

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.255 of 2020

In
Civil Writ Jurisdiction Case No.15523 of 2018

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Ankit Abhishek, male aged about 28 years, S/o Dr. Indrajeet Kumar Sinha, R/o Mohalla-Jayaraj Villa, Canary Hill Road, Near Gibraltar Kothi, Dipugarha Sadar, P.O. and P.S.-Hazaribagh, District-Hazaribagh, permanent address at Village-Bansi, P.O.-Sonbhadra, P.S.-Karpi, District-Arwal, Bihar.

... .. Appellant/s

Versus

1. Dr. Ravi Ranjan Kumar Son of Ramchandra Prasad, Resident of Village-12, Bahari Bigha, Lalbigha, P.S. Kaschichak, District-Nawada.
2. Dr. Chandan Kumar Tiwari, Son of Brajnandan Tiwari, Resident of Lichi Bagan, Near Doon Public School, Bhikhanpur, Gumti No. 2, P.S. Jagdishpur, District-Bhagalpur.

Writ Petitioners-Respondents 1st Set.

3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
5. The Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
6. The Additional Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
7. The Director, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
8. The Chairman, Bihar Combined Entrance Competitive Examination Board, Government of Bihar, I.A.S. Association Building, Near Patna Airport, Patna-14.
9. Medical Council of India, Pocket-14, Sector-8, Dwarka Phase-1, New Delhi.

... .. Respondents 2nd Set/ Respondent/s

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WITH
Letters Patent Appeal No. 256 of 2020
In
Civil Writ Jurisdiction Case No.15523 of 2018

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1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health Medical Education and Family Welfare, Govt. of Bihar, Patna.
3. The Secretary, Department of Health Medical Education and Family Welfare, Govt. of Bihar, Patna.
4. The Additional Secretary, Department of Health Medical Education and Family Welfare, Govt. of Bihar, Patna.



5. The Director, Department of Health Medical Education and Family Welfare,
Govt. of Bihar, Patna.

... .. Appellant/s

Versus

1. Dr. Ravi Ranjan Kumar Son of Ramchandra Prasad, Resident of Village-12,
Bahari Bigha, Lalbigha, P.S.-Kaschichak, District-Nawada.
2. Dr. Chandra Kumar Tiwari, Son of Brajnandan Tiwari, Resident of Lichi
Bagan, Near Doon Public School, Bhikhanpur, Gumti No. 2, P.S.-
Jagdishpur, District-Bhagalpur.
3. The Chairman, Bihar Combined Entrance Competitive Examination Board,
Govt. of Bihar, I.A.S. Association Building, Near Patna Airport, Patna-14.
4. Medical Council of India, Pocket-14, Sector-8, Dwarka Phase-1, New Delhi.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 255 of 2020)

For the Appellant : Mr. P. K. Shahi, Senior Advocate
Mr. Alok Ranjan, Advocate

For the Respondents

No.1 & 2 : Mr. Ashish Giri, Advocate

For the Respondents

No.3 to7 : Mr. P. N. Shahi, AAG-6
Mr. Sanjeet Kumar Singh,
AC to AAG-6

For the Respondent No.8 : Mr. Vikas Kumar, Advocate

For the Respondent No.9 : Mr. Kumar Brijnandan, Advocate

(In Letters Patent Appeal No. 256 of 2020)

For the Appellants :Mr. Lalit Kishore, Advocate General
Mr. S. D. Yadav, AAG-9
Ms. Shama Sinha, AC to AAG-9

For the Respondents

No.1 & 2 :Mr. Ashish Giri, Advocate

For the Respondent No.3 :Mr. Vikas Kumar, Advocate

For the Respondent No.4 :Mr. Kumar Brijnandan, Advocate



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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR**

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-05-2020

Every trial is a voyage of discovery in which truth is the quest. With this endeavour we have ventured to adjudicate the *lis*, based on admitted and undisputed facts.

2. Right to good health and access to basic facilities of health is now is an important facet of right to life under Article 21 of the Constitution. Justice which has to be social cannot be limited only to sub-serve the interest of the affluent, the rich and the empowered.

3. The concept “social justice”, which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. “Social justice” is thus an integral part of ‘justice’ in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea



of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity; the State should provide facilities and opportunities to enable them to reach at least minimum standard of health, economic security and civilised living while sharing according to their capacity, social and cultural heritage. This is what stands observed by Hon'ble the Apex Court in **Consumer Education & Research Centre and others Versus Union of India & Ors. (1995) 3 SCC 42.**

4. Shockingly, in the course of discovery of truth, we find the State to have breached its *Dharma* of acting in public interest for the benefit of teaming millions living in the rural areas, but also not maintaining its neutrality, in the accomplishment of the constitutional goals and determination of rights *inter se* private parties. The stand taken is both immoral and illegal. In fact, we find the Department to have adopted a partisan approach, ensuring



that the most marginalized and deprived ones are not benefitted of the medical infrastructure and facilities in the rural parts of the State. Bihar is the most populated State of the country, having highest density of population ratio, with a rural based demography comprising of remote, rural and hilly areas, with little bit of cosmopolitan culture or area.

5. The health care facilities in the remote and difficult areas of the State, to say the least, are desirable, also for want of posting of adequate doctors. Undisputedly, in Bihar out of 11645 sanctioned posts of doctors, 8768 are lying vacant, out of which 5674 fall only in the difficult/remote/rural areas. As against 1544 doctors posted in the urban areas only 1333 are posted in the rural areas, reflective of the iniquitous and lopsided welfare health policy of the Department. And despite the same, as is stated on an affidavit, Department has chosen not to grant incentive of weightage in marks in terms of its two Notifications dated 27.08.2013 and 17.06.2014, to be added in computing the merit on the basis of National Eligibility-cum- Entrance Test (NEET), to the doctors posted in the rural/remote/difficult areas, for the reason that ***“the merit would stand compromised and would adversely affect the in service doctors posted at urban areas”*** and, therefore, it is not appropriate and justifiable to give any



weightage to the in service doctors posted at rural/remote areas over and above to those posted at urban areas.

6. Can a Welfare State even adopt such a stand more so in the absence of any plea or material to indicate absence of doctors or higher percentage of vacancy of the posts in the urban areas. Incentivizing posting of doctors/medical staff in the specified areas can only be in public interest and for public good and not the other way round. Is it that with the posting of Doctors in the urban areas the general health of the people there has improved? Do these Doctors cater to the need of Government employees? Is it that with their posting in the urban areas, referral to the private hospitals has stopped? Is it that the Government has taken a policy decision of stopping all medical reimbursement of expense incurred by the Government employees for undertaking treatment in private institution? To our understanding it is not so. So how does posting of majority of the doctors in the urban area help anyone, save and except perpetuate vested interests. Under the Constitution all power must be exercised to sub-serve public interest, for public good and for a public cause. If only such benefits are accorded would the Doctors voluntary opt to serve the poor, the needy, the deprived and the marginalized ones living in the remotest corner of the State.



7. The percentage of vacancies of doctors in the rural areas is extremely high and grossly disproportionate as against the doctors in the urban areas. It is in this backdrop the Apex Court in **State of Uttar Pradesh & Ors. Versus Dr. Dinesh Singh Chauhan reported in (2016) 9 SCC 749**, while acknowledging the sacrifice made by the doctors posted in the rural and difficult areas observed that the academic merit of the candidate must also reckon the services rendered for the common or public good and emphasized that the need of providing incentive cannot be ‘underscored’, for on account of concentration of doctors in urban areas, large number of posts in the rural areas remain unfilled. Further, on account of concentration of doctors in urban areas, the rural areas are neglected.

