IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.7231 of 2018
W.P.Nos.7857 to 7861 of 2018
W.P.Nos. 8116 and 8117 of 2018 &
W.P.No.8442 of 2018

W.P.No.7231 of 2018:

1. Dr.P.Pravin
2. Dr.M.Mahesh
3. Dr.G.Ramesh Kumar
4. Dr.T.Rengaraj ... Petitioners

vs.

1. 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.

2. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009.

3. The Director of Medical Education,
Kilpauk, Chennai 600 010.

4. The Secretary,
Selection Committee,
The Directorate of Medical Education,
Kilpauk, Chennai 600 010.

5. The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi - 110 077. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of writ of certiorarified mandamus to call for the records relating to the impugned Government Order issued by the 2nd Respondent in G.O.Ms.No.75, Health and Family Welfare (MCA-1) Department, dated 09.03.2018 as amended in the subsequent Government Order issued by the 2nd Respondent in G.O.Ms.No.96 Health and Family Welfare (MCA-1) Department, dated 23.03.2018 and clause 16 of the Prospectus for admission to PG Degree/Diploma Courses in Tamil Nadu 2018-19 session issued by the 4th Respondent approved in G.O.(D) No.411, Health and Family Welfare Department, dated 15.03.2018 and to quash the same and consequently direct the Respondents to notify the remote/difficult areas with reasonable classification/identification of areas by following objective and standard parameters relating to remoteness/lack of connectivity/difficulties, etc. by including the working places of the Petitioners for awarding of incentive marks for admission to Post Graduate Medical Courses/Diploma Courses based on National Eligibility cum Entrance Test - PG 2018 and consequently select the Petitioners for Post Graduate Medical Course based on merit in the selection.

For Petitioners : Mr.G.Sankaran

For 1st Respondent: ***Mr.G.Baskaran CGSC**

For Respondents 2 to 4 : Mr.S.T.S.Moorthy, Addl. Advocate General assisted by Mr.C.Munusamy, Spl. Govt. Pleader Mr.A.Rajaperumal, Addl. Govt. Pleader & Mrs.V.Annalakshmi, Govt. Advocate

For 5th Respondent : Mr.V.P.Raman

W.P.Nos.7857 to 7861 of 2018:

Dr.N.Karthikeyan ... Petitioner in W.P.No.7857 of 2018
Dr.S.Ranjith Pratap ... Petitioner in W.P.No.7858 of 2018
Dr.Ganesa Sooria ... Petitioner in W.P.No.7859 of 2018
Dr.S.Aieswarya ... Petitioner in W.P.No.7860 of 2018
Dr.Bennet Philip, A. ... Petitioner in W.P.No.7861 of 2018

vs.

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.

4. The Medical Council of India,
   rep. by its Secretary,
   Pocket 14, Sector 8,
   Dwarka Phase I,
   New Delhi - 110 077.

5. The Chairman of the Committee,
   (Identification of Remote/Difficult Areas),
   Dr.P.Umanath, I.A.S.,
   Tamil Nadu Medical Services Corporation,
   Egmore, Chennai. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus, calling for the records of G.O.Ms.96, Health and Family Welfare Department (MCAI), dated 23.03.2018 herein, pertaining to admission to Post-graduate Degree/Diploma courses in Tamil Nadu Government Colleges, Government seats in self-financing Medical Colleges affiliated to Tamil Nadu Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University) for the academic year 2018-2019 and quash the same insofar as identifying and notifying Remote/Difficult areas for awarding incentives and consequently direct the Respondents 1 to 3 herein to admit the Petitioners herein in a PG Degree course 2018-2019 based on their NEET marks for the academic year 2018-2019.

For Petitioner in each W.P. : Mr.N.R.Chandran, Senior Counsel & Mr.V.Karthic, Senior Counsel for Mr.R.Kannan

For Respondents 1 to 3 & 5 : Mr.S.T.S.Moorthy, in each W.P. Addl. Advocate General assisted by Mr.C.Munusamy, Spl. Govt. Pleader Mr.A.Rajaperumal, Addl. Govt. Pleader & Mrs.V.Annalakshmi, Govt. Advocate

For 4th Respondent in each W.P. : Mr.V.P.Raman

W.P.Nos.8116 and 8117 of 2018:

Dr.Blesso Nezer ... Petitioner in W.P.No.8116 of 2018
Dr.S.Anand Kumar ... Petitioner in W.P.No.8117 of 2018

vs.

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.

4. The Medical Council of India,
rep. by its Secretary,
Pocket 14, Sector 8,
Dwarka Phase I, New Delhi - 110 077.

5. The Chairman of the Committee,
(Identification of Remote/Difficult Areas),
Dr.P.Umanath, I.A.S.,
Tamil Nadu Medical Services Corporation,
Egmore, Chennai. ... Respondents

Writ Petition No.8116 of 2018 filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus, calling for the records of G.O.Ms.96, Health and Family Welfare Department (MCAI), dated 23.03.2018 herein, pertaining to admission to Post-graduate Degree/Diploma

courses in Tamil Nadu Government Colleges, Government seats in self-financing Medical Colleges affiliated to Tamil Nadu Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University) for the academic year 2018-2019 and quash the same insofar as identifying and notifying Remote/Difficult areas for awarding incentives and consequently direct the Respondents 1 to 3 herein to admit the Petitioner herein in a PG Degree course 2018-2019 based on his NEET marks for the academic year 2018-2019.

Writ Petition No.8117 of 2018 filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of G.O.Ms.96, Health and Family Welfare Department (MCAI), dated 23.03.2018 herein, pertaining to admission to Post-graduate Degree/Diploma courses in Tamil Nadu Government Colleges, Government seats in self-financing Medical Colleges affiliated to Tamil Nadu Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University) for the academic year 2018-2019 and quash the same insofar as identifying and notifying Remote/Difficult areas for awarding incentives and consequently direct the Respondents 1 to 3 herein to admit Dr.Nithya herein in a PG Degree course 2018-2019 based on her NEET marks for the academic year 2018-2019.

