therefore, they are also entitled to be given weightage regardless of the location in which they are employed. According to him, once the discretion is given to the respective competent authorities/Government to identify the remote and difficult areas, the State of Tamil Nadu has chosen to bring within the ambit of the incentive benefit for the doctors who are employed in certain areas of specialisation. Such discretion which exercised by the Government on the basis of the recommendations of the expert Committee cannot said to be arbitrary or unreasonable.

17. Per contra, Mrs.Nalini Chidambaram, learned senior counsel and Mr.G.Sankaran, learned counsel opposed the appeals on the ground that the order passed by the learned Judge does not require interference, since the same was premised on sound materials and reasoning. According to the opposing counsels, the recommendations of the expert Committee, did not satisfy the directions issued by the Hon'ble Supreme Court of India, particularly in the case of **"State of Haryana and another versus Dr.Narendra Soni and others"** and **"Dr.Amit Bagra and others Vs. State of Rajasthan"** cited supra. They would draw the attention of this Court to the directions issued by the Hon'ble Supreme Court of India in Dr.Narendra Soni's case. In the said case, the Hon'ble Supreme Court of India has held as follows:

"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 7 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. Dwelling upon the past experiences on 02-07-2009, the Hon'ble Minister of Health and Family Welfare wrote to the Chief Ministers of States, about the challenges in reaching health services in hilly areas, desert areas, areas affected by Naxalite problem, areas having poor connectivity and un-served and under-served tribal areas. The third Common Review Mission (CRM) of the Ministry of Health and Family Welfare in November,

2009 invited suggestions from all States. After noticing drawbacks in the same, the Ministry of Health and Family Welfare requested the National Health System Resources Centre (NHSRC) to conduct an independent survey for categorization of difficult, most difficult or inaccessible areas and evolve a set of criteria. NHSRC evolved the criteria on the following five principles:

“a. That the facilities are identified on the basis of how difficult it is for service providers to go and work in these areas- not on how well the health programmes are faring or how difficult it is to provide services in these areas. b. That the basis of identification would be an objective and verifiable data base which measures difficulty in four dimensions: the difficulty posed by the remoteness of a rural area, the difficulty posed by natural and social environmental factors, the difficulty a family would have in terms of housing, water, electricity and schooling and the record of success of the system in filling up the post in the past. The data-base to be prepared would be stored in such a manner that it could be regularly updated. c. That once the data base is defined the scoring could be done by giving weightage to the various factors in any way the state or the center wants it, and if need be

different elements of the incentive package could be defined by different weightages and selections. d. Of the four dimensions of difficulty, the most important would be assumed to be the remoteness and physical inaccessibility of the area, while other factors would be considered only if the distance 10 from an urban area of district headquarters criterion was satisfied. Thus an extremist affected district could be as much a problem as distance, but if the facility is an urban or peri-urban area then it would not be the central issue in getting a doctor to that facility. This is based on an understanding that lack of willingness to work in remote areas is due to a combination of economic loss, social and (from community and family) and professional isolation and not so much of a problem as distance from an urban area. e. The criteria for difficulty should be measurable enough to withstand legal and political contestation, but there would be exceptions that need to be made and these could be made by addition of further qualifying rules and flexibilities that would be defined in writing wherever needed."

12. Annexure 1 to the draft note on "the measurement of inaccessibility and difficulty of health facilities" stipulates as follows:

"1. Accessible: Any health

facility less than 60 km from any district hospital/ district headquarters OR less than 60 km from any urban area- (not counting very small townships-) is accessible. It would not be considered difficult even if there are other adverse environments or housing situations. (exceptions only in extreme situations like Upper Himalayan districts or in some NE districts). In terms of scoring, these facilities within the 60km zone are scored A0. This cut-off of 60km is chosen as in most circumstances 60km is less than two hours motorable distance.

2. Inaccessible: Any health facility which is not on a motorable road or where the road gets cutoff for more than 6 months and one has to walk to reach the facility- is Inaccessible irrespective of other factors. Not to count as inaccessible, if the walking part is only within the village/town. (Motorable road to the village, not necessarily to the facility). A walking time of over half hour or 2 km distance is taken as cut-off. Usually above a one-hour walking time and 5 km distance, it is safe to declare it as "Inaccessible." At the lower limit, one needs to verify the data more carefully. In terms of scoring these are scored A4 or A5. A 5 is if the distance is over 15 km- or three hours walking time.