8. In our considered view, the State cannot be allowed to argue that the benefit of Regulation framed by the Medical Council of India cannot be conferred only for the reason that it would affect the interest of doctors serving in urban areas. Undoubtedly discretion of according such benefits, vests with the Government, but then, its exercise has to be based on some rational and not in an arbitrary and capricious manner. In our considered view, there is no logic of depriving the doctors posted in the rural areas of such benefits. And all this, despite the State



itself having issued a Notification(dated 27.08.2013) conferring such benefits upon them. Yet, strangely, if not collusively, it has taken a specious plea of interpreting such a Notification limited only to the identification of areas in terms of the Regulation and not taking a decision conferring benefits in terms thereof. Such a stand is both immoral, illogical and illegal. Mere non enforcement of a right by an individual or its non-conferment by the Department, no matter for how long, would also not be a reason for it to adopt such a dubious plea.

9. A healthy body is the very foundation for all human activities. In a welfare State it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health. The Hon'ble Apex Court in **Vincent Panikurlangara Versus Union of India & Others,(1987) 2 SCC 165** reiterated that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and 47 of the Constitution. Emphasizingly it was opined that attending to public health was of the highest priority. Even with regard to the health infrastructure of a particular institution in Bihar, the Hon'ble Apex Court in **Rakesh Chandra Narayan Versus State of Bihar, 1989**



Supp (1) SCC 644 reminded the State it to be a welfare State, with an obligation “to provide medical attention to every citizen.”

10. As such a constitutional Court is duty bound to ensure that the benefits, under and in terms of the Constitution, are conferred upon those who rightly deserve, particularly when it would sub-serve public interest and promote public good and a public cause. We are concerned not only with the rights of individuals, but enforcement of the Statute as also the law laid down by the Hon’ble Apex Court, which by virtue of Article 141 of the Constitution of India is the law commanding every person to abide by, which this Court, by virtue of Article 142 is duty bound to do so.

MCI ACT & REGULATIONS

11. The Indian Medical Council Act, 1956 (in the judgement referred as the Act) inter alia provides for securing uniform standards of post-graduate medical education throughout India. Sections 20 and 33 of the Act empowers and enables the Council, so defined under Section 2 (b), to frame Regulations prescribing standard of Post Graduate Medical Education. Such Regulations framed by the Medical Council of India (in the judgment referred as MCI) are statutory in character and binding on all Universities and Colleges. **[(1998) 6 SCC 131 titled as**



**Medical Council of India Vs. State of Karnataka; (1999) 7 SCC
120 titled as Dr. Preeti Srivastava and another Vs. State of
M.P. & Ors.]**

12. By virtue of the provisions of the Act, undisputedly, the MCI has framed Regulations and the one notified vide Notification No.MCI-18(1)/2010-Mad/62052 dated 15th February, 2012 (in the judgement referred to as the Regulation) which reads as under:-

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

There shall be a single eligibility cum entrance examination namely "National Eligibility -cum- Entrance Test for admission to Post-graduate Medical Courses" in each academic year. The superintendence, direction and control of National Eligibility -cum- Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India.

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

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

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

III. In order to be eligible for admission to any post-graduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility -cum- Entrance Test for Post-graduate courses" held for the said academic year.



However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9 (II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in "National Eligibility -cum- Entrance Test" for Post-graduate courses:

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

IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidate shall be prepared on the basis of the marks obtained in National Eligibility -cum- Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only:

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

V. No candidate who has failed to obtain the minimum eligibility marks as prescribed in sub-clause (II) above shall be admitted to any Post-graduate courses in the said academic year.

VI. In non-Governmental medical colleges/institutions, 50% (Fifty Per cent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Per Cent)



of the seats shall be filled by the concerned medical colleges/institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility –cum- Entrance Test.

VII. 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as defined by State Government/Competent authority from time to time.

VIII. The Universities and other authorities concerned shall organize admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super specialty courses each year. For this purpose, they shall follow the time schedule indicated in Appendix-III.

IX. There shall be no admission of students in respect of any academic session beyond 31st May for post-graduate courses and 30th September for super speciality courses under any circumstances. The Universities shall not register any student admitted beyond the said date.

X. The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year."

(Emphasis supplied)

13. By a subsequent Notification No.MCI-18(1)/2018-Med./100818 dated 05.04.2018, Clause (IV) and (VII) of Regulation 9 reproduced supra was amended and the word 'rural' inserted along with the words "remote and/or difficult areas".



14. In this petition, we are only concerned with the interpretation of Regulation 9(IV) and 9(VII) and its application to the attending facts and circumstances.

15. The Regulation framed by the Indian Medical Council came up for consideration before the Hon'ble Apex Court in **Dr. Preeti Srivastava (supra)** wherein the Court held that the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. Regulations framed by MCI are binding on the State, and in exercise of power under Entry 25 of List III, cannot make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the MCI for postgraduate medical education. The standards of education are laid down in exercise of the power conferred under Entry 66 of List-I.

16. Subsequently, Constitution Bench (five judges) of the Hon'ble Apex Court in **Saurabh Chaudri and others Vs. Union of India and others, (2003) 11 SCC 146**, recognized the principle of reservation and institutional preference to the extent of 50% in different courses of admission of Medical Colleges. [**Yatinkumar Jasubhai Patel and others Versus State of Gujarat and others, (2019) 10 SCC 1**].



17. Highlighting the importance and significance of merit at the level of Specialty stream, the Apex Court in **Dr. Jagadish Saran & Ors. v. Union of India, (1980) 2 SCC 768**, in paragraph 23 observed as under, which view stands reiterated in **Nikhil Himthani Versus State of Uttarakhand and others (2013) 10 SCC 237:-**

“23. Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure all the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk.”

18. What is the meaning of the expression ‘merit’ for the purposes of admission to Medical Colleges stood explained by the Court in **Dr. Pradeep Jain and others Versus Union of India & Ors. (1984) 3 SCC 654** to mean not only high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work, but that is not enough; it also calls for a sense of social commitment and dedication to the cause of poor. Merit cannot be measured in terms of marks alone, but human sympathies are



equally important. The heart is as much a factor as the head in assessing the social value of a member of the medical profession. The Court reiterated the following view rendered in **Dr.Jagadish Saran (supra)**, in paragraph 12 which reads as under:-

“If potential for rural service or aptitude for rendering medical attention among backward people is a criterion of merit — and it, undoubtedly, is in a land of sickness and misery, neglect and penury, wails and tears — then, surely, belonging to a university catering to a deprived region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as precious in the scale of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in freak cases.”

FACTUAL BACKGROUND OF WRIT PROCEEDINGS

19. For Admission in various Post Graduate Medical Courses including MD/MS/PG DIPLOMA/PG DENTAL (MDS), the competent authority (referred to as the examiner) issued a prospectus for the academic session 2018.

20. Finding the merit list not to have been prepared by granting incentive marks to in-service candidates in terms of Regulation 9(IV) (Proviso), on 23.07.2018, petitioners, namely Dr. Ravi Ranjan Kumar and Dr. Chandan Kumar Tiwari preferred a writ petition being CWJC No.15523 of 2018 titled as Dr. Ravi Ranjan Kumar & anr. Vs. The State of Bihar & Ors. seeking a mandamus, commanding the respondents to redraw the Merit List. However the matter remained pending and even for the subsequent academic



Sessions i.e. 2019-2020, the position remained the same. But with the issuance of a fresh prospectus prepared on similar lines for the academic session 2020, on 17th January, 2020, the writ petitioners preferred an interlocutory application seeking amendment of the writ petition, inter alia praying that the merit list be redrawn in terms of the Regulation.