For Petitioner in both W.Ps. : Mr.V.Karthic, Senior Counsel for Mr.R.Kannan

For Respondents 1 to 3 & 5 : Mr.S.T.S.Moorthy, in both W.Ps. Addl. Advocate General assisted by Mr.C.Munusamy, Spl. Govt. Pleader Mr.A.Rajaperumal, Addl. Govt. Pleader & Mrs.V.Annalakshmi, Govt. Advocate

For 4th Respondent in both W.Ps. : Mr.V.P.Raman

W.P.No.8442 of 2018:

R.Eurekha Rani ... Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by the Principal 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,
No.162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

3. The Selection Committee
rep. by its Secretary,
Post Graduate Medical Admission,
No.162, Periyar EVR High Road,
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 Dean,
Government Medical College and Hospital,
Omandurar Government Estate,
Triplicane, Chennai 600 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of mandamus, directing the 1st Respondent to include the Petitioner as eligible casualty Medical Officer of the Government Medical College Hospital, Omandurar Government Estate, Chennai under category A3 in G.O.(Ms) No.75, dated 09.03.2018 (Health and Family Welfare, MCA-1) and G.O.Ms.No.96, dated 23.03.2018 (Health and Family Welfare, MCA-1) issued by the 1st Respondent by extending the benefit of giving due weightage marks and consequently to direct the Respondents to consider the Petitioner's admission to Post Graduate Course for the year 2018-19 as in-service candidate.

For Petitioner : Mrs.Lesi Saravanan

For Respondents : Mr.S.T.S.Moorthy,Addl. Advocate General
1 to 3 & 5 assisted by
Mr.C.Munusamy, Spl. Govt. Pleader
Mr.A.Rajaperumal, Addl. Govt. Pleader
& Mrs.V.Annalakshmi, Govt. Advocate

For 4th Respondent : Mr.V.P.Raman

C O M M O N O R D E R

W.P.No.7231 of 2018 has been filed challenging G.O.Ms.No.75, Health and Family Welfare (MCA-1) Department, dated 09.03.2018 as amended in the subsequent Government Order issued by the 2nd Respondent in G.O.Ms.No.96 Health and Family Welfare (MCA-1) Department, dated 23.03.2018 and clause 16 of the Prospectus for admission to PG Degree/Diploma Courses in Tamil Nadu 2018-19 session issued by the 4th Respondent approved in G.O.(D) No.411 Health and Family Welfare Department, dated 15.03.2018 and for a consequential direction to the Respondents to notify the remote/difficult areas with reasonable classification/identification of areas by following objective and standard parameters relating to remoteness/lack of connectivity/difficulties, etc. by including the working places of the Petitioners for awarding of incentive marks for admission to Post Graduate Medical Courses/Diploma Courses based on National Eligibility cum Entrance Test - PG 2018 and consequently select them for Post Graduate Medical Course based on merit in the selection.

2. W.P.Nos.7857 to 7861 of 2018 and W.P.No.8116 of 2018 have been filed challenging G.O.Ms.96, Health and Family Welfare Department (MCAI), dated 23.03.2018, pertaining to admission to Post-graduate Degree/Diploma courses in Tamil Nadu Government Colleges, Government seats in self-financing Medical Colleges affiliated to Tamil Nadu Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University) for the academic year 2018-2019 and quash the same insofar as identifying and notifying Remote/Difficult areas for awarding incentives and consequently direct the Respondents 1 to 3 herein to admit the Petitioners herein in PG Degree course 2018-2019 based on their NEET marks for the academic year 2018-2019.

3. W.P.No.8117 of 2018 has been filed challenging G.O.Ms.96, Health and Family Welfare Department (MCAI), dated 23.03.2018, pertaining to admission to Post-graduate Degree/Diploma courses in Tamil Nadu Government Colleges, Government seats in self-financing Medical Colleges affiliated to Tamil Nadu Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University) for the academic year 2018-2019 and quash the same insofar as identifying and notifying Remote/Difficult areas for awarding incentives and consequently direct the Respondents 1 to 3 herein to admit Dr.Nithya in a PG Degree course 2018-2019 based on her NEET marks for the academic year 2018-2019.

4. W.P.No.8442 of 2018 has been filed seeking a direction to the Respondents to include the eligible casualty Medical Officer of the Government Medical College Hospital, Omandurar Government Estate, Chennai under category A3 in G.O.(Ms) No.75, dated 09.03.2018 (Health and Family Welfare, MCA-1) and G.O.Ms.No.96, dated 23.03.2018 (Health and Family Welfare, MCA-1) issued by the 1st Respondent by extending the benefit of giving due weightage marks and consequently to direct the Respondents to consider the Petitioner's admission to Post Graduate Course for the year 2018-19 as in-service candidate.

5. Though all these Writ Petitions involve an identical issue, the facts are being dealt with separately, as under :

W.P.No.7231 of 2018:

6. Petitioners herein are Medical Officers in Government service of the Government of Tamil Nadu, serving in Rural and Primary Health Centres.

6.1. It is stated by the Petitioners that Medical Council of India Act, 1956 has been amended with an insertion of Section 10-D of Central Act 39 of 2016 to conduct uniform entrance examination for admission for Under Graduate and Post-Graduate levels and consequently, the provisions of Post Graduate Medical Education Regulations, 2000 has been amended with reference to Regulation 9 relating to the procedure for selection of candidates for P.G. courses. As per Regulation 9(I), "there shall be a single eligibility cum entrance examination viz., National Eligibility cum Entrance Test for admission to Post Graduate Medical courses" in each academic year and as per Regulation 9(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 marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to P.G. courses from the said merit lists only.

6.2. As per the proviso to Regulation 9(IV), in determining the merit of candidates who are in Government service, 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 (NEET) and that the remote and difficult areas shall be as defined by the State Government/Competent Authority from time to time.

6.3. Insofar as the State of Tamil Nadu is concerned, the Government has followed the procedure by giving incentive marks to the in-service Doctors for getting admission in P.G. Degree/Diploma courses in Government Medical Colleges. While so, one Dr.Rajesh Wilson filed a Writ Petition in W.P.No.6031 of 2017 to implement Regulation 9(IV) of P.G. Regulations, 2000 as amended, by adding 30% of incentive marks on the marks secured by the Petitioner in the NEET examination while preparing the rank list for admission to P.G. Medical courses for the academic year 2017-18. The Writ Petition was allowed as per the order dated 17.04.2018 with directions to the State Government to follow Regulation 9(IV) of P.G. Regulations, 2000 of Medical Council of India, without any deviation.

6.4. Subsequently, the State Government filed Writ Appeal No.484 of 2017, wherein, the legality of other clauses in the Prospectus for the year 2017-18 were also adjudicated and there was a split verdict on 03.05.2017 and hence, the matter was referred to a third Judge, who passed orders on 03.05.2017, holding that incentive marks should be given in accordance with Regulation 9 of P.G. Regulations, 2000. However, the Court held that the decision of the Government in identifying the rural/remote/difficult areas for the year 2017-18 does not warrant any interference due to paucity of time.