3. Difficult and Most difficult: If the facility is more than 60 km from urban area/ district headquarters it would be considered difficult if in addition

a. The facility is more than 30 km from block headquarter and over 10 km away from national highway or other main busy highway-irrespective of other adverse environment or housing criteria: OR

b. The facility is less in one of the above two distances (from block and from highway)but there are adverse environment factors or housing factors to compensate for it.
OR

c. If the road gets cut off for more than a month every year. In terms of scoring an A2 is difficult and A3 is most difficult A1 is accessible.

A facility which is over 60 km from any urban area or any district headquarters gives it a score of 12 A1. To this we add another score of 0.5 for being more than 30km from block HQ and another 0.5 for being more than 10 km off the national highway. This makes any facility conforming to paragraph "3 a" above get a score of A2.

If the facility had a score of A1 or A 1.5 score from its distance or for road cut-off reasons but as an environment score of more than 2 or an environment score of 1 plus a housing score or a vacancy score then this A1 or A 1.5 would become a net A2 and get categorised as difficult.

If the facility had a score of A 2 or A 2.5 from its distance scores and cut-off reasons- and then also has an environment score of more than 2 or an environment score of 1 plus a housing score or a vacancy score

then this A1 or A 1.5 it would become a net A3 and get categorised as Most difficult.

Lack of public transport including lack of a taxi service could also make an A2 into an A3.

4. Scoring for Environment: Any hilly, forest, tribal or desert or island area would attract an environment score of 1. These are not additive. If it is a facility located in a tribal hilly forest area, the environment score is still only 1- not 3. If the hills are above 5000 ft then one could put it as two. Or if the tribal areas has a high malaria problem (Falciparum and above API 5) in addition to it being hilly and forested one could put it as 2. We can also add one to three points for Left Wing violence depending on the stage of police operations. Generally other forms of conflict which are occasional and widely dispersed would not attract a disturbed area score. Factors like dacoit infested, caste conflicts etc are not given any score. The important point to note is that an environment 13 score would make an A1 to an A2 or an A2 into an A3. It would seldom make an A1 to A3 and it would never make an A0 into any level of difficulty.

5. Scoring for Housing: Poor quality of housing, lack of water supply and electricity, and lack of access to a higher secondary school within one hour of bus journey (30 km) also are scored. In combination with an environment score they could make an A1 to an A2 (difficult) or an

A2 to an A3 (most difficult), but would not make an A0 into a difficult category.

6. Scoring for Vacancy: If medical posts are vacant for one to three years we indicate it by V1 to V3 scores. This is just used to check whether we are on the right track. The pattern of vacancies is inconsistent and changing and the data on it is of too poor a quality to use it for decision making."

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."

18. The learned counsels would also draw the attention of this Court to the observations and the directions of the Hon'ble Supreme Court of India in ***Dr.Amit Bagra'*** case. In the said case, the Hon'ble Supreme Court of India has extenso reproduced the orders passed in ***Dr.Narendra Soni's*** case and finally held that the State Government concerned shall identify the remote as well as difficult areas in consonance with the directions as contained in ***Dr.Narendra Soni's*** case. The learned opposing counsels also submitted that the Special Leave Petitions disposed of

in respect of our State in the matter of ***Dr.Subashini Vs. Secretary to Government***, by order dated 31.01.2018, wherein the Hon'ble Supreme Court of India has directed the State to complete the process of identification by 10.03.2018 in terms of its order/directions rendered in aforesaid two cases.

19. According to the learned counsels, the present identification as conveyed through the impugned Government Orders did not meet the legal standards as held by the Hon'ble Supreme Court of India and the ostensible parameters adopted by the expert Committee were out of the tune with the directions given by the Hon'ble Supreme Court of India and therefore, the impugned categorization cannot be sustained in law.

