IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.8071, 8254, 8318 and 8474 of 2019
& W.M.P.Nos.8673, 8812, 8813, 8865 of 2019
& W.M.P.Nos.9008, 9009 and 9012 of 2019

Dr.Thanveer Ahmed .. Petitioner in W.P.No.8071/2019

Dr.C.Adithyan .. Petitioner in W.P.No.8254/2019

1. Dr.Athish Pranav J.S.
2. Dr.Durai Nivedha
3. Dr.R.Sriram
4. Dr.V.Preethi
5. Dr.M.Rafeek Ahmed
6. Dr.K.Sathyanarayanan
7. Dr.K.R.Bharat Krishnan
8. Dr.S.Visvesaran .. Petitioners in W.P.No.8318/2019

Dr.S.Sasipriya .. Petitioner in W.P.No.8474/2019

Vs.

1. State of Tamil Nadu
   rep. by its Secretary to Government,
   Health and Family Welfare Department,
   Secretariat, Fort St. George,
   Chennai-600 009. .. Respondent 1 in all W.Ps

2. Selection Committee,
   Directorate of Medical Education,
   No.162, Periyar E.V.R. High Road,
   Kilpauk, Chennai-600 010. ..Respondent 2 in W.P.No.8071/19
   Respondent 3 in W.P.Nos.8254
   8318 & 8474/19

3. The Secretary,
   Medical Council of India,
   Pocket 14, Sector 8,
   Dwaraka,
   New Delhi-110 077. .Respondent 3 in W.P.No.8071/19
   Respondent 4 in W.P.Nos.8254 &
   8318 & 8474/19

4. The Director of Medical Education,
Kilpauk, Chennai-600 010. . Respondent 2 in W.P.No.8254, 8318 & 8474/19

5. The Member Secretary and Convenor
of the Committee (Identification of
Remote/Difficult Areas) for admission
to PG Degree Courses 2019-2020,
rep. by Additional Director of Medical Education,
Office at Directorate of Medical Education,
Kilpauk, Chennai-600 010.
. Respondent 5 in W.P.No.8318/19

* * *

Prayer in W.P.No.8071 of 2019 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent to reclassify Aravatla PHC in Nariampattu Block of Thirupathur Health Unit District as "Difficult area in plains" in the impugned G.O.Ms.No.86, dated 06.03.2019 issued by the first respondent.

Prayer in W.P.No.8254 of 2019 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned Government Order issued by the first respondent in G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019 and to quash the same in so far as inclusion of Eduthavainatham Primary Health Centre under the classification of Rural Areas in Sl.No.974 in Annexure-IV is concerned and consequently directing the respondents to include the Eduthavainatham Government Primary Health Centre under the classification of 'Difficult Areas in Plains' to enable the petitioner to avail 9% of incentive/weightage marks per year for admission to Post Post Graduation Medical Degree/Diploma Courses for the year 2019-2020.

Prayer in W.P.No.8318 of 2019 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019 herein pertaining to admission to Post Graduate Degree/ Diploma Courses in Tamil Nadu Government Medical Colleges, Government Seats in Self-financing Medical Colleges affiliated to the Tamil Nadu Dr.M.G.R. Medical University and seats in Rajah Muthiah Medical College (Annamalai University) for the academic year 2019-2020 and quash the same in

so far as identifying and notifying Difficult areas in Hills, Difficult areas in plains, remote area and Rural areas (Annexure I to IV) for awarding incentive marks for service candidates and consequently direct the respondents 1 to 3 herein to admit the petitioner and all other candidates in PG Degree/Diploma course for the Petitioner and all other candidates for the Academic Year 2019-2020 based on their N.E.E.T marks.

Prayer in W.P.No.8474 of 2019 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned Government Order issued by the first respondent in G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019 and to quash the same in so far as inclusion of Kunnavakkam Primary Health Centre under the classification of Rural Areas in Sl.No.189 in Annexure-IV is concerned and consequently directing the respondents to include the Kunnavakkam Government Primary Health Centre under the classification of 'Difficult Areas in Plains' to enable the petitioner to avail 9% of incentive/weightage marks per year for admission to Post Graduation Medical Degree/Diploma Courses for the year 2019-2020.