6.5. In this regard, the State Government issued orders in G.O.(D) No.1054, Health and Family Welfare Department, dated 06.05.2017 to notify the remote/difficult areas by including all the areas already notified in the previous year. The said Government Order was subjected to challenge in a batch of Writ Petitions, wherein, orders were passed by this Court on 16.06.2017 striking down the same. Challenging the said order of this Court, Appeals were filed before the Apex Court in S.L.P.Nos.16541 to 16542 of 2017, and an order of interim stay was granted on 06.07.2017. In furtherance to the same, the students got admission to P.G. Degree and Diploma courses for the academic year 2017-18 and they were permitted to continue their courses without any hindrance.

6.6. Subsequently, the State Government constituted a Committee to identify the remote and difficult areas for awarding incentive marks to the service candidates for admission to P.G. courses for the academic year 2018-19. In the meanwhile, the Apex Court passed final orders in S.L.P.Nos.16541 to 16542 of 2017 on 31.01.2018, directing the State Government to complete the process by 10.03.2018 and notify remote and difficult areas as provided in the order. It was further observed that admission in the academic year 2017-18 are not to be disturbed.

6.7. Based on the recommendations of the Committee, the Government issued orders in G.O.Ms.No.75, Health and Family Welfare Department, dated 09.03.2018 for awarding incentive marks to the in-service candidates for their services rendered in remote/difficult areas for admission to P.G. Medical Courses by considering the working places, which have been categorized as Category-A, B and C, based on the list of Hospitals enclosed in the Annexure to the Government Order. The posts coming under Category-A are given the benefit of 100% permissible incentive marks; posts coming under Category-B are made eligible for 40% permissible incentive marks and the posts coming under Category-C are not eligible for any incentive marks.

6.8. Thereafter, the Government issued orders in G.O.Ms.No.96, Health and Family Welfare Department, dated 23.03.2018 to rectify certain discrepancies in the list of places identified in G.O.Ms.No.75, dated 09.03.2018 and accordingly, the earlier list annexed to G.O.Ms.No.75, dated 09.03.2018 was modified and a revised list was approved. In the meantime, the 4th Respondent/Selection Committee issued Prospectus for admission to P.G. Medical Courses for the academic year 2018-19 as approved in G.O.(D) No.411, Health and Family Welfare Department, dated 15.03.2018.

6.9. Accordingly, the service candidates will be awarded weightage marks upto 10% of the marks secured in NEET-PG 2018 per year of completion of service in remote/difficult areas as notified in G.O.Ms.No.75, dated 09.03.2018 subject to maximum of 30% of marks secured in NEET-PG 2018. The last date for submission of application was fixed as 26.03.2018 and the Petitioners submitted their applications before the said date. The grievance of the Petitioners is that the Government Order vide G.O.Ms.No.75, dated 09.03.2018 came to be issued completely undermining the rational method of identification of remote/difficult areas as directed by the Apex Court and further the Prospectus came to be issued in direct contradiction/violation of MCI Regulations with reference to the percentage of marks to be awarded for the services rendered in remote/difficult areas.

W.P.Nos.7857 to 7861 of 2018 and W.P.Nos.8116 and 8117 of 2018:

7. Petitioners in W.P.Nos.7857 to 7861 of 2018 and W.P.No.8116 of 2018 and one Dr.Nithya, represented by her Guardian, viz. Dr.S.Anand Kumar (Petitioner in W.P.No.8117 of 2018), are working as Doctors and come under Non-service category for the purpose of admission to Post-Graduate Medical Degree courses.

7.1. According to the Petitioners, admission to Post-Graduate Degree/Diploma Courses in Tamil Nadu Government Colleges, for the seats surrendered to the State Government by self-financing Medical Colleges affiliated to Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University) are governed under the Regulations of the Medical Council of India viz. Post-graduate Medical Education Regulations, 2000.

7.2. Petitioners in W.P.Nos.7857 to 7861 of 2018 and W.P.No.8116 of 2018 and Dr.Nithya in W.P.No.8117 of 2018 applied for admission to Post-graduate Degree/Diploma Courses in Tamil Nadu Government Medical Colleges Government seats in self-financing Medical Colleges affiliated to Tamil Nadu Dr.M.G.R.Medical University, Raja Muthiah Medical College (Annamalai University) 2018-2019 session as per G.O.(D) No.704, Health and Family Welfare (MCA-1) Department, dated 27.03.2017. In the said Prospectus, it is inter alia stated that 'Admission to the State Quota seats is done by the Secretary, Selection Committee using NEET-PG 2017 marks with applicable eligibility criteria, reservation policy, benefit for in-service candidates rural postings, etc, as per the Prospectus'.

7.3. It is stated by the Petitioners that they appeared for Post-graduate Entrance Examinations (NEET-PG) for admission for the academic year 2018-2019 and secured good marks. Since they are non-service candidates of Government of Tamil Nadu, they are not eligible to be considered for 50% under service quota in Diploma seats.

7.4. Though, it is well settled by the Apex Court that the act of providing reservation for in-service candidates for admission to PG Degree Courses, is illegal, Regulation 9(IV) provides for additional marks for in-service candidates as incentive for their service in remote and/or difficult areas. However, the definition of remote and difficult areas is left to the domain of the State Government to define the same from time to time.

7.5. Accordingly, Government of Tamil Nadu, as per their Prospectus issued in terms of G.O.(D) No.704, Health and Family Welfare (MCA-1) Department, dated 27.03.2017, vividly mentioned only 80 places as List of Hill area Primary Health Centres under DPH, 26 places as the List of Hill Area Primary Health Centres under DM & RHS and 9 places as Remote and Difficult Area Government Hospitals. Hence, both as per G.O.(D) No.704, Health and Family Welfare (MCA-1) Department, dated 27.03.2017 and the Prospectus, Doctors working in 80+26+9=115 Centres alone are entitled and eligible to get admission to Post-Graduate

Degree/Diploma courses in Tamil Nadu Government Medical Colleges, Government seats in self-financing Medical Colleges affiliated to Tamil Nadu Dr.M.G.R. Medical University and Raja Muthiah Medical College (Annamalai University) 2017-2018 session under the concept of remote and difficult areas.