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20. In addition, Mrs.Nalini Chidambaram, learned senior counsel stated that the State has shown undue preference to the in-service candidates and the

Government's action in passing impugned G.O. is a result of mala fide exercise of power. She would draw the attention of this Court to paragraph 12 of the affidavit filed in support of the Writ Petition filed by her client, stating that the Government had caved in to the repeated demands and the agitations by the in-service candidates protesting for preferential right in the matter of admission to Post Graduation Degree and Diploma courses in the State. She would therefore submit that the entire categorization is aimed at protecting the in-service candidates as against the fresh meritorious candidates and therefore, the categorization has to be re-done in terms of the order passed by the learned Judge.

21. The learned Additional Advocate General would rely on the decision rendered by the Hon'ble Supreme Court reported in "(2010) 8 SCC 372 (***Basavaiah (Dr.) versus Dr.H.L.Ramesh and others***), wherein, he would draw the attention of this Court to paragraphs 20 and 21, which are

extracted hereunder:

"20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinized the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinized the merits and de-merits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

"21. It is the settled legal position that the courts have to show deference and consideration to the

recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture."

22. He would submit that the Courts cannot take the recommendations of the expert Committee lightly and interfere with the same unless there was a compelling reasoning for doing so. In the instant case, the Committee comprised of the experts in the field and after much deliberations only, categorization was recommended and the same was adopted by the Government. In support of the above submission, Mr.P.Wilson, learned senior counsel

would also rely on the following decisions, viz.,

i) (2003) 4 SCC 289 (***Federation of Railway Officers Association and others versus Union of India***)", wherein, he would draw the attention of this Court to paragraph 12, which is reproduced hereunder:

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."

ii) "(2009) 8 SCC 582 (***Delhi Development Authority versus Rajendra Singh and others***), wherein, the Hon'ble Supreme Court of India has held that the decisions of the expert Committee cannot be interfered with by Court without adequate contra material. Relying on this, the learned senior counsel would contend that there was no contra material made available before the learned single Judge to interfere with the impugned categorization and in fact, the learned Judge has proceeded on certain nebulous facts and therefore, the order premised on such thin and slender reasoning, cannot be sustained.

iii) "(2016) 7 SCC 353 (***Modern Dental College and Research Centre and others versus State of Madhya Pradesh and others***), wherein, he would particularly rely upon paragraphs 149, 171 and 172 which are reproduced herein below.

"149. I have no hesitation in upholding the vires of the impugned legislation which empowers the state government to regulate admission process in institutions imparting higher education within the state. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of 'higher education' being one such field which directly affects the growth and development of the state, it becomes prerogative of the State to take such steps which further the welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and fee etc. governing the institutions running in that particular state except the centrally funded institutions like IIT, NIT etc. because no one can be a better judge of the requirements and inequalities-in-

opportunity of the people of a particular state than that state itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams.

"150 to 170.

"171. It is the obligation of the State under the Constitution to ensure the creation of conditions necessary for good health including provisions for basic curative and preventive health services and assurance of healthy living and working conditions. Under Articles 39(e), 39(f) and 42 of the Constitution, obligations are cast on the State to ensure health and strength of workers, men and women; ensure children are given opportunities & facilities to develop in a healthy manner and to secure just & humane conditions of work and for maternity relief, respectively. Article 47 of the Constitution makes improvement of public health a primary duty of the

State. However, right to health is no longer in the sole domain of Part IV of the Constitution. In [Kirloskar Brothers Ltd. v. Employees' State Insurance Corp.](#) (1996) 2 SCC 682, it was held that right to health is a fundamental right of workers and the maintenance of health is most imperative constitutional goal whose realization requires interaction of many social and economic factors. In [Rajasthan Pradesh Vaidya Samiti, Sardarshahar and another v. Union of India and others](#) (2010) 12 SCC 609, this Court held that the citizens of this country have a right under [Article 21](#) of the Constitution of India which includes the protection and safeguarding the health and life of public from mal-medical treatment. More recently in [Centre for Public Interest Litigation v. Union of India](#) (2013) 9 SCR 1103, again this Court has recognized that right to life under [Article 21](#) includes right to health.

"172. Maintenance and improvement of public health and to provide health care and medical services is the constitutional obligation of the State. To discharge this constitutional obligation, the State must have the doctors with professional excellence and commitment who are ready to give medical advice and services to the public at large. State can satisfactorily discharge its constitutional obligation only when the aspiring students enter into the profession based on merit. None of these lofty ideals can be achieved without having good and committed medical professionals."

