

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 691 of 2020

1. Dr. Kishore Kumar Chouhan S/o Purandar Chouhan, Aged About 33 Years R/o Bade Nawapara, Baramkela, District - Raigarh Chhattisgarh.
2. Dr. Aditya Sinha S/o Shri K. L. Sinha, Aged About 33 Years R/o C. H. C. Campus, Magarlod, District - Dhamtari Chhattisgarh.
3. Dr. Pramod Kumar Rathore S/o Bhesaj Lal Rathore, Aged About 30 Years R/o C.H.C. Campus, Odgi, District - Surajpur Chhattisgarh.
4. Dr. Rashmi Aabha Minj D/o Peter Minj, Aged About 35 Years R/o Community Health Centre, Kumhari, District - Durg Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh Through - Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh.
2. The Director Medical Education, Old Nurse Hospital, D.K.S. Bhawan Parisar, Raipur, District - Raipur Chhattisgarh.
3. The Director Health Services, Indravati Bhawan, Capital Complex, New Raipur, District - Raipur Chhattisgarh.
4. The Medical Council of India Through - Its Chairman, Pocket - 14, Phase - 1, Sector - 8, Dwarka, New Delhi.

---- Respondents

and

WPC No. 1039 of 2020

1. Dr. Pranay Gourav Shukla S/o Shri C.L. Shukla Aged About 33 Years Posted At Health Centre Keshkal Block Keshkal, District Kondagaon, Chhattisgarh
2. Dr. Aditya Kumar Rajwade S/o Shri Sukhlal Rajwade Aged About 33 Years Posted At District Hospital Surajpur, District Surajpur, Chhattisgarh
3. Dr. Nitin Gupta S/o Shri M.K.Gupta Aged About 30 Years Posted At Ambagarh Chowki District Rajnandgaon, Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh Through Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh
2. The Director Medical Education, Old Nurse Hospital, D.K.S. Bhawan Parisar, Raipur, District Raipur, Chhattisgarh
3. The Director Health Services, Indravati Bhawan, Capital Complex, New Raipur, District Raipur, Chhattisgarh

4. The Medical Council of India Through Its Chairman, Pocket-14, Phase-1, Sector-8, Dwarka, New Delhi

---- Respondents

For Petitioners	: Shri Prafull N. Bharat and Shri Akash Pandey, Advocate
For Respondents/State	: Shri Satish Chandra Verma, Advocate General assisted by Shri Vikram Sharma, Deputy GA.
For Respondent/MCI	: Shri Ranbir