7.6. In addition to NEET marks, incentive marks are awarded to in-service candidates for their service in remote and difficult areas depending on the number of years of service upto 3 years. Based on the marks secured in NEET, merit list for All India Quota (in Tamil Nadu, 50% of Post-graduate seats are surrendered to All India Quota) and State Quota (balance 50% that includes Post Graduate Degree seats in Tamil Nadu Government Colleges, Seats surrendered to State Government by self-financing Medical Colleges affiliated to Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University), shall be prepared and further based on the merit list, admission to Post Graduate Degree courses shall be made.

7.7. In contradiction to the ratio laid down by the Apex Court in State of Uttar Pradesh vs. Dinesh Singh Chauhan, 2016 (9) SCC 749, wherein, the act of providing reservation for in-service candidates for admission to PG Degree courses was held to be illegal, the State of Tamil Nadu provided reservation of 50% of available seats under Tamil Nadu State Quota for the service candidates with distinct mode of computation of incentive marks. The said question of validity of reservation of 50% of available seats in Tamil Nadu State quota for the service candidates with distinct mode of computation of incentive marks by State Government came up for consideration before this Court in W.A.No.484 of 2017, batch of cases and this Court was pleased to uphold the computation of marks based on the Regulations of the Medical Council of India, i.e. additional marks for the service candidates as incentive for their service rendered in remote and/or difficult areas @ 10% of NEET marks per year of service, but subject to maximum of 30% and thereby striking off the concept of reservation of 50% of available seats in Tamil Nadu State Quota for the service candidates with distinct mode of computation of incentive marks by the State Government. Respondents 1 to 3 were directed to prepare merit list based on the above dictum of this Court.

7.8. During the course of the above litigation, there have been widespread agitations by service candidates across the State including boycott from providing medical service. However, succumbing to such pressure, despite the above decision of this Court, Respondents 1 to 3, clandestinely chose to accommodate all the service candidates. In view of such clandestine act, Respondents 1 to 3, by virtue of the impugned merit list, chose to provide incentive marks to all service

candidates as per Regulation 9 of the Regulations of the Medical Council of India, indiscriminately, irrespective of the fact that whether the concerned candidate has rendered service in remote and/or difficult areas or not. According to the Petitioners, such act of the Respondents 1 to 3 is nothing but playing fraud upon the Medical Council of India.

W.P.No.8442 of 2018:

8. The Petitioner herein is working as a Medical Officer (Casualty) in Government Medical College and Hospital, Government Omandurar Estate, Triplicane, Chennai. She appeared for NEET examination for Post-Graduate Degree/Diploma Courses in the year 2017-2018 and scored 530 marks in NEET. According to her, she is eligible for incentive marks as an in-service candidate for Post-graduate Degree/Diploma Courses in Tamil Nadu.

8.1. The case of the Petitioner is that in G.O.Ms.No.75, dated 09.03.2018, 29 Hospitals/Institutions are listed under the category A-3. Almost, all the Medical Colleges in Tamil Nadu are covered in the said list except Government Medical College Hospital, Omandurar Estate, Chennai. In this regard, a Medical Officer (Casualty) of Government Medical College Hospital, Omandurar Government Estate has given a letter to the Dean of that Hospital on 19.03.2018, stating that their Medical College is not included in G.O.Ms.No.75, dated 09.03.2018 and the said letter was forwarded to the Directorate of Medical Education and the Selection Committee through their Dean.

8.2. As the Petitioner did not receive any reply to the said letter from the appropriate authorities till date, she is before this Court with a prayer that she is eligible for admission to the Post-Graduate Course and further eligible to be considered for 10% incentive marks per year of service as per Regulation 9(IV) of the Post-graduate Medical Education Regulations, 2000.

9. In W.P.No.7231 of 2018, Respondents 2 to 4 have filed counter affidavit to the following effect:

9.1. Based on the orders passed by this Court in W.A.No.484 of 2017, the Government issued an amendment vide G.O.(D) No.1054, Health and Family Welfare Department, dated 06.05.2017, to notify remote/difficult areas and those places included in Clause 17(b) and Annexure VII of the Prospectus for the year 2017-18, without adding any new place.

9.2. Seeking to strike down the said Government Order, W.P.No.12246 of 2017 and a batch of Writ Petitions were filed before this Court and by a common order dated 16.06.2017, this Court struck down certain portions of the said Government Order by observing as under:

> "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/Primary Health Centres/Government Medical College Hospitals located in TNR Districts."

9.3. Challenging the said order of this Court, the Government filed S.L.P.Nos.16541 and 16542 before the Supreme Court and by an interim order dated 06.07.2017, the Supreme Court held as under:

> "An an interim measure, it is directed that the impugned order dated 16th June 2017, passed by the High Court of Judicature at Madras shall remain stayed. Needless to say, if any Contempt proceedings have been filed on the basis of the said impugned order, the same shall also remain stayed."

9.4. Based on the above interim order of the Supreme Court, students, who got admission in Post-Graduate Degree and Diploma courses during the academic year 2017-18, were permitted to continue their courses without any hindrance. However, to sort out the issue in respect of identifying remote and difficult areas, the Government constituted a Committee to identify hilly/remote and difficult areas for awarding incentive marks to the service candidates for admission to Post-Graduate Degree/Diploma Courses for the academic year 2018-19, vide G.O. (Ms) No.466, Health and Family Welfare (MCA.1) Department, dated 11.12.2017.

9.5. Pursuant thereto, the State Government constituted a Committee in respect of identifying remote and difficult areas for awarding incentive marks to the service candidates for admission to Post-Graduate Degree/Diploma Courses for the academic year 2018-19 and the Committee has elaborately analyzed the working conditions of the Medical Officers, density of the Doctors in the region, etc and therefore, the Government has decided to accept the recommendation of the Report of the Committee.

9.6. However, no comments/suggestions have been received on the Report of the Committee published in the public domain (www.tnhealth.org and www.tnmedicalselection.org) except one representation received from the Health Officers Association. Thereafter, the Government again examined the Report of the Committee in the light of the remarks received after publishing the Report and the recommendation of the Ministry of Health and Family Welfare, Government of India, New Delhi to modify the percentage of marks to the Medical Officers and the list of places identified by the Director of Medical and Rural Health Services and the Director of Public Health and Preventive Medicine, and decided to accept the recommendations of the Committee. Accordingly, the Government issued G.O.Ms.No.75, Health and Family Welfare Department, dated 08.03.2018.