According to the learned senior counsel, it is the ultimate duty of the Court to provide good health conditions and therefore, the discretion exercised by the Government in categorization is only in furtherance of the discharge of basic duty cast upon the State.

23. The sum and substance of the submissions of the learned counsels against the impugned judgment, is that the discretion which is given to the State concerned for identifying the remote and difficult areas is not in dispute and such discretion in the present case has been exercised fairly, properly and correctly and therefore, the categorization as spelt out in the impugned Government Orders, was on the basis of the recommendations of the expert Committee and therefore, it requires no interference. Therefore, the impugned order passed by the learned Judge is incorrect and calls for interference.

24. On the other hand, the substance of the submissions made by the opposing counsels is that the categorization as recommended by the expert Committee and adopted by the Government is completely at variance with the proviso to Sub-clause IV of Regulation 9 of Regulations 2000 and also not in consonance with the directions issued by the Hon'ble Supreme of India,

particularly in "**Dr.Narendra Soni's** and "**Dr.Amit Baghra's** cases.

25. Heard all the learned counsels at length, perused entire materials and pleadings placed on record.

26. What ultimately boils down for this Court to consider is that, whether the categorization as adopted by the Government is in consonance with the parameters laid down by the Hon'ble Supreme Court of India in the aforesaid decisions and also whether it fulfils the object as envisaged in the proviso to Sub-clause IV of Regulation 9 of the Regulations 2000 and whether the order passed by the learned Judge in the above circumstances, requires any interference.

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27. The issues which ultimately fall for consideration before this Court can be summed up as follows:

(i) Whether the recommendations

of the expert Committee adopted by the Government and conveyed through the impugned G.Os., are liable to be held as not in consonance with the directions of the Hon'ble Supreme Court and need to be addressed by this Court from different dimensions?

(ii) Whether the impugned orders adopting the recommendations of the expert Committee in respect of the categorization viz., A, B and C, fall in line with the directions of the Hon'ble Supreme Court as well as what is envisaged in Proviso to Sub-clause IV of Regulation 9 of the Regulations 2000?

(iii) Whether the categorization as such in entirety to be held as incorrect and wrong as held by the learned single Judge of this Court in the impugned in his order?

(iv) Whether the plea of expediency pleaded by the Government

i.e., the last date of closure of admission of Post Graduate Degree /Diploma courses is 31.05.2018, has to be borne in mind while reaching ultimate decision in these appeals?

(v) Whether the categorization as adopted by the Government can be divided one falling in line with the proviso to Sub-clause IV of Regulation 9 and the directions of the Hon'ble Supreme Court in the decisions cited supra and the other falling outside the scope of the regulations and parameters enunciated by the Hon'ble Supreme Court of India?

28. As regards the categorization of A(1) and A(2), it appears that the Committee had adopted certain material factors like density of post of doctors, vacancy position and health indicators and on such basis, the Committee had recommended that it would fall within the remote and difficult areas in the State. In this connection, we find that

such categorization cannot be said to be in strict conformity with the parameters laid down in the directions of the Hon'ble Supreme Court in ***Dr. Narendra Soni*** and ***Amit Bagha*** cases and this aspect of the matter requires to be traversed in further detail and adverted to in proper perspective. It is, therefore, imperative that the Government takes a comprehensive initiative to identify remote and difficult areas entirely in line with the directions of the Hon'ble Supreme Court in order to infuse greater objectivity and validity in such identification.

29. At the same time, we are, however, of the view that the reasoning which went into the identification of categorization of A(1) and A(2) cannot *per se* be held to be completely extraneous or basically erroneous so as to be undeserving for any acceptance in terms of the proviso to sub-clause IV of Regulation 9 of the Regulations, 2000. Moreover, as rightly contended by the Additional Advocate General, when a committee of experts had recommended on

the basis of deliberations and such recommendations unless the same are found to be extremely blatant, unreasonable or manifestly arbitrary and unduly favouring one class of incumbents/doctors who are not entitled to such preferential right, the Court should be wary of substituting its views in the place of the recommendations of the expert committee. Therefore, we hold that inasmuch as the categorization of A(1) and A(2) does not suffer from any legal or factual infirmity on its whole, the same cannot be invalidated.