21. With the State not objecting to the same, the Writ Court (Learned Single Judge), vide order dated 23rd April, 2020 while allowing the amendment directed the State to file its response.

22. Resultantly, the Principal Secretary, Department of Health, Government of Bihar filed his personal affidavit dated 21st of January, 2020 refuting the petitioners' claim, on the premise that the Government of Bihar while issuing Notification vide memo no.2/Court-59/13- No.1037(2)/ Patna, dated 27.08.2013 had only 'identified' the remote/difficult areas and that with such *"identification, the weightage in marks maximum 30 % to be given for 50 % seats of diploma course to such medical officers who have been working for three years or more in the said identified areas for the purpose of admission in PGMAC 2019 is under consideration of the Government."* Also, Vide another Notification issued vide Memo No.2/Court-59/2013- 695(2) Patna, dated 17th June, 2014, all



Health centres, except the Health Centres and Hospitals situated at State Headquarters and District Headquarters, stand identified as remote/difficult areas for the purpose of grant of incentive in admission for 50% of diploma course to the Medical Officer working for three years or more in such Health Centres.

23. Importantly these notifications were placed on the record for the first time.

24. In response to a specific query put by the Court (vide order dated 23.04.2020) as to whether the writ petitioners would be entitled to the benefit of incentives provided under Regulation 9(IV), more so, in view of the law laid down by Hon'ble the Apex Court in **Dr. Dinesh Singh Chauhan (supra)**, Under Secretary, Health Department, Government of Bihar, Patna filed his supplementary counter affidavit dated 25th April, 2020, stating that "it is humbly submitted that the matter of posting of the doctors in government service is the decision/discretion of the State government and is not based upon the will/option of the government doctors and if the incentive/wightage is given to the in-service doctors posted at rural/remote area in admission in the Post graduate degree and diploma courses, the merit will be compromised and *would adversely affect the in-service doctors posted at urban areas and therefore it is not appropriate and*



justified to give any weightage to the in-service doctors posted at rural/remote areas over and above to those posted at urban areas which is not in their hands.”

(Emphasis added)

25. Finding Regulation 9(IV) to be mandatory and not directory, with no scope of discretion left with the Government, more so, as per law expounded in **Dr. Dinesh Singh Chauhan** (supra), the learned Single Judge vide judgement dated 27th April, 2020 allowed the writ petition, directing the State to consider the claim of the writ petitioners for grant of incentive marks in terms of Regulation 9(IV) and prepare a fresh State merit list of all the eligible candidates for admission into Post Graduate Degree/Diploma Courses for the academic session 2020.

FACTUAL BACKGROUND OF LETTERS PATENT APPEAL

26. Aggrieved thereof, assailing the impugned judgement, Dr. Ankit Abhishek, preferred an appeal bearing L.P.A. No.255 of 2020 in which on 12th of May, 2020, leave to appeal was granted (For he was not a party in the Writ Petition) when also MCI was impleaded as a party and in an application for grant of interim relief, it stood clarified that it would be open for the Authorities to implement the impugned judgement, in letter and



spirit, which action taken, shall be subject to the outcome of the appeal, which fact, be notified to all concerned.

27. In the meanwhile, independently assailing the very same judgement, State also preferred its appeal being LPA No.256 of 2020 titled as The State of Bihar & Ors. Versus Dr. Ravi Ranjan & Ors. and as such, both of these appeals were listed on 14th of May, 2020, when on the request of the State, MCI was also impleaded as a party respondent.

28. Finding the parties not to have placed on record all the documents dealing with the issue, this Court directed the State to file all the Notifications issued in reference to and pursuant to the Post Graduate Medical Education Regulation, 2000 issued vide Notification No.MCI-18(1)/2010-Med/62052, dated 15.02.2012 as amended Vide Notification No.MCI-18(1)/2018-Med./100818 dated 05.04.2018. The Secretary, Department of Health, Medical Education was also directed to file an affidavit indicating in a tabular form, the number of sanctioned posts of the doctors and the existing vacancies in Bihar. Also learned counsel for the MCI was directed to obtain instructions as to whether (a) proviso to Regulation 9(IV) was mandatory or not; (b) Notification issued for the purpose of Regulation 9(VII) is to be read into and for the purposes of Regulation 9(IV).



29. In the meanwhile, yet another appeal being LPA No.257 of 2020 titled as Dr. Keshav & Anr. Versus The State of Bihar & Ors. assailing the judgement dated 07.05.2020 passed in another matter being CWJC No.5624 of 2020, overlapping one of the issues in question was preferred by the petitioners whose writ petition stood dismissed.

30. When All these three appeals were listed together and on 19th of May, 2020, this Court accepted the suggestion of learned counsel for the Parties that the said LPA No.257 of 2020 be delinked. However it stood clarified that all the appeals shall be heard on the basis of a complete compendium of the documents and the written submissions filed by the parties, to be part of the record of the appeals.

ADMITTED/UNDISPUTED FACTS

31. Before us, it is not disputed that (i) the original writ petitioners, namely Dr. Ravi Ranjan Kumar and Dr. Chandan Kumar Tiwari, have been serving the State as doctors (ii) initially, the Regulation restricted the benefit of incentive only to remote/difficult areas, which stood extended even to the rural areas with effect from 5th April, 2018; (iii) State has issued a Notification No.1037(2) dated 27.08.2013 under Regulation 9 (IV). It being a different matter, as is so canvassed, that the same was only for the



purpose of identification of the remote/difficult areas and not conferring the benefits of incentives; (iv) the State Government issued another Notification No.695 (2) dated 17.06.2014 notifying certain areas as rural areas. However it only refers to Diploma and not Degree courses. No separate Notification identifying rural areas stands issued for the Degree Courses, a category, inter alia, specified under Regulation 9(IV); (v) it is a matter of record that the writ petitioners have served in the rural area notified in terms of notification dated 17.06.2014.; (vi) as per the statement made by Sri S. D. Yadav, learned Additional Advocate General and Sri Vikas Kumar, learned counsel appearing for the examiner, no benefit in terms of these two Notifications stands accorded to any one of the candidates seeking admission into a Degree Course.

32. It is with this factual backdrop, we now proceed to decide the issues canvassed before us.

REGULATION 9(IV) MANDATORY OR DIRECTORY

33. The first issue which arises for consideration is as to whether Proviso contained in Regulation 9(IV) is mandatory or not. The learned Single Judge by relying upon the decision rendered in **Dr. Dinesh Singh Chauhan (supra)** has held the word ‘may’ contained in the proviso to be mandatory in nature, leaving no option or discretion with the Government but to apply and grant



incentive to the doctors who have served in the areas specified therein.

34. While inviting our attention to the observations made in paragraphs 25 to 49 of the said Report, Sri Ashish Giri, learned counsel appearing for the writ petitioners, contends that in view of use of strong expressions such as “relevance” “obliged”, “necessary for adherence of the provisions” by Hon’ble the Apex Court, there is no option left with this Court, but to affirm the view taken by the learned Single Judge.

35. Well, we do not find ourselves to be persuaded on this count.

36. We notice that such observations, in reference to the applicability and enforceability of the proviso contained in Regulation 9 (IV) was in the backdrop of the vain attempt made on the part of the State to wriggle out of its concession made during the course of hearing, which fact is evident from paragraphs 7 and 20 of the said report. No doubt, in paragraph 32 thereof, the Court emphasized that the need of providing incentive cannot be ‘underscored’, for on account of concentration of doctors in urban areas, large number of posts in the rural areas remain unfilled but then it did not hold that the State has no discretion to grant incentive.