* * *

For Petitioners in W.P. No.8071/2019 :Mr.V.Prashanth Kiran

For Petitioners in W.P. Nos.8254 & 8474/19 :Mr.G.Sankaran

For Petitioners in W.P. No.8318/2019 :Mr.M.S.Krishnan, Senior Counsel for M/s.Ebenezer Paul

For Respondents :Mrs.Narmadha Sampath, Additional Advocate General assisted by Mr.V.Kadhirvelu, Special Govt. Pleader (Hr. Edn.) for R1 in W.P.No.8071/2019 RR 1 & 2 in W.P.Nos.8254, 8318 and 8474/2019

Mr.Abdul Saleem for R2 in W.P. Nos.8071/2019 & R3 in W.P. Nos.8254, 8318 & 8474/2019

Mr.P.V.Raman, Standing Counsel for R3 in W.P. No.8071/2019 and R4 in W.P. Nos.8254, 8318 & 8474/2019

C O M M O N O R D E R

Preface :

Though India has developed and modified the health care in rural by founding/constituting Primary Health Centres (PHCs), many of them are without Doctors or manned by nurses and paramedical staff or with one Doctor and paramedical staff. From these PHCs, patients are referred to District Headquarters Hospitals, which are supposed to have all facilities required for managing at least 90%.

2. Many villages do not even have a PHC. Even after seventy years of independence, the Doctors do not want to go to villages and several methods are being tried by the Government to woo/and encourage the Doctors to serve in those remote/difficult areas, but all in vain. Though the number of PHCs are in the increase consistently, a considerable percentage of PHCs do not have Doctors.

3. Getting an admission in Government Medical College is an Himalayan challenge. Like any other profession, a busy practice and an affluent life would be the dream of every medical student. Therefore, the rural practice is also becoming remote, especially in India, where, we have our own native medicines like Siddha, Ayurvedha and Naturopathy. If a Doctor is not trained to treat the diseases that may affect a large part of the rural community, he/she is unlikely to find any interest in managing these diseases. In a forest area, cases of reptile bites, stings by poisonous insects are common. A Doctor should be able to handle and treat the situation. Malnutrition in pregnant women in villages is another challenge in rural areas. Unless the said subjects are also included in the curriculum, a student/Doctor will not be interested in going to rural areas.

4. Doctors in city based multi-specialty hospitals/Government Hospitals are provided with multifarious equipments and are depending on laboratory reports. While there is no harm using such facilities, the Doctors in these classified areas feel helpless, as the Doctors in those difficult areas get little experience to clinical skills. The internship training given to those Doctors expose them to the real world. But now that has become a casualty in the cases of PG Medical Students.

5. The State Governments have posted these Doctors to serve in the rural areas and force them to execute a bond to serve the Government. These bonds are often not enforced. The Doctors,

who are mostly young and married having small children are forced to go to these remote areas, where they will have no social interaction, no schools of reputation for their children and no health care facilities for themselves are available. Therefore, it is not surprising that they are not willing to work in such environment. The physical isolation is also the reason for this discrimination. Surprisingly, the nurses, who are also part of the system are not discussed about. Other than the incentive marks offered, what are the other motivational factors that may interest a person to serve in the rural and remote areas ? May be the national interest one has besides the respect and recognition, comfortable working conditions, competent and considerate mentor and also promotional avenues.

6. When admittedly, the Doctor ratio is much less compared to the population, the Government can consider posting two doctors for each PHC, so that the willingness to work will be there.