9.7. It has been subsequently brought to the notice of the Government by the Director of Medical and Rural Health Services that some of the places included in the list of places have been inadvertently included, since the said places come under the Municipal and Corporation areas and therefore, the in-service Medical Officers working in those areas are not eligible to get the incentive marks and therefore, requested the Government to delete the said places in the list annexed to G.O.No.75, Health and Family Welfare Department, dated 08.03.2018. After careful examination, the Government decided to delete such places inadvertently included in the Annexures of the said Government Order and replace the list of places annexed to G.O.Ms.No.96, Health and Family Welfare Department, dated 23.03.2018.

9.8. It is further stated in the counter that every State has its own geographical problems and that the Committee has analyzed the problems in detail and submitted their Report. To some extent, the Committee has taken into account the density of Doctors, high vacancy and poor health indicators as one among the criterion to identify the places for giving incentive marks. According to the Respondents, Vellore District is naturally a backward District. However, Kancheepuram District is having all facilities and developed in nature in all spheres. Hence, the Committee has identified Vellore District under Category-A, whereas, Kancheepuram District is identified under Category-B. Hence, according to the Respondents, there is no infirmity as contended by the Petitioners.

9.9. It is also stated in the counter that Neonatal Unit and Sick Neonatal Units are available in Tertiary Care Hospitals only and day-to-day patient administration of these Units are very hard and management of patients in these Units are very challenging. Hence, considering the work constraints of the Medical Officers, the Committee has recommended to include these

Units under Category-A for getting full incentive marks. Further, there is difficulty in reaching the working spot by considering as remote area and the working conditions in the particular place, i.e. NICU/SNCU/Trauma Care Hospitals are difficult in nature and to motivate the Medical Officers who have been posted in these Units, the Committee has recommended to give incentive marks to the Medical Officers to work in the above said places. Hence, according to the Respondents 2 to 4, there is no discrimination in classifying the said places as remote/difficult, as contended by the petitioners.

10. Mr.G.Sankaran, learned Counsel appearing for the Petitioners in W.P.No.7231 of 2018 submitted that the Government proceeded to notify remote/difficult areas to give incentive marks to in-service candidates for admission to PG Medical Courses by identifying the areas based on vacancy position of Doctors in each District, and Health Indicators. He contended that the impugned Government Order vide G.O.Ms.No.75, dated 09.03.2018 issued by the State of Tamil Nadu identifying the remote/difficult areas based on density of Doctors, health indicators and vacancy position in a particular District, is ex-facie in violation of the orders of the Supreme Court and it is liable to be interfered with.

10.1.According to the learned Counsel for the Petitioners, vacancy position, density of Doctors as well as health indicators cannot be the criteria for identification of remote/difficult areas, inasmuch as all the factors are not permanent features. Further, such conditions depend upon various other factors relating to establishment of adequate number of Hospitals, Primary Health Centres, providing para Medical facilities, Laboratory facilities and other staff resources and that the classification of areas should be made based on the difficulties/challenges in reaching the health services in the area, as per geographical conditions.

10.2.It is the contention of the learned Counsel for the Petitioners that there was no publication by the Committee constituted by the Government to identify remote/difficult areas, in public domain, calling for remarks from anybody. Therefore, the Committee has proceeded to give the Report even without availing any suggestion from the interested stakeholders and thereby, the entire procedure adopted by the Committee is vitiated by errors of law and procedure.

10.3.Learned Counsel went on to contend that 16 Districts in the State of Tamil Nadu are declared as backward Districts and all the Hospitals, even Medical Colleges within the Districts are made eligible for awarding of 10% weightage marks. On the other hand, the actual, remotely placed Primary Health

Centres in other Districts have been deprived of awarding of weightage marks resulting in utter discrimination, violating Articles 14 and 16 of the Constitution of India and that classification of areas cannot be approved on the test of reasonableness.

10.4.It is further contended by the learned Counsel that the Government Headquarters Hospital, Government Medical College Institutions located in the main area of the City and Town cannot be given the benefit of weightage marks for the posts coming under certain Department by connecting to the nature of work. According to him, the pattern of work cannot be constant and consistent and it may vary from place to place and time to time; even the Doctors working in remote area in Primary Health Centres have tougher time in covering the entire area coming under the jurisdiction of Primary Health Centre than a Government Doctor working in Headquarters Hospital within the City, who is expected to remain in the same Hospital throughout the working hours. Therefore, according to the learned Senior Counsel, classification of Doctors working in the Trauma Care, Departments of Headquarters Hospital and Medical College Hospitals would be discriminatory and illegal.

11. Mr.G.Sankaran, learned Counsel for the Petitioners in W.P.No.7231 of 2018 has relied on the following decisions:

(i) an Apex Court decision in the case of State of Madhya Pradesh vs. Gopal D.Tirthani, (2003) 7 SCC 83

> "21. To withstand the test of reasonable classification within the meaning of Article 14 of the Constitution, it is well settled that the classification must satisfy the twin tests: (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differentia must have a rational relation with the object sought to be achieved. It is permissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. We have, in the earlier part of the judgment, noted the relevant statistics as made available to us by the learned Advocate-General under instructions from Dr Ashok Sharma, Director (Medical Services), Madhya Pradesh, present in the Court. The rural health services (if it is an appropriate expression) need to be strengthened. 229

community health centres (CHCs) and 169 first-referral units (FRUs) need to be manned by specialists and block medical officers who must be postgraduates. There is nothing wrong in the State Government setting apart a definite percentage of educational seats at post-graduation level consisting of degree and diploma courses exclusively for the in-service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In-service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. In-service candidates, on attaining higher academic achievements, would be available to be posted in rural areas by the State Government. It is not that an in-service candidate would leave the service merely on account of having secured a postgraduate degree or diploma though secured by virtue of being in the service of the State Government. If there is any misapprehen-sion, the same is allayed by the State Government obtaining a bond from such candidates as a condition precedent to their taking admission that after completing PG degree/diploma course they would serve the State Government for another five years. Additionally, a bank guarantee of rupees three lakhs is required to be submitted along with the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved.