37. While upholding the constitutional validity of the proviso granting incentives, in paragraphs 33, 34, 35, 40, 42, 43 and 44 of the Report, the Court extensively dealt with the relevance, significance and importance of providing such an incentive to the doctors serving in the specified areas. Concentration of doctors in the urban areas led to large number of posts remaining unfilled in the rural areas. It is in this backdrop it was held that for determining the academic merit of candidates not only the marks obtained in the examination (NEET), but also services rendered for common or public good must be reckoned and the candidate who had sacrificed his career by rendering services for providing healthcare facilities in rural areas deserve incentive marks. The Court, as is evident from para 44 of the report, went into the legislative history for providing such incentive and eventually observed as under:-

“44.....To determine the academic merit of candidates, merely securing high marks in NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing healthcare facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to postgraduate medical courses. Not even one instance has been brought to our notice to show



that some areas which are not remote or difficult areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to clause (IV) is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to clause (IV) in particular is just, proper and reasonable and also fulfils the test of Article 14 of the Constitution, being in larger public interest.

38. But then the Court was directly not dealing with the issue as to whether the expression “May” in the proviso is to be read as “Shall”, nor has the Court held it to be so. Only the constitutional validity of the Proviso and the attempt to wriggle out of the undertaking granting incentive in terms thereof, inter alia, were the issues involved.

39. Even otherwise, what is ratio decidendi, its principles and applicability, is now well settled. A judgement cannot be read as a statute. A word, a clause or a sentence occurring in a judgement divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in the judgement cannot be said to be ratio decidendi. **[Madhav Rai Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85, para 141, Vishal N. Kalsaria Versus Bank of India and others, (2016) 3 SCC 762, para 33]. In Union of India vs.**



Dhanwanti Devi, (1996) 6 SCC 44, the Hon'ble Apex Court

observed that:-

9. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates— (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. *Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.* The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application



of law to the facts and circumstances of the case which constitutes its ratio decidendi.

40. Applying the aforesaid principles it cannot be said that either contextually or constructively, the issue stands decided by Hon'ble the Apex Court in **Dr. Dinesh Singh Chauhan** (supra).

41. The law as to whether the word “May” can be construed as “Must” or “Shall” is also well settled. It has to be determined by the Court depending upon whether the power was coupled with a duty to exercise the same or was it conferment of power simpliciter. [**D. K. Basu Versus State of West Bengal and others (2015) 8 SCC 744**, para 17.3, **The Textile Commissioner and others Versus Shri Jagdish Process Pvt. Ltd. And another, (1977) 2 SCC 579**, paragraph-2).

42. Dealing with the issue as to whether the word ‘may’ has to be and should be construed to read as ‘shall’, we need not labour any further, for we find, as Mr. P. K. Shahi, learned Senior Counsel rightly invites our attention to two subsequent decisions, the Apex Court directly dealing with the issue in hand, has held the provision of giving weightage under Regulation 9 (IV) to be an enabling one. [**State of Haryana & anr. Versus Narendra Soni and others, (2017) 14 SCC 642** para 26) and that there is no right which “inheres” in the government doctors to compel the State



Government for providing the incentive. [**State of Punjab and another Versus Rajesh Kumar and others. (2017) 14 SCC 655**, para 12].

43. As such, the findings returned by the learned Single Judge, holding the proviso to be “mandatorily followed by the Government leaving no discretion” cannot to be said to be as per settled principles of law and warrants interference. Ordered accordingly.

DEFERMENT OF THESE APPEALS PENDING REFERENCE TO THE LARGER BENCH

44. Should we defer the hearing of these appeals or dismiss them only on the ground that the decision rendered in **Dr. Dinesh Singh Chauhan** (supra) stands referred to a larger Bench is the next issue which we now proceed to decide, as is so canvassed both by the learned Advocate General and Shri P. K. Shahi, learned Senior Counsel appearing for the appellant.

45. Well, in view of the observation made in the order of reference itself (Paras 12 and 13) reported as **Tamil Nadu Medical Officers Association and others Versus Union of India and others, (2018) 17 426**, we are afraid, even that we need not do so, for the Court, while making the reference, in paragraph 15, categorically observed that the observations made in **Dr. Dinesh**



Singh Chauhan (supra) still holds the field and construction of Regulation 9(IV), for the present, cannot be brushed aside.

INTERPRETATION OF THE REGULATION AND THE NOTIFICATIONS

46. Next we examine as to whether the notification issued for the purpose of 9(VII) can be read into and for the purposes of 9(IV) or not and whether the two notifications actually confer any benefit of incentives or not.

47. With regard to construction and interpretation of a Statute, with profit we may quote the following observations made by the Hon'ble Apex Court in **Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus Presiding Officer, Labour Court, Chandigarh and others, (1990) 3 SCC 682** as under:-

“62. “The only rule of construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.”.....

.... “The court has to determine the intention as expressed by the words used. If the words of a statute are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver.”

As was stated in *Thompson v. Goold & Co.* [1910 AC 409, 420 : 26 TLR 526] “it is a strong thing to read into an



Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do so". "The cardinal rule of construction of statute is to read statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning". [*Jugalkishore Saraf v. Raw Cotton Co. Ltd.* [(1955) 1 SCR 1369 : AIR 1955 SC 376]]

64. According to Lord Simon looking into the legislative history or the preparatory works may sometimes be useful but may often lead to abuse and waste, as "an individual legislator may indicate his assent on an assumption that the legislation means so-and-so and the courts may have no way of knowing how far his assumption is shared by his colleagues, even those present". In the absence of such material it is said, the courts have five principal avenues of approach to the ascertainment of the legislative intention: (1) examination of the social background, as specifically proved if not within common knowledge, in order to identify the social or juristic defect which is likely subject of remedy; (2) a conspectus of the entire relevant body of the law for the same purpose; (3) particular regard to the long title of the statute to be interpreted (and where available, the preamble), in which the general legislative objectives will be stated; (4) scrutiny of the actual words to be interpreted, in the light of the established canons of interpretation; and (5) examination of the other provisions of the statute in question (or of other statutes in *pari materia*) for the illumination which they throw on the particular words which are the subject of interpretation.

65. The *Heydon's Rule* requires that the court will look at the Act to see what was its purpose and what mischief in the earlier law it was designed to prevent. Four things are to be considered: (i) What was the law before the making of the Act? (ii) What was the mischief and defect for which the earlier law did not provide? (iii) What remedy the Parliament had resolved to cure? (iv) What is the true reason for the remedy? The court shall make such construction as shall suppress the mischief and advance the remedy.

66. Where the statute has been passed to remedy a weakness in the law, it is to be interpreted in such a way as well to bring about that remedy."



48. We have already noticed the observations of Hon'ble the Apex Court in **Dr. Dinesh Singh Chauhan** (supra) in paragraphs 24, 29 and 32 as under:-

“24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see *Preeti Srivastava v. State of M.P.* [*Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120 : 1 SCEC 742]). The procedure for selection of candidates for the postgraduate degree courses is one such area on which the Central legislation and regulations must prevail.

29. In the present case, we have held that providing 30% reservation to in-service candidates in postgraduate “degree” courses is not permissible. It does not, however, follow that giving weightage or incentive marks to in-service candidates for postgraduate “degree” courses entails in excessive or substantial departure from the rule of merit and equality. For, Regulation 9 recognises the principle of giving weightage to in-service candidates while determining their merit. In that sense, incentive marks given to in-service candidates is in recognition of their service reckoned in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in NEET. Weightage or incentive marks specified in Regulation 9 are thus linked to the marks obtained by the in-service candidate in NEET and reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage the medical graduates/doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates)



is permissible differentiation whilst determining their merit. It is an objective method of determining their merit.”