Prayer :

7. With the above preface, let us see the prayers of the petitioners herein :

7.1. The petitioner in W.P.No.8071 of 2019 is a Doctor in Aravatla Government Primary Health Centre (in short, "PHC"), Pernambut Block, Tirupattur-Vellore District from 31.03.2017. According to him, the said PHC is located in and around the Koundinya Wildlife Sanctuary and Mordana Reserve Forest in Mariampattu Block and it has much poorer accessibility issues and hence, he seeks a direction to the respondents to reclassify the said place as Difficult area in plains in the G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019, (in short, G.O.86, dated 06.03.2019) instead of rural area and award him the consequential incentive marks.

7.2. The petitioner in W.P.No.8254 of 2019 was the Assistant Surgeon in PHC, Eduthavainatham, Kallakkurichi, from 29.03.2017, when he was transferred to PHC Arampoondi, Kariyalur Block, Kallakkurichi on 01.07.2018. His erstwhile place of service, where he served for more than an year, was notified as a difficult area, which is now reclassified as rural area in Annexure-IV of the impugned G.O.86, dated 06.03.2019. Hence, he seeks a direction to the respondents for reclassification of the same and consequential incentive marks.

7.3. The prayer of the petitioner in W.P.No.8474 of 2019, who is the Assistant Surgeon in PHC, Kunnavakkam, Chengalpattu Health Unit District, from 16.09.2015, is also to reclassify the said PHC from rural area to difficult area in plains making her eligible for 9% incentive marks.

7.4. Contrary to the above claims, the petitioners in W.P.No.8318 of 2019, who are non-service candidates, seek to quash the G.O.86, dated 06.03.2019, on the ground of wrong classification, identification and notification of the difficult/remote/rural areas and consequently direct the respondents to admit the candidates in PG Courses for the academic year 2019-2020 based on their NEET Marks.

8. The controversy raked up by these litigious doctors has been extensively considered by the Hon'ble Supreme Court in the State of Narendra Soni V. State of Haryana, (2017) 14 SCC 642. A Division Bench of this Court the judgment in The State of Tamil Nadu V. Dr.P.Pravin, (2018) 2 WLR 161 held that each time the identification and categorisation takes place, the same is put to challenge by the persons aggrieved to include the area resulting in the process getting completely derailed every academic year and suggested that a committee of experts may be constituted, which shall be headed by a retired High Court Judge. Despite the same, the process of this year also is in the verge of derailment as the aggrieved in-service Doctors and also the non-service Doctors opposing the categorisation are before this Court challenging the G.O.86, dated 06.03.2019.

9. The uniform contention of the in-service candidates is that the Committee, which had recommended categorisation, had not considered all the guidelines/parameters laid down by the Hon'ble Supreme Court of India. The impugned G.O. is issued by the Government after examining the report of the committee and accepting the recommendation of the committee and accordingly, the following categories were classified for award of incentive marks to the in-service Medical Officers, based on their working place, for getting admission in Post Graduate Medical Course :

> "Difficult Areas in Hills - All Government Health Facilities in hilly areas are categorized as difficult areas in hills. These areas are covered by forests and mostly inhabited by wild animals where often wild animals stay into human habitations. Difficulties in transportation, difficulties encountered in acclimatization for people from plains and inadequate housing facilities deter doctors taking up placements in Government Health Facilities located in these areas. As a result, vacancies persist in these areas categorized as "Difficult Areas in Hills". Medical Officers serving in these institutions are eligible for incentive marks @ 10 percent of the marks secured in NEET per year of service in these identified areas.

Difficult Areas in Plains - All Government Health Facilities with poor accessibility, with their service coverage areas extending into the hills or reserve forests, located in foot hills, backward areas are categorized "Difficult Areas in Plans". Medical Officers serving in these institutions are eligible for incentive marks @ 9 percent of the marks secured in NEET per year of service in these identified areas.

Remote Area - All Government institutions with inadequate transport facilities due to remoteness of the areas and difficulties in filling up vacancies are categorized as "Remote". Medical Officers serving in these institutions are eligible for incentive marks @ 8 percent of the marks secured in NEET per year of service in these identified areas.

Rural Areas - Medical Officers serving in Government Health Facilities located in rural areas, except those institutions included under the categories of Difficult Areas - Hills, Difficult Areas - Plains and Remote Areas, are categorized as "Rural". Medical Officers serving in these Government Health Facilities are eligible for incentive marks @ 5 percent of the marks secured in NEET per year of service in these identified areas.