(ii) another Apex Court decision in the case of State of Uttar Pradesh vs. Dinesh Singh Chauhan, (2016) 9 SCC 749

"32. The imperative of giving some incentive marks to doctors working in the State and more particularly serving in notified remote or difficult areas over a period of time need not be underscored. For, the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in public healthcare units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. This problem is faced by all States across India. This Court

in Snehelata case[Snehelata Patnaik v. State of Orissa, (1992) 2 SCC 26 : 1992 SCC (L&S) 401 : (1992) 20 ATC 187] had left it to the authorities to evolve norms regarding giving incentive marks to the in-service candidates. The Medical Council of India is an expert body. Its assessment about the method of determining merit of the competing candidates must be accepted as final [State of Kerala v. T.P. Roshana [State of Kerala v. T.P. Roshana, (1979) 1 SCC 572] (SCC para 16); also see Medical Council of India v. State of Karnataka [Medical Council of India v. State of Karnataka, (1998) 6 SCC 131]]. After due deliberations and keeping in mind the past experience, Medical Council of India has framed regulations, inter alia, providing for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, is an attempt to undo the mischief.

35. As aforesaid, the Regulations have been framed by an expert body based on past experience and including the necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks @ 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks; and if the candidate has

worked for two years, the candidate would get another 15 marks. Similarly, if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200 marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks en bloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, much less reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational.

(iii) yet another Apex Court decision in the case of State of Haryana vs. Narendra Soni, (2017) 14 SCC 642

"5. Senior Counsel Ms Indu Malhotra and Senior Counsel Shri Vikramjit Banerjee, appearing for the respondents, submitted that the High Court has rightly held that the notification was issued in hot haste, and only after the result of NEET had been published. It was acted upon even before its publication in the Gazette. The subsequent publication will not cure the illegality. The Committee was constituted on 4-5-2017. The issuance of the impugned notification the very next day covering 115 Community Health Centres and 498 Primary Health Centres is itself evidence of the haste with which the decision was taken. The criteria adopted for identifying remote and/or difficult areas was arbitrary, based on no relevant material, and had no co-relation to the object and purpose of Regulation 9(IV). Unwillingness of doctors to join posting at specified locations not to their liking, cannot

be the criterion for such identification. The Notification dated 21-9-2005 sought to be relied upon, pertained to a general transfer policy. In any event, it had no relevance in the year 2017 because of developments that have taken place in the State thereafter. The High Court has rightly held that notifying places as remote and/or difficult in the vicinity of the municipal committees/councils was not sustainable. The identification of the areas could not be for the purpose of medical admission only as held in D.S. Chauhan[State of U.P. v. Dinesh Singh Chauhan, (2016) 9 SCC 749] . Counselling has been held subsequently on 22-5-2017 and 23-5-2017 notified by the Directorate of Medical Education and Research, Haryana, in teeth of the interim order dated 16-5-2017.

10. The words "remote and/or difficult areas" have 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 incentivisation. 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.

13. It is, therefore, apparent that the Notification dated 5-5-2017 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.

15. The conduct of the State in issuance of the Notification dated 5-5-2017 based on no data, formulation of the same in a day, implementation before publication in the Gazette, after publication of 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."

(iv) a Division Bench decision of this Court in the case of Dr.Praneetha, S. vs. State of Tamil Nadu, (2017) 6 MLJ 457

"38. 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.

39. 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.

46. This conclusion is reached, dehors, 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.

53. 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 v. Dr. Narender Soni (hereafter referred to as "Dr. Narendra Soni-I").

54. 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 sub-divisions 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 1stcounselling 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."

11.1.Learned Counsel for the Petitioners has also relied on an Apex Court decision in the case of Dr.Amit Bagra vs. State of Rajasthan, (S.L.P.No.11692 of 2017, batch, order dated 15.12.2017), relevant portion of which, runs as under:

"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 one 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 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."

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."

12. Mr.N.R.Chandran, learned Senior Counsel appearing for the Petitioners in W.P.Nos.7857 to 7861 of 2018, contended that the State Government is empowered to give weightage or incentive marks to in-service Doctors, who are serving in remote and difficult areas alone and not to the in-service candidates serving in Town/City Hospitals, which are not remote or difficult areas as defined in the Regulations of the Medical Council of India. He went on to state that though the words 'remote' and 'difficult' areas have not been defined anywhere, the identification of the same would require considering a host of factors such as, social and economic conditions, Geographical location, accessibility and similar other relevant considerations, which may be a hindrance in providing adequate medical care requiring incentives.

13. In the same lines, Mr.V.Karthic, learned Senior Counsel appearing for the Petitioners in W.P.Nos.8116 and 8117 of 2018, contended that the identification of areas by the Committee has no rational nexus to the object sought to be achieved by the Medical Council of India Regulations and an artificial identification of areas is made by the Committee, which has been accepted by the Government. He pointed out as to how the Committee appointed by the State Government, irrationally included 2207 Primary Health Centres out of 2816 and all the Hospitals and Medical Colleges in 16 Districts out of 32 Revenue Districts. Learned Senior Counsel citing Narendra Soni's case (cited supra) submitted that the said decision is squarely applicable to the facts of the present case.

14. Mrs.Lesi Saravanan, learned counsel for the Petitioner in W.P.No.8442 of 2018 submitted that the Petitioner therein is handling Trauma/Accident Emergency Care services and pleaded that her area has to be classified as a 'difficult' one. According to her, the State has not categorically and clearly designed "Difficult area" in the impugned Government Orders.

15. In reply, Mr.S.T.S.Moorthy, learned Additional Advocate General appearing for the Respondents/State in all the Writ Petitions, submitted that every State has its own geographical problems and the Committee has elaborately analyzed the problems in detail and submitted its Report. To some extent, the Committee has taken into account the density of Doctors, high vacancy and poor health indicators as one among the criterion to identify the places for giving incentive marks. He further submitted that no comments/suggestions have been

received from any stakeholders on the Report of the Committee published in the public domain, except one representation received from the Health Officers Association.

16. Mr.V.P.Raman, learned counsel appearing for the Respondent/Medical Council of India, submitted that Regulation 9 of Post Graduate Medical Education Regulations, 2000, categorically gives the discretion of granting incentive marks to Medical Officers, to the respective States by identifying remote/difficult areas and if on a geographical consideration, the places are not identified as remote/difficult/hilly areas, certainly, it amounts to arbitrary exercise.

17. Heard the learned counsel for the parties, given thoughtful consideration to their submissions and also gone through the records, coupled with the decisions relied on by them.