49. Clinchingly, the issue, also with the advantage of the Legislator/Regulator (MCI) before us, needs to be answered in the affirmative, in view of its following stand:

“9. It is submitted that the phrase “remote and/or difficult area or Rural areas” used in the proviso to Regulation 9 (IV) of the PGMER and Regulation 9 (VII) of the PGMER do carry identical meaning and import and once the remote and/or difficult area or Rural areas has been defined by the State Government/Competent Authority for the purpose of filling 50% PG Diploma seats from in-service candidates as per Regulation 9 (VII) of the PGMER, the same notification may also be used for the purpose of giving weightage for service in remote and /or difficult area or Rural areas as per the Proviso to Regulation (IV) of the PGMER provided policy decision by the State Government is taken to enforce the Proviso to Regulation 9(IV) of the PGMER.”

(Emphasis supplied)

50. Even by way of interpretative process, the stand of the Regulator is correct. It is in tune with the process of contextual interpretation. Benefit, be it that of grant of incentives or reservation is only vis-à-vis the areas defined by the State as remote/difficult/rural. The power of defining the areas, as per Regulation 9(IV) is with the State Government, the competent authority, of which there is no reference in Regulation 9 (VII). Both deal with the same very specie of conferring benefits, be it by way of incentive in weightage of marks or reservation. Both are with the very same object and purpose. By incentivizing posting of doctors



in the rural areas, State would only be advancing the constitutional goal of improving the health and improvising the infrastructure in such areas.

51. Grant of 50% reservation in P.G. Diploma Course to in-service doctors who have served three years in rural areas is mandatory under Regulation 9(VII), however, same is granted only when State notifies remote/difficult areas and once such declaration being made 50% reservation in P.G. Diploma Course is automatic and no discretion is left with State to grant it or not. However, grant of incentive under Regulation 9(IV) in P.G. Degree course, decision of State Government is desirable and if circumstances and factors exist in the State for which proviso was inserted in Regulation 9(IV), then State could not and should not deny such incentive. In Bihar, it is an admitted fact that large number of posts in Rural Health Centres/Hospital is vacant as doctors are not willing to serve in such areas and for this reason, MCI provided incentive to motivate doctors to serve in such areas by adding weightage of 10% to 30% in marks of NEET.

52. Thus, the Notification dated 17.06.2014 has to be used for the purposes of conferring benefit to the doctors in terms of Proviso to Regulation 9 (IV). The term rural area has to be read into and along with Notification dated 27.08.2013.



53. Since interpretation and application of both these Notifications is in issue, for ready reference, we reproduce them as under:-

Government of Bihar

Department of Health

Notification

File No.-2/court-59/13-1037(2)/Health

Patna, Dated-27.08.2013

It has been mentioned in the Medical Council of India notification no.-62052, dated-15.02.2012 that up to 30 per cent weightage be given to candidates on marks obtained in National Eligibility-cum-Entrance Examination, for their government services rendered in remote and difficult areas. It is also mentioned in the notification that the remote and difficult areas shall be those defined by the State Government/Competent Authority from time to time.

2. In the light of notification mentioned above, hospitals situated in the state are marked as remote and/or difficult areas as per the following table-

Sl. No	Proposed criteria	Name of Block	Type of Hospital	Remarks
1	2	3	4	5
1	Hilly Area	Aghaura (Kaimur)	Referral Hospital	
		Bankebazar (Gaya)	Primary Health Center	
		Fatehpur (Gaya)	Primary Health Center	
		Tankuppa (Gaya)	Primary Health Center	
		Mohra (Gaya)	Primary Health Center	
		Nimchakbathani (Gaya)	Primary Health Center	
		Dumariya (Gaya)	Primary Health Center	
		Suryagarha (Lakhisarai)	Addl. Primary Health Center, Urain	
		Nawhatta (Rohtas)	Primary Health Center	
2	Forest Area	Mohanpur (Gaya)	Primary Health Center	
		Barachatti (Gaya)	Primary Health Center	
		Fatehpur (Gaya)	Primary Health Center	
		Imamganj (Gaya)	Primary Health Center	
		Chanan (Banka)	Primary Health Center	
		Bagha (W. Champaran)	Primay Health Center, Harnatand	Also in purview of hilly area
		Gaunaha (W. Champaran)	Primary Health Center	Also in purview of hilly area
3	Diyara Area	Raghopur (Vaishali)	Primary Health Center, Raghopur/Addl. Primary Health Center Mallikpur, Virpur, Jurawanpur	



		Samho (Begusarai)	Primary Health Center, Samho	
		Baliya	Addl. Primary Health Center, Hanuman Nagar, Paharpur	
		Sahebpur Kamal (Begusarai)	Addl. Primary Health Center, Malhipur	
		Bachhwara (Begusarai)	Addl. Primary Health Center, Chamtha	
		Pipariya (Lakhisarai)	Primary Health Center, Pipariya/Addl. Primary Health Center, Ramchandrapur	
		Barahiya (Lakhisarai)	Addl. Primary Health Center, Khutha	
4	Not connected with road	Thakraha (W. Champaran)	Primary Health Center	Sandy area and across Gandak
		Bhithhan (W. Champaran)	Primary Health Center	Across Gandak
		Piprasi (W. Champaran)	Primary Health Center	Across Gandak
		Madhubani (W. Champaran)		Sandy area and across Gandak
		Tariyani (Sheohar)	Primary Health Center	
		Nirmali (Supaul)	Addl. Primary Health Center, Baskhora, Bela, Daturaha, Ghoghariya	
		Garauna (Supaul)	All Addl. Primary Health Center of the Block	
		Suryagarha (Lakhisarai)	Addl. Primary Health Center, Pratappur, Halsi	
		Ladaniya (Madhubani)	Addl. Primary Health Center, Tenuaahi	
		Babubarhi (Madhubani)	Addl. Primary Health Center, Bhatchaura	
		Harlakhi (Madhubani)	Addl. Primary Health Center, Gangaur	
5	Usually flood prone area	Alauli (Khagariya)	Addl. Primary Health Center, Haripur, Bahadurpur, Sumbha, Gohraghat and Dharndih	
		Beldaur (Khagariya)	Primary Health Center, Addl. Primary Health Center, Pirnagra, Kurchan	
		Chautham (Khagariya)	Addl. Primary Health Center, Thuthi, Mohanpur	



	Gogri (Khagariya)	Addl. Primary Health Center, Basuwa	
	Mahishi (Saharasa)	Addl. Primary Health Center, Telaya and Kunchah	
	Nawhatta (Saharasa)	Addl. Primary Health Center, Bakniyan	
	Salkhuwa (Saharasa)	Addl. Primary Health Center, Kabirajap	
	Aalamnagar (Madhepura)	Addl. Primary Health Center,, Khapur, Ratwara	
	Udakishunganj (Madhepura)	Addl. Primary Health Center, Khara	
	Bariyarpur (Munger)	Addl. Primary Health Center, Jhauwabahiyar, Binda Diyara	
	Tetiyabamber (Munger)	Addl. Primary Health Center, Chata, Tilkari	
	Sadar Prakhand (Munger)	Addl. Primary Health Center, Kutulpur	
	Kusheshwarsthan (Darbhanga)	Primary Health Center, Addl. Primary Health Center, Kusheshwarsthan, Sugrain, Kola	
	Kusheshwarsthan, Sati Ghat (Darbhanga)	Addl. Primary Health Center, Madhuban, Budhauri	
	Kiratpur (Darbhanga)	Primary Health Center, Kistpur, Addl. Primary Health Center, Jamalpur, Rasiyari	
	Gaurabauram (Darbhanga)	Addl. Primary Health Center, Aadharpur, Gauramansingh	
	Madhwapur (Madhubani)	Addl. Primary Health Center, Madhwapur	
	Laukahi (Madhubani)	Addl. Primary Health Center, Mahadevgadh	
	Ghoghardiha (Madhubani)	Addl. Primary Health Center, Chhajana	
	Andhratharhi (Madhubani)	Addl. Primary Health Center, Gangdwar	
	Benipatti (Madhubani)	Brijhari Hospital, Madhour	
	Madhepur (Madhubani)	Addl. Primary Health Center, Basipati, Bheja	
	Lakhnaur (Madhubani)	Addl. Primary Health Center, Rataul Gadanpur	

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3. In addition to the above blocks/hospitals, if any information received from elsewhere, that shall also be considered to be included/notified as remote/difficult areas.