Urban Areas (Municipal/ Corporation Areas) - Medical Officers serving in Government Health Facilities located in Municipal / Corporation areas are categorized as "Urban areas". Medical Officers serving in these Government Health Facilities located in these areas are not eligible for any incentive marks."

10. Mr.M.S.Krishnan, learned Senior Counsel who appeared on behalf of Non-Service candidates, contended that in preparing the final merit list, the State Government has accorded weightage without providing a criteria for identifying remote / difficult / rural areas. If the said difficult areas are not identified based on a known, reasonable and/or rationale criteria, the undeserving candidates would take away the weightage marks. The Learned Senior Counsel also pointed out that in Annexure I, the tourists spot Udagamandalam, which is also a District Headquarters, and Hosur, which is on NH 27 – both are having very pleasant climatic conditions, have been added, which would go to show that without even ascertaining the remote and/or difficult areas in hills, categorization has been

made enabling the Doctors to get 10% of marks for every one year service completed. Secondly, in Annexure II dealing with difficult areas in plains, the places, which are well connected with bus routes and which are barely 500 meters from the State Highways are included. Similarly, in the category of remote areas, the places near the National Highways and State Highways like Hanumantheertham in Krishnagiri District, which is on the National Highway 77 and having bus facilities, is included in the remote area enabling the students to get 8% of the marks per year.

11. The main ground of attack of the learned Senior Counsel is that in Annexure IV which deals with rural areas, 1021 PHCs and 119 Government Hospitals are included. All the Town Panchayat Areas in the State numbering about 561 are included in the rural areas list, without any basis. For example, the Othakkadai in Madurai - opposite to Madurai Bench of this Court is treated as rural area, though it is well connected with the public transport.

12. The petitioners in Writ Petition No.8318 of 2019 also pointed out several instances of erroneous inclusion of PHC's and Government Hospitals without ascertaining the difficulties to reach, remoteness of the rural nature of the areas.

13. It is also pointed out that, earlier the Division Bench of this Court had held that treating Udhagamandalam in Nilgiris and OthaKadai in Madurai as a remote or difficult area is illegal. Hence, it was persuaded that the report given by the Committee is erroneous and the same is accepted as such by the Government in the impugned G.O. As the impugned identification of the areas has no rationale nexus to the object sought to be achieved by the MCI Regulations, the areas recommended by the committee, as accepted by the Government, cannot be implemented as it is and it requires reconsideration. In other words, relevant considerations are omitted to be considered and irrelevant criteria without any rationale has been followed while identifying the areas in the impugned order.

14. In response to the same, the learned Additional Advocate General contented that as per the impugned G.O, the maximum incentive marks of 10% are awarded to the in-service Medical Officers working in 119 PHCs and 20 Government Hospitals alone. A minimum of 5% of incentive marks are awarded to the Medical Officers working in 1021 PHCs and 119 Secondary Care Hospitals. As there is no restrictions to award marks lesser than 10% as recommended by the Committee, the impugned order grants an additional 5 % marks alone.

15. It was further argued that the workload of an in-service Doctor cannot be compared to a non-service Doctor. An average number of out-patients, as seen by a Medical Officer, crosses 100 per day, besides performing administrative and field functions. These Medical Officers are responsible for implementation of all health related programs of both Central and State Governments. That apart, during floods and/or other calamities the in-service Doctors are mandatorily required to go and conduct camps in difficult places. Therefore, the award of these incentive marks based on the GO cannot be challenged.

16. So far as the other cases are concerned, where the challenge is put to various categorisations for award of marks, it is pointed out that the flawed implementation by a hasty identification of remote and/or difficult areas without following the guidelines set out in the judgment of the Hon'ble Apex Court in State of U.P. V. Dinesh Singh Chauhan, (2016) 9 SCC 749 is illegal.