30. Insofar as the categorization of A3 is concerned, we are of the considered view that it completely falls outside the scope of what is envisaged in proviso to Sub-clause IV of Regulation9 of the Regulations 2000 since a separate classification has been made solely on the basis of areas of specialization, which in our opinion, does not meet the object which is sought to be provided for under the *proviso* to Sub-clause IV of Regulation9 of the Regulations

2000. The attempt by the Government to bring in a separate category of Doctors and pitchfork them along with dissimilarly placed posts as identified with reference to location being remote and difficult areas as envisaged in the Regulations 2000, cannot be countenanced both in law and on facts for the simple reason that such categorization of bringing in Doctors on the basis of the areas of specialisation amounts to indirect legislation and also tantamount to amending proviso to Sub-clause IV of Regulation 9 of the Regulations 2000. Such executive power does not fall within the domain of the State and therefore, the categorization A(3) is *per se* a colourable exercise of power on the part of the State and therefore, the same is unconstitutional and illegal, as being contrary to central legislation.

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31. We are also of the opinion that while categorizing A(3), certain extraneous and irrelevant considerations which are alien to the object expressed in Regulation 9, had

been taken into account and therefore, such categorization runs contrary to the letter and spirit of the Regulations, 2000. The proviso to Sub-clause IV of Regulation 9 only deals with rural and remote and/or difficult areas and therefore, any identification and categorization can only be centered on the geographical location coupled with allied factors as laid down by the Hon'ble Supreme Court of India. The identification on the basis of the areas of specialisation alone, irrespective of its geographic location, therefore, does not have any sanction and the same is without the authority of law. Such categorization by the Government amounts overreaching its power of discretion relegated and hence the same is to be held as capricious, irrational and violative of Article 14 of the Constitution of India. Therefore, this Court is of the view that the categorization A(3) as spelt out in G.O.Ms.No.75, dated 09.03.2018, is to be struck down and the same is struck down.

32. As regards the categorization of B is concerned,

though it includes all Government Hospitals under the Directorate of Medical and Rural Health Services, yet, it is qualified by and restricted by categorization A & C. On the basis of the said restriction and qualification, the benefit which is available under category B, is only providing for non-urban areas. This category B probably and presumably was introduced in anticipation of subsequent amendment brought in by the Medical Council of India dated 05.04.2018, by adding 'rural areas' in the proviso in addition to 'remote and difficult areas'. At the same time, the Government also felt that the rural areas need not be placed on parity with the remote and difficult areas in order to extend 100% weightage as contemplated, had given only 40% of the weightage of marks obtained in the National Eligibility cum Entrance Test (NEET). Since the Doctors employed in the rural areas are forming a class by themselves, they have been treated differently and we do not find anything amiss with such categorization extending benefit of lesser weightage. We therefore, hold that the

categorization (B) with the reduced weightage of 40% is in order atleast for the time being and the same does not call for any interference.

33. Even otherwise, we are of the opinion that the schedule of examination fixed the last date of closure as 31.05.2018, in fact, it could be seen in the earlier proceedings which were pending before this Court and the Hon'ble Supreme Court of India, the admission of Post Graduate Degree/Diploma courses was allowed to be completed even before a final decision could be taken for resolving the controversy one way or the other. This was done on the basis of expediency, in view of the dead line fixed for closure of admissions.

34. Needless to mention that any further deferment of admission at this stage, will completely undermine the selection process and may even result in foregoing the entire quota of Post Graduate admissions for the State.

Such scenario cannot be countenanced for serving larger public interest. Hence, we are of the considered opinion that it would not be practicable to undertake the task of categorisation afresh for this academic year 2018-19 as directed by the learned Judge in the judgment under appeal.

35. Although it appears that the Committee which had recommended the categorization might not have considered certain parameters laid down by the Hon'ble Supreme Court of India, yet the basis adopted by the Committee cannot completely be held as wholly extraneous and uncalled for. In the above circumstances, we hold that in order to complete the admission process of the Post Graduate Degree/Diploma courses, the categorization as provided in the impugned Government Order, sans A(3) shall be construed to be valid for the purpose of admission for the academic year 2018-19.