18. Having considered the rival submissions, the question that needs to be answered is:

> "Whether the two Government Orders - G.O.Ms.No.75, Health and Family Welfare (MCA-1) Department, dated 09.03.2018 as amended in the subsequent Government Order issued by the 2nd Respondent in G.O.Ms.No.96 Health and Family Welfare (MCA-1) Department, dated 23.03.2018, are legal or not"

19. The State of Tamil Nadu has provided for reservation of 50% of the available seats in Tamil State Quota for the service candidates with distinct mode of computation of incentive marks, which according to the Petitioners, stands in violation of the Regulations of the Medical Council of India. The case of the Petitioners is that the Committee constituted by the State Government has not properly classified remote/difficult areas and taking advantage of the same, the Respondents/State chose to provide incentive marks to all service candidates as per Regulation 9, indiscriminately, irrespective of the fact as to whether the candidate concerned had served in remote and/or difficult area or not. Thus, according to the Petitioners, the impugned Government Orders are liable to be quashed, on the ground that classification of areas has not been done geographically and that incentive marks have been awarded even to Medical Officers working in District Headquarters Hospital.

20. Before proceeding further, for better understanding, relevant portion of G.O.(Ms) No.75, Health and Family Welfare (MCA-1) Department, dated 09.03.2018, is 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.

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.

21. Also, relevant portion of the Prospectus for admission to Post-Graduate Degree/Diploma Courses in Tamil Nadu Government Medical Colleges and Government Seats in Self-Financing Medical Colleges affiliated to Tamil Nadu Dr. M.G.R. Medical University & Rajah Muthiah Medical College affiliated to Annamalai University 2018-2019 Session as per G.O.(D) No.411, Health and Family Welfare (MCA-1) Department, dated 15.03.2018, is extracted hereunder:

"VI. MERIT LIST:

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 subject to maximum of 30% of marks secured in NEET-PG 2018. Fractional values of a year will not be counted for awarding weightage marks. (See Annexure VII)"

22. From the records, it is seen that the Committee has classified the working places of the Medical Officers in three Categories, viz. A, B and C. Posts coming under Category 'A' are eligible for 100% of the maximum permissible incentive marks and Posts coming under Category 'B' are eligible for 40% of the maximum permissible incentive marks. Whereas, Posts under Category 'C' are not eligible for any incentive marks. Out of

2816 Primary Health Centres, 2207 have been classified as remote/difficult areas including all the Hospitals and Medical Colleges in 16 Districts out of 32 Revenue Districts.

23. All 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 fall under the Category 'A'. Ordinarily, rural areas are defined as those, which are falling outside the Municipal areas. Naturally, a rural Primary Health Centre may abut municipal limits and consequently, the candidate, while serving in such a rural area would not suffer any difficulty, as he would be located next to a municipal area. However, what has to be taken note of is, whether a Primary Health Centre coming under remote/difficult category, is genuinely a remote area or not, i.e. whether the locality has good transport facilities and other facilities to attend to the emergency needs of the people therein.

24. Also, Hilly areas fall under the Category 'A'. All Hilly areas cannot be classified as remote/difficult areas. A 'remote' area is one, which has no easy accessibility. But, the District Headquarters Hospital located at Ooty is shown as remote/difficult area, for the reason that it is a hilly destination. But, Ooty has all the facilities of a township, and is easily accessible by road.

25. Coming to remote/difficult areas, when this Court queried the learned Senior Counsel appearing for the Petitioners as also the learned Additional Advocate General appearing for the Respondents/State, as to the definition for 'remote' and 'difficult' areas, they replied that there is no definition for the same.

26. On a perusal of the List annexed to G.O.(Ms) No.96, it is clear that no criteria had been formulated for identifying remote/difficult areas and in the guise of complying with the orders of the Supreme Court, barring a few Districts, the entire State of Tamil Nadu including some Hospitals in Chennai have been identified as remote/difficult areas. In the counter affidavit filed in W.P.No.7231 of 2018, the Respondent/State has stated that the Committee has elaborately analyzed the working conditions of the Medical Officers and the density of the Doctors in the Region while determining the remote/difficult areas. But, there is not even an iota of evidence as to the determination of remote/difficult areas based on the geographical location and the extent of medical care required by the people of the locality.

27. 'Remote/Difficult' area is a place, where the residents of that area will not be able to get the assistance of the Doctor immediately. It is a place where there is no proper transportation facilities and other facilities to suit the emergent needs of the people therein and that once the Doctor reaches the place, he will not be in a position to come back immediately. He must reside there and treat the patients. Merely because, there are more patients in a Hospital, that cannot be a ground for treating it as a 'difficult' area. The intention of awarding incentive marks in terms of Regulation 9 of the Post Graduation Medical Education Regulations, 2000, is to ensure that Doctors work in a most-backward District, where there are no proper facilities.

28. Here, for example, the Committee has identified Vellore District as a backward District and it comes under the Category - A and Kancheepuram District is fitted under the Category - B. The entire District of Vellore cannot be termed as a 'Village' and the whole of Kancheepuram District cannot be termed as a 'Town'. Both Districts have rural, remote and difficult areas, which have to be determined geographically. In this regard, Mr.Karthik, learned Senior Counsel pointed out that some of the areas in Vellore District, which have been determined as 'difficult' areas, cannot be termed so, as they are located on the Highways itself and some places in Vellore District are just 15 kms away from the Highways.

29. Also, the Respondent/State has identified Neonatal Unit and Sick Neonatal Unit in the Tertiary Care Hospitals under the Category-A, as, day-to-day patient administration of these Units is very difficult. Though managing patients in such Units is difficult, that cannot be the only ground to identify such places as difficult/remote for the sake of awarding incentive marks.

30. As has been held in Dinesh Singh Chauhan's case (cited supra), the real effect of Regulation 9 is to assign specific marks commensurate with the length of service rendered by the candidate in the notified remote/difficult areas in the State linked to the marks obtained in NEET. In the case of Narendra Soni (cited supra), the Supreme Court has clearly held that the word 'remote' and 'difficult' areas have not been defined anywhere and that identification of 'remote and/or difficult areas' 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 incentivisation.