4. It has government approval.

By the order of the Governor of Bihar

Sd/-
(Sanjay Kumar)
Joint Secretary to the Govt.

Memo No.-2/court-59/2013-1037(2)

Patna, Dated-27.03.2013

Copy to- Accountant General, Bihar, Virchand Patel Path, Patna/Finance (pay slip) Department, Bihar, Patna for information and necessary action.

Copy to- Under Secretary, Secretariat Press (Section), Finance Department, Bihar, Patna for publication in extraordinary issue of Bihar Gazette.

Copy to- All Divisional Commissioner/All District Magistrate/All Regional Deputy Director, Health Services/All Civil Surgeon for information and necessary action.

Copy to- Principal Secretary to Hon'ble Chief Minister/O.S.D. to Chief Secretary/P.S. to Principal Secretary, Health/Executive Director, State Health Society/Director-in-Chief, Health Services for information.

Copy to- Shri J.R.K. Rao, Examination Controller, BCECE Board, IAS Bhawan, Patna/Dr. (Capt.) N.P. Yadav, Examination Controller-cum-Principal, Patna Medical College Hospital, Patna for information and necessary action.

Sd/-
(Sanjay Kumar)
Joint Secretary to the Govt.



Government of Bihar
Health Department
NOTIFICATION

No.-2/Court-59/13...../Health, Patna Dated-...../...../2014

It has been mentioned in the Medical Council of India notification no.62052 dated-15-02-2012 regarding admission in diploma course through National Eligibility-cum-Entrance Test that for government services rendered in remote or difficult areas candidates it is also mentioned that these areas shall be such as have been defined by the State Government/Competent Authority from time to time.

2. All doctors having served for three years or more in all health institutions, barring health centers/hospitals situated in State Headquarter & District Headquarter are marked as remote/difficult areas for 50 per cent seats of diploma Course.

3. Terms and conditions shall be applicable as notified by Medical Council of India from time to time. All notifications issued earlier, with this regard are hereby repealed with immediate effect.

4. It has the approval of Hon'ble Minister, Health Department.

By the order of the Governor of Bihar

Sd/-
(Sanjay Kumar)
Joint Secretary to the Govt.

Memo No.-2/Court-59/2013-695(2)/Health, Patna Dated-17/06/2014

Copy to- Accountant General, Bihar, Virchand Patel Path, Patna/Under Secretary, Finance (pay slip) Department, Bihar, Patna/Gazette Cells, Finance Department, Bihar, Patna for publication in extraordinary issue of Bihar Gazette.

Copy to- All Divisional Commissioner/All District Magistrate/All Regional Deputy Director, Health Services/All Civil Surgeon for information and necessary action.

Copy to- P.S to Hon'ble Minister, Health/Officer on Special Duty to the Chief Secretary/P.S. to Principal Secretary, Health/Executive Director, State Health Society/Director-in-Chief, Health Services for information,

Copy to- Shri J.R.K Rao, Examination Controller, BCECE Board, IAS Bhawan, Patna/Dr. Prabhat Kumar, Examination Controller for information.

Copy to- Principal Additional Advocate General, Patna High Court, Patna for information and necessary action.

Sd/-
Joint Secretary to the Govt.



54. Here, only we may observe that save and except for one notification (dated 27.08.2013), consistently the Department has been conveying to the examiner, vide three communications dated 27th June, 2012, 27th July, 2013 and 15th April, 2020, of according benefits of the Regulations only with respect to the Diploma Courses.

NOTIFICATION DATED 27TH AUGUST, 2013

55. Submission made on behalf of the learned Advocate General that the Notification dated 27th August, 2013 cannot be interpreted to be a decision of the State Government of granting weightage in terms of the proviso to Regulation 9(IV), for the said Notification only identifies the remote and difficult areas, and does not accord benefits in terms thereof, is also legally unsustainable.

56. The language of the Notification is clear. It is issued under Regulation dated 15.02.2012 issued by MCI; it does not state that only areas stand identified; Clause two is evidently clear. Factum of giving weightage up to 30% on the marks obtained in NEET on account of Government service rendered in remote/difficult areas is categorically notified; it does not state that a separate or subsequent notification would be issued conferring such benefits; it records that left out areas were to be notified



subsequently; the Notification was forwarded to the Examiner-a separate legal entity; all this only implies the affirmative intent of the Government in conferring benefits in terms of the Regulation 9(IV).

57. In our considered view, the State cannot be allowed to argue that the benefit of Regulation framed by the MCI cannot be conferred only for the reason that it would affect the interest of doctors serving in urban areas. Undoubtedly discretion of according benefits, vests with the Government, but then, its exercise has to be based on some rational and not in an arbitrary and capricious manner. There is no logic of depriving the doctors posted in the rural areas of such benefits. Strangely, if not collusively, it has taken a specious plea of interpreting such a Notification limited only to the identification of areas in terms of the Regulation and not taking a decision conferring benefits in terms thereof. Such a stand is both immoral and illegal.

58. The Regulation 9(IV) does not envisage twin stage i.e. (a) first identification and (b) then conferment. The language is simple and clear. The power to grant incentive is discretionary, but then having done so, State cannot be allowed to turn around and contend to the contrary, notwithstanding as to whether such benefit was neither claimed nor conferred upon any



individual. Mere non enforcement of a right by an individual or its non-conferment upon by the State would also not be a reason for the State to adopt such a dubious plea

59. Not only that we find the stand taken by the Department to be patently false and incorrect.

60. We had called for the original file leading to the issuance of the Notification. Perusal thereof, reveals that the genesis of the origin of the file was initiation of two writ petitions filed before this Court being CWJC No.12028 of 2013 titled as Rajesh Kumar & ors. Vs. State of Bihar & ors. and CWJC No.12044 of 2013 titled as Dr. Gaurav Kumar Versus State of Bihar & Ors.. Applicants in Rajesh Kumar could not succeed for they were claiming parity of reservation as that of P.G. Diploma Course but the file was taken to its logical end. The proposal prepared by the Health Department processed through the concerned Departments was placed before the Chief Secretary who opined certain changes of identifying the areas on block-wise basis, whereafter, with the completion of such exercise, and the approval of the Administration Department, file was again placed before the Chief Secretary and Hon'ble the Chief Minister for issuance of the Notification, for which sanction was accorded and the resultant action taken. Even from the noting portion, it cannot be inferred that the intent of the



Government was only to identify the area and not to confer benefits of incentive in terms of the Regulation.