17. The challenge by the petitioner in W.P.No.8071 of 2019 is to the health service centre in Aravatla located in Nariampattu Block, which has been categorized as a rural area. The Aravatla PHC is located in and around Koundinya Wildlife Sanctuary and Mordana Reserve Forest, which has poor accessibility issues and services. As the respondents themselves have described Aravatla as a small hillock, though it is 13 kms away from Peranampattu and road facilities are available, the same cannot be categorized as difficult plain area. Learned counsel for the petitioner tried to convince this Court by showing the map from google maps, elucidating various public health centres in and around the place.

18. No doubt Aravatla PHC is in the Koundinya Wildlife Sanctuary, but the same is only 13 kms away from Peranampattu and road facilities are available and hence, though it is not categorized as difficult area in plains entitling the petitioner for 9% of marks, admittedly, it is not a remote area, as per the G.O. As the Aravatla PHC is closer to Peranampattu, Pallikonda and Gudiyatham Taluks, it is classified as rural area and the Medical Officers are entitled for 5% of marks per year of service in these identified areas.

19. Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner in in W.P.No.8254 of 2019 tried to persuade this Court to declare Eduthavainatham PHC as a difficult area, which, according to the petitioner, is located in foot-hills, but

classified only as a rural area. It is contended that the classification of Eduthavainatham PHC as a rural area, instead of difficult area in plains is ex facie illegal and contrary to the judgment of the Hon'ble Supreme Court.

20. The Eduthavaithanam PHC is admittedly located in Kalvarayan Foothills and Parigam Reserve Forest. Though the PHC is located in the Kalvarayan Foothills, it is 20 kms away from the Kallakurichi, which is a new District Headquarters and road facilities are available to this centre and the PHC is located in Melur Block. As it is well-connected by road, though not it is a difficult area in plains, it is classified as rural area, which would entitle the petitioner for 5% marks.

21. The next challenge to the G.O. by the petitioner in W.P.No.8474 of 2019 is with respect to the place Kunnavakkam PHC in Nandivaram Block in Kancheepuram District as a backward area having very poor accessibility, whereas, in the Government Order, it is included in Annexure IV, which is a rural area and 5% of marks per year is awarded as a incentive. It is further pointed out that it should have been classified as a difficult areas in plains, as it is surrounded by reserve forests and not having any proper road to reach the health facility, except one lake strand.

22. In response to the same, learned Additional Advocate General submitted that the said PHC is located in Nandhivaram Block in Chengalpattu Health Unit District and road facilities are available and therefore, the committee categorized the same as a rural area, which is eligible for 5% of incentive marks.

23. The challenge by all the petitioners, apparently, is aimed at claiming more incentive marks based on their classification of their respective areas they are serving in, while the petitioners in W.P.No.8318 of 2019 questioning the rationale of the classification of the places. As stated in the beginning, it is only to urge the Doctor population to move to the remote and/or difficult areas of the country to extend the health benefits to all the citizens, the incentive mark system itself was introduced with reference to the factors like, improper housing, poor recreational facilities, professional isolation, poor medical services for themselves, lack of schools of repute for their wards, poor job opportunities for their spouses, etc.

24. As mentioned earlier, the workload of the in-service Doctors and non-service Doctors cannot be matched. The Medical Officers working in these PHC facilities are responsible for not only the clinical management, but also the administrative functions of the State. The implementation of non-health

related programmes by the Central or State Governments have to be taken to the public only by these Doctors. At times of natural calamities the services of these Medical Officers are mandatorily pressed-in. Considering all these aspects, the Government thought it fit to award them these bonus marks, as the time for preparing themselves for the tests is deprived to them many a times. However, the award of incentive marks cannot be claimed as a matter of right.