31. The proviso to Regulation 9, more particularly, Regulation 9(IV) is not complete, but it is an enabling provision vesting discretion with the State. The discretionary power has to be exercised reasonably and it cannot be exercised arbitrarily and capriciously or in order to satisfy the Doctors in the entire State. But, in the case on hand, almost the entire State of Tamil Nadu has been identified as remote/difficult areas and hence, the criteria adopted by the Committee constituted by the Respondent/State in identifying remote and/or difficult areas is arbitrary and has no co-relation to the object and purpose of Regulation 9(IV). Except Urban areas, under different terminologies, areas have been categorized as 'A', 'B' and 'C', thereby adding percentage of marks to all the in-service candidates in order to enable them to have advantage over meritorious candidates. Remote/Difficult areas have to be identified geographically and not depending upon the number of patients, trauma care, etc. The Respondent/State must appreciate that when there are no patients in a Hospital, it would convey two things, firstly, the Hospital is bad and therefore, the remedy will be worse than the disease and secondly, the people in that area are healthy and there is no need to go to a Doctor.

32. Without extraneous consideration, if the intention of the Government is to serve the needy and not the greedy, certainly honest efforts have to be taken by them with regard to identifying remote/difficult areas in order to award incentive marks to the deserving Medical Officers. While identifying remote/difficult areas, the Government must bear in mind that the attention/service of the Doctors must be immediately available to those who are residing in remote/ difficult/hilly/rural areas. In case, a Doctor refuses to get posted in a particular place, it can be considered as a Remote/Difficult area and the said Doctor can be shown the Doors, in the interest of the Society. And, if such kind of Doctors are going to take up Post-graduate Courses, it will certainly not be beneficial to the Society. On a surprise inspection that may be conducted in all the remote/difficult areas so identified, the Government will come to know as to whether Doctors are really available there.

33. Even though Mr.G.Sankaran, learned counsel for the Petitioners in W.P.No.7231 of 2018 submitted that before three years, i.e. before the introduction of various provisions, there was proper allotment of incentive marks and that there was no discrimination between in-service candidates and outsiders, the clock cannot be set back, more particularly in the light of the amendment and in the light of the direction of the Supreme Court.

34. 'Doctor' profession is one of the noblest professions, apart from Teaching and Law, and Doctors must ensure that their services are available to the needy and that they must try to get accommodation in Post-graduate Medical Courses, de hors grant of incentive marks. However, in the light of the decisions of the Supreme Court in Dr.Narendra Soni's case, Amit Bagra's case and taking into account the flaws of the Committee in the identification of remote/difficult areas, the Government Orders in question are liable to be interfered with and accordingly, both the Government Orders, vide G.O.(Ms) No.75, Health and Family Welfare (MCA-1) Department, dated 09.03.2018 and G.O.(Ms) No.96, Health and Family Welfare (MCA-1) Department, dated 23.03.2018 are declared to be illegal. I am of the view that the Respondent/State should redo the exercise in identifying remote/difficult areas in a proper perspective, in consultation with the Expert Committee.

35. Insofar as the Petitioner in W.P.No.8442 of 2018 is concerned, she is working as a Medical Officer (Casualty) in Government Medical College and Hospital, Government Omandurar Estate, Chennai and seeks to include the category 'Medical Officer (Casualty)' under the category A3, as it involves high stress as well as long hours of duty. According to the Respondent/State, the Dean has not forwarded the Petitioner's application and hence, it has not been considered. If the contention of the Petitioner that Trauma care within the City has to be identified as a 'Difficult' area, then all the Hospitals in the entire State of Tamil Nadu will henceforth have a Trauma Care unit/Accident Zone and the Government in the next notification may have to bring even the Urban areas under the category 'Remote/Difficult'.

36. Moreover, there is no request from the concerned Hospital, viz. Government Medical College and Hospital, Government Omandurar Estate, Chennai, where the Petitioner in W.P.No.8442 of 2018 is working, to identify it in one of the categories mentioned supra, when such identification is the discretion of the State. Therefore, when the Government has not exercised any discretion, this Court, by means of a writ of mandamus, cannot direct the State Government to include Government Medical College and Hospital, Government Omandurar Estate, Chennai in any one of the categories 'A', B' and 'C' and thereby grant incentive marks to the candidate, more particularly, when the impugned Government Orders are held to be illegal.

37. In the result, Writ Petitions in W.P.Nos.7231 of 2018, W.P.Nos.7857 to 7861 of 2018 and W.P.Nos. 8116 and 8117 of 2018 are allowed with the above direction(s) and observation(s) and W.P.No.8442 of 2018 is disposed of with the above observation. No costs.

Consequently, connected W.M.P.Nos.8984 and 8985 of 2018 in W.P.No.7231 of 2018; W.M.P.Nos.9804 to 9813 of 2018 in W.P.Nos.7857 to 7861 of 2018; W.M.P.Nos.10094 to 10097 of 2018 in W.P.Nos.8116 and 8117 of 2018 and W.M.P.No.10390 of 2018 in W.P.No.8442 of 2018 are closed.

Sd/-
Assistant Registrar(CS-iv)
Dated:02/05/2018

*Corrected as per
letter dated 12/06/2018
Assistant Registrar(CS-II)
Dated:21/06/2018

//True Copy//

Sub Assistant Registrar

(aeb)
To:

1. The Secretary,
   Government of India,
   Ministry of Health and Family Welfare,
   Room No.348, 'A' Wing, Nirman Bhavan,
   New Delhi - 110 011.

2. The Principal Secretary to Government,
   State of Tamil Nadu,
   Health and Family Welfare Department,
   Secretariat,
   Fort St. George, Chennai 600 009.

3. The Director of Medical Education,
   Kilpauk, Chennai 600 010.

To be substituted the order already despatched on 03/05/2018

4. The Secretary,
Selection Committee,
The Directorate of Medical Education,
Kilpauk, Chennai 600 010.

5. The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi - 110 077.

6. The Chairman of the Committee,
(Identification of Remote/Difficult Areas),
Tamil Nadu Medical Services Corporation,
Egmore, Chennai.

7. The Dean,
Government Medical College and Hospital,
Omandurar Government Estate,
Triplicane, Chennai 600 002.

+7cc to Mr.R.KANNAN, Advocate, S.R.No.28943
+1cc to Mr.D.DELVAM, Advocate, S.R.No. 28754
+1cc to Mr.V.P.RAMAN, Advocate, S.R.No.28811
+1cc to Mr.G.BASKARAN, Advocate, S.R.No. 28744
+1cc to the Government Pleader, S.R.No. 32326
+1cc to Mr.G.Baskaran, Advocate Sr.38993 [25/06/2018]

Common Order
in W.P.Nos.7231 of 2018
W.P.Nos.7857 to 7861 of 2018
W.P.Nos. 8116 and 8117 of 2018 &
W.P.No.8442 of 2018

SSI(CO)
TR(02/05/2018)
srg 21/06/2018