61. We notice that again the matter was taken up with the Civil Surgeon(s) who submitted their report, identifying left over areas which was approved by the Principal Secretary of the Administration Department to which the Chief Secretary took an exception that since no parameters for inclusion of the remote/difficult areas stood formulated by the Department, hence directed for constitution of a Committee.

62. However instead of constituting any committee for inclusion of left over remote/difficult areas in the notification, Health Department made a fresh proposal to declare all the Health Centres/Hospitals located other than in State Headquarter or District Headquarter as remote/difficult areas as 90% of Health Centre are located in rural areas and said proposal was approved by Health Secretary and Health Minister and Notification dated 17.06.2014 was issued by the Health Department. Surprisingly approval of Chief Secretary and Hon'ble Chief Minister was not taken on this proposal. In Notification dated 17.06.2014 itself it was clarified that all previous notification on this subject stand omitted meaning thereby by Notification dated 17.06.2014 declaring remote/difficult area remains valid and effective and remote/difficult areas made in



Notification dated 27.08.2013 stood replaced/omitted by subsequent Notification.

63. Mere reading of two Notifications, it is apparent that Notification dated 27.08.2013 was issued to grant incentive of 10% to 30% in marks obtained in NEET Examination to the in-service doctors of the State Government who had served in remote/difficult areas from one year to three years or more for admission in P.G. Degree Course in view of Proviso to 9(IV) of Regulation whereas Notification dated 17.06.2014 was issued to provide reservation of 50% in P.G. Diploma Course to in-service Doctor who served in rural areas for three years. 50% reservation in P.G. Diploma Course to doctors serving in rural areas is mandatory and State has only to notify remote/difficult areas for said purpose.

64. Both Notifications were issued by the Health Department pursuant to order dated 04.07.2013 passed in CWJC No.12044 of 2013 by this Court to consider grant of incentive/weightage, pursuant to amendment made in MCI Regulation in the year 2012, to the writ petitioner. CWJC No.12044 of 2013 was disposed of by the High Court on 04.07.2013 with direction to the Principal Secretary to consider the representation of the petitioner with respect to grant of weightage/incentive in terms of Notification dated 15.02.2012 of MCI Regulation and in



consideration thereof, both Notifications were issued by the Health Department.

65. Undoubtedly, this Notification does record that the areas identified are for the purposes of admission in P.G. Diploma Courses but then, as the Legislator (Regulator) itself has stated, the same has to be read into and for the purposes of 9 (IV), for which we have no hesitation in holding so.

66. We also notice that the decision for issuance of both the Notifications, i.e. 27th August, 2013 and 17th June, 2014 arose in the context of order dated 04.07.2013 passed in writ petition (CWJC No.12044 of 2013), filed by Dr. Gaurav Kumar which stood disposed of, to be treated as a representation and he did not pursue the matter any further, perhaps, benefits thereof could not be conferred.

67. Not only that, the procedure adopted by the State for grant of certificate by the Civil Surgeon both with respect to 9(IV) and 9 (VII) is same and similar, so much so that the format is also similar.

68. It is for this reason we hold that the recent communication dated 15.04.2020 of the Administration Department to the Examiner is not in tune with the decision of the Government which in fact is the competent authority to take such a decision.



Right to Health and Access To Health Care Infrastructure

69. Undoubtedly, right to health is a fundamental right. Right to good health is now a facet of right to life under Article 21 of the Constitution of India and when we talk of justice which is social it would also include opportunities of availing facilities and infrastructure in the health sector.

70. In **Pashim Banga khet Mazdoor Samity & Ors. Versus the State of West Bengal and another, (1996) 4 SCC 37**, the Hon'ble Apex Court has held that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view.

71. In **State of Punjab & Ors. Versus Ram Lubhaya Bagga & Ors. (1998) 4 SCC 117**, the Hon'ble Apex Court observed that:-

“26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to



make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal.”

72. In Common cause (A Registered Society)

Versus Union of India and another, (2018) 5 SCC 1, the Hon’ble

Apex Court held as under:-

304. There is a related, but interesting, aspect of this dignity which needs to be emphasised. Right to health is a part of Article 21 of the Constitution. At the same time, it is also a harsh reality that everybody is not able to enjoy that right because of poverty, etc. The State is not in a position to translate into reality this right to health for all citizens. Thus, when citizens are not guaranteed the right to health, can they be denied right to die in dignity?

318. Rights with regard to medical treatment fall essentially into two categories: first, rights to receive or be free of treatment as needed or desired, and not to be subjected involuntarily to experimentation which, irrespective of any benefit which the subjects may derive, are intended to advance scientific knowledge and benefit people other than the subject in the long term; secondly, rights connected incidentally with the provision of medical services, such as rights to be told the truth by one's doctor.



73. In **Aswani Kumar Versus Union of India & Ors. (2019) 2 SCC 636**, the Hon'ble Apex Court in paragraphs 28 to 31 held that:-

“28. It was submitted by the petitioner that medical facilities and geriatric care are not given the due importance that they deserve. He submitted that, by and large, it is older persons who require medical care more frequently than younger persons and if they are not provided the necessary medical facilities, it would adversely impact on their right to health. In support of his contention that the right to health is a human right and a constitutional right, the petitioner referred to a few decisions which we detail hereinbelow.

29. In *Vincent Panikurlangara v. Union of India* [*Vincent Panikurlangara v. Union of India*, (1987) 2 SCC 165 : 1987 SCC (Cri) 329] this Court did not specifically deal with the right to health of the elderly but it did make reference to Article 21 of the Constitution and noted that it includes within it the right to live with human dignity. In fact, Article 21 derives its life breath from some Articles in the directive principles of State policy, particularly, Articles 39, 41 and 42 of the Constitution. While these Articles do not directly deal with the right to health of the elderly, it is quite obvious that when they refer to the protection of the health and strength of men and women, it must include the elderly. It was said in para 16 of the Report as follows: (SCC pp. 173-74)

“16. ... ‘It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Coralie Mullin v. State (UT of Delhi)* [*Francis Coralie Mullin v. State (UT of Delhi)*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212] to live with human dignity, free from exploitation. *This right to live with human dignity enshrined in Article 21 derives its life breath from the directive principles of State policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and*



of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.’ [Ed.: As observed in *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 at p. 183, para 10.] ”

(emphasis supplied)

30. A similar view was expressed by this Court in *Consumer Education & Research Centre v. Union of India* [*Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604] , para 25 and *Kirloskar Bros. Ltd. v. ESI Corpn.* [*Kirloskar Bros. Ltd. v. ESI Corpn.*, (1996) 2 SCC 682 : 1996 SCC (L&S) 533] , para 10.

31. In *State of Punjab v. Mohinder Singh Chawla* [*State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83 : 1997 SCC (L&S) 294] , para 4, *Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd.* [*Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd.*, (2006) 13 SCC 382] , para 26 and in *Occupational Health and Safety Assn. v. Union of India* [*Occupational Health and Safety Assn. v. Union of India*, (2014) 3 SCC 547] , para 10 the right to health was given the status of a fundamental right flowing from Article 21 of the Constitution. There is, of course, no going back on this.”

74. The health care facilities in the remote and difficult areas of the State, to say the least, are desirable, for lack of posting of adequate doctors. Undisputedly, in Bihar out of 11645 sanctioned posts of doctors, 8768 are lying vacant, out of which 5674 fall only in the difficult/remote/rural areas. And despite the same, as stated on an affidavit, Department has chosen not to grant incentive of weightage in marks, to be added in computing the merit on the basis of National Eligibility-cum- Entrance Test



(NEET), to the doctors posted in the rural/remote/difficult areas, for the reason that *“the merit would stand compromised and would adversely affect the in service doctors posted at urban areas”* and, therefore, it is not appropriate and justifiable to give any weightage to the in service doctors posted at rural/remote areas over and above to those posted at urban areas.