25. As submitted by the learned Senior Counsel for the petitioners in W.P.No.8318 of 2019, the National Health Resource Centre formulated the criteria to identify remote and difficult areas. The guidelines formulated in Narendra Soni's case (cited supra) had to be followed before classifying these areas. Pursuant to the order of the Division Bench of this Court in Dr.Pravin's case, the said task was entrusted to the Committee headed by a retired Judge of this Court. The Committee was constituted in the month of November 2018 and had taken considerably long time to decide the categorization of places. As per Annexure IV, there are 1021 PHCs and 119 Government Hospitals, from which, Doctors would be competing for the P.G. Admissions. This category of rural area itself was introduced only in the year 2018, which would give them 5% of marks as incentive per year. Only the urban areas and municipal and corporation areas are excluded from claiming this bonus marks. The Government Order, by and large, based on the report of the Committee, had considered the pros and cons of every place, where, the PHCs are situated and classified them into four categories for the purpose of awarding marks from 5% to 10%. All the petitioners have challenged only the classification of the respective areas from where they are working, as rural areas, which would given them only 5% of marks, whereas, if those areas are classified as difficult areas in plains, marks will be close to double.

26. No doubt, the Government Order was not made available in the public domain as complained by the petitioners. However, the same was released on 06.03.2019, much ahead of the last date for submission of the applications in online and the receipt of the fill-in applications forms. Every petitioner, who has challenged the G.O. before this Court is only seeking re-classification enabling them for a better incentive marks, as according to them, all of them are entitled for the incentive marks, subject to the categorization. As mentioned above, the petitioners in W.P.No.8318 of 2019 questioned the rationale of the classification.

27. As the tentative date of rank list has to be published on 31.03.2019, in the absence of any grave error said to have been committed by the Committee in categorization, the same need not be disturbed for the current Academic Year 2019-2020. However, this Court is of the considered view that, in the interest of the future P.G. Medical Courses aspirants, the following directions are required to be issued :

(i).The impugned G.O.86, dated 06.03.2019, can be revisited by the Committee, if any representation has already been received or may be received on or before 31.05.2019 from the stakeholders.

(ii).Every stakeholder interested in the re-classification of the areas can submit their representations on or before the said date, i.e., 31.05.2019 before the said Committee.

(iii).The Committee is directed to consider all the objections received scrupulously and wherever changes are required, the same may be made in terms of the guidelines laid down by the Hon'ble Supreme Court. The said exercise has to be completed on or before 31.07.2019.

(iv).The final report of the Committee and the consequential order may be put in the public domain. The intimation placing the same in the public domain shall also be published in popular English and Vernacular dailies immediately thereafter. This is to avoid eleventh hour challenge by the persons aggrieved, so that the litigious Doctors could find a solution one way or the other well in advance without causing much inconvenience to the Selection Committee at the wee hours. It is made clear that the re-classification, if any, made by the Committee and the Government will have no retrospective effect for the current Academic Year 2019-2020.

(v).Once the list is drawn and published, unless and otherwise, there is any development or improvement with respect to any particular area, which requires re-classification, the same may be continued for a period of at least three years.

(vi).As and when any particular area is released out of the list for any reason, the same may also be made known to all by putting the same in public domain and information about the same shall also be published in popular English and Vernacular dailies immediately thereafter.

28. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

gg Sub Assistant Registrar

To

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

2. Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010.

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

4. The Director of Medical Education,
Kilpauk, Chennai-600 010.

5. The Member Secretary and Convenor
of the Committee (Identification of
Remote/Difficult Areas) for admission
to PG Degree Courses 2019-2020,
rep. by Additional Director of Medical Education,
Office at Directorate of Medical Education,
Kilpauk, Chennai-600 010.

+1 cc to M/s.M.V.Swaroop, Advocate, S.R.No.28978
+2 ccs to M/s.G.Sankaran, Advocate, S.R.No.29544, 29545
+1 cc to M/s.P.Ebenezer Paul, Advocate, S.R.No.28764
+4 ccs to M/s.Abdul Saleem, Advocate, S.R.No.29992 to 29995
+1 cc to M/s.V.P.Raman, Advocate, S.R.No.28965
+1 cc to the Government Pleader, S.R.No.29811

W.P.Nos.8071, 8254, 8318
and 8474 of 2019

SSM(28/03/2019).