36. In conspectus of the above consideration, we summarise our findings as follows:

i) the recommendation of the expert Committee and as adopted in respect of categorization of (A) and (B) does not strictly fall in line with the directions of the Hon'ble Supreme Court as well as what is envisaged in proviso to Sub-clause IV of Regulation 9 of the Regulations 2000. As a corollary to that the categorization of A(3) providing additional benefit of weightage in marks for the in-service candidates on the basis of areas of specialisation, cannot be countenanced in law and the same also runs contrary to the explicit provision as provided in proviso to Sub-clause IV of Regulation 9 of the Regulations 2000;

ii) The categorization made by the expert Committee sans A(3) cannot held to be entirely incorrect or wrong as held in the impugned judgment;

iii) Since the categorization as evolved by the expert Committee and adopted by the Government

as conveyed through the impugned G.O., cannot be said to be entirely incorrect and wrong as held in the impugned judgment in view of our conclusion stated supra;

iv) The plea of expediency regarding closure of last date of admissions being 31.05.2018 is also important factor to be taken into consideration since the admission to the Post Graduate Degree/Diploma Courses serves larger public interest;

v) The categorization as adopted by the Government can be divided into, one falling in line with the proviso to Sub-clause IV of Regulation 9 and in line with the directions of the Hon'ble Supreme Court and the other falling outside the scope of the Regulations 2000 and the directions of the Hon'ble Supreme Court of India. The glaring example of the latter is A(3) which is completely alien to what is envisaged in the proviso to Sub-clause IV of Regulation 9 of the Regulations 2000 as well as the directions of the Hon'ble Supreme Court.

37. In view of the above, the Government is directed to complete the process of selection of medical Post Graduate Degree / Diploma Course in the medical education and proceed with the admission as indicated in the schedule for the academic year 2018-19. It is made clear that the weightage (incentive) by way of additional marks ought not to be extended to A3 category which as per the earlier conclusion, is not entitled to such benefit.

38. In the result, the Writ Appeals are partly allowed, the judgment of the learned single Judge is modified and the Writ Petitions are accordingly disposed of on the aforesaid terms. No costs. Consequently, all connected CMPs are closed.

39. Before parting with these appeals, we also take

note of certain concerned reservations expressed by the parties and the manner in which the areas identified by the Committee disregarding certain directions issued by the Hon'ble Supreme Court of India. In each time of such identification and categorization takes place, it is always put to challenge by the aggrieved section who were omitted to be included or section which is held not entitled and the admission process gets completely derailed every academic year. In such event, the Courts are forced to pass orders more on the basis of expediency only to protect the interest of the public at large. In order to avoid such recurrence in future towards categorization of Doctors who are employed in remote, difficult and rural areas for the purpose of benefit of additional weightage as envisaged in proviso to Sub-clause IV of Regulation 9, it is suggested that the Committee of experts may be headed by a retired Judge of the High Court. This is more so, when repeatedly such identification or categorization is put to challenge in the legal forum, so that the experts who are part of the

Committee, will have the benefit of legal acumen from the Judge concerned while making the recommendations for identifying the areas in tune with the proviso to Sub-clause IV of Regulation 9 and also in line with the directions of the Hon'ble Supreme Court of India and other High Courts. We do hope that the Government bear this in mind while constituting any further Committee/s for future academic years in respect of admissions to Post Graduate Degree / Diploma courses.

(V.P.N.J.) (P.D.A.J.)

17.05.2018

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Index : yes/no

Internet : yes/no

Speaking Order/Non-Speaking Order

To

- 1.The State of Tamil Nadu,
Rep by its Principal Secretary to
Government,
Health and Family Welfare
Department,
Secretariat, Fort St.George,
Chennai 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai 600 010.
- 3.The Secretary,
Selection Committee,
The Directorate of Medical Education,
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- 4.The Government of India,
Rep by its Secretary to
Government,
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New Delhi 110 011.
- 5.The Secretary,
Medical Council of India,
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New Delhi 110 077.

V.PARTHIBAN.J.,

and

P.D.AUDIKESAVALU.J.,

suk



Pre delivery judgment in
W.A.Nos.1051 and
1117 to 1124 of 2018

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17.05.2018