75. Can a Welfare State even adopt such a stand more so in the absence of any plea or material to indicate absence of doctors or higher percentage of vacancy of the posts in the urban areas. Under the Constitution all power must be exercised to subserve public interest, for public good and for a public cause. If only such benefits are accorded would the Doctors voluntary opt to serve the poor, the needy, the deprived and the marginalized ones living in the remotest corner of the State.

76. Chart indicating the total sanctioned strength of the doctors; posts filled up; and lying vacant, area wise, in the State is given hereunder:

S.No.	Area	Strength	Posted	Vacant
1	Urban Area	4418	1544	2874
2.	Rural Area	6944	1270	5674
3.	Remote/difficult area	283	63	220
	Total	11645	2877	8768



77. The percentage of vacancies in the rural areas is extremely high and grossly disproportionate to that of posting of doctors in the urban areas. It is in this backdrop the Apex Court in **Dr. Dinesh Singh Chauhan (supra)**, while acknowledging the sacrifice made by the doctors posted in the rural and difficult areas observed that the academic merit of the candidate must also reckon the services rendered for the common or public good and emphasized that the need of providing incentive cannot be ‘underscored’, for on account of concentration of doctors in urban areas, large number of posts in the rural areas remain unfilled. Further, on account of concentration of doctors in urban areas, the rural areas are neglected.

78. Merit of a candidate would also indicate a sense of social commitment and dedication to the cause of poor. In the absence of grant of any incentives, which doctor, in today’s attending circumstances, would want to be posted in the specified areas, thus depriving the poor of their constitutional right of having access to health related infrastructure.

79. As such a constitutional Court is duty bound to ensure that the benefits, under and in terms of the Constitution, are conferred upon those who rightly deserve, particularly when it would sub-serve public interest and promote public good and public



cause. We are not concerned not only with the rights of individual, but enforcing the Statute as also the law laid down by the Hon'ble Apex Court which by virtue of Article 141 of the Constitution of India is the law commanding every person to abide by the same which this Court, by virtue of Article 142 is duty bound to do so.

Power of Constitutional Court

80. The Hon'ble Apex Court in **Ritesh Tewari and another Versus State of Uttar Pradesh and others, (2010) 10 SCC 677** has held that the Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

81. The powers of the Court even in a Letters Patent Appeal, are wide enough to review both the finding of fact and law,



in view of the law laid down in **Smt. Asha Devi Versus Duhi Sao and another, (1974) 2 SCC 492; Chatti Konati Rao and others Versus Palle Venkata Subba Rao, (2010) 14 SCC 316; Roma Sonkar Vs. Madhya Pradesh State Public Service Commission & Anr.(2018) 17 SCC 106; Umaji Keshao Meshram & Ors. Vs. Radhi Kabai, Widow of Anandrao Banapukkar and another, 1986 Supp SCC 401; Buddula Lakshmaiah & Ors. Versus Sri Anjaneya Swami Temple & Ors. (1996) 3 SCC 52; Management of Narendra & Company Private Limited Versus Workmen of Narendra & Company 2016 (3) SCC 340.**

82. In **Ladli Prasahad Jaiswal v. The Karnal Distillery Co. Ltd., Karnal and others, AIR 1963 SC 1279**, the Constitution Bench of the Hon'ble Supreme Court held that in our judgement the appeal with certificate granted by the High Court under Art. 133 (1) (a) and (b) is competent, because a single Judge of the High Court hearing either a proceeding as a Court of original jurisdiction or in exercise of appellate jurisdiction is a court immediately below the Division Bench which hears an appeal against his judgement under the relevant clause of the Letters Patent.

83. Equally, the Constitutional Court is not shackled from moulding the reliefs, more so, when it comes to enforcement



of a fundamental rights of good health with more and more doctors willing to work in the rural areas.

84. Writ Petitioners have prayed for the following reliefs:-

- “1 (vii) To issue writ/order/direction in the nature of mandamus commanding the respondent to prepare the State Merit List for admission in various medical colleges for MD/MS/Post Graduate Diploma Courses in the upcoming session of 2020 conducted by the Bihar Combined Entrance Competitive Examination Board by granting incentive marks to the petitioners @ 10 % of the marks obtained for each year of service in remote and/or difficult areas upto maximum of 30 % as per regulation 9(4) of the Post Graduate Medical Education Regulation, 2000 in terms of the direction of the Hon’ble Apex Court in the case of *State of Uttar Pradesh & Ors. Versus Dr. Dinesh Singh Chauhan reported (2016) 9 SCC 749*.
- (viii) To hold and declare that in terms of the law laid down by the Hon’ble Apex Court in the case of *State of Uttar Pradesh & Ors. Versus Dr. Dinesh Singh Chauhan reported (2016) 9 SCC 749* the state has no jurisdiction to make any rules and regulations contrary to regulation 9(4) of the Post Graduate Medical Education Regulation, 2000 and no reservation can be granted for degree courses and further the marks weightage is mandatory to be granted and any decision contrary to the same of the respondent including the letter no.695 dated 17.06.2014 to be bad in law and wholly without jurisdiction and also to hold that the decision as contained in Annexure-3 dated 17.06.2014 or any other similar decisions providing 50% of reservation to in service candidates having completed 3 years of services in remote and rural areas will not apply for degree courses.
- (ix) To pass interim/ex-parte interim order preventing the respondent from publishing the final merit list for admission to MD/MS/Post Graduate Courses in terms



of National Eligibility cum Entrance Test (NEET-PG) for the sessions 2020 pursuing to the examination held on 5th January, 2020.”

85. The prayers are unambiguously clear and as such the prospectus, a subordinate legislation in conflict with the principal legislation, to the extent of not extending the benefits of the incentives is held to be illegal.

86. Hence, for all the aforesaid reasons, we dismiss these appeals with the following directions:

(i) All candidates who have participated in the selection process, including the writ petitioners and are otherwise eligible, would be entitled to the benefit of Notification No.1037(2)/Health dated 27.08.2013 and Notification No.695(2)/Health dated 17.06.2014 issued by the Government of Bihar;

(ii) Provision in the prospectus to the contrary is held to be illegal and void;

(iii) The Bihar Combined Entrance Competitive Examination Board shall redraw the merit list strictly in accordance with law by granting benefit of Notification No.1037(2)/Health dated 27.08.2013 and Notification No.695(2)/Health dated 17.06.2014 after accounting for the certificates/proof of eligibility, for grant of incentives in terms of Regulation 9(IV) issued by the



Medical Council of India vide Notification No.MCI-18(1)/2010-Med/62052, dated 15th February, 2012 as amended Vide Notification No.MCI-18(1)/2018-Med./100818 dated 05.04.2018;

(iv) All such benefits shall be determined on the basis of principles laid down by Hon'ble the Apex Court in **Dr. Dinesh Singh Chauhan** (supra);

(v) The Chief Secretary, Government of Bihar shall, with the normalization of the current Pandemic COVID-19, ensure that vacancies in the rural/remote/difficult areas are filled up to the maximum extent possible, either by transfer or expediting the process of recruitment;

(vi) No order as to costs;

(vii) Both the Original files called for by the Court are directed to be returned.

(Sanjay Karol, CJ)

S. Kumar, J. I agree.

(S. Kumar, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	20.05.2020
Uploading Date	28.05.2020
Transmission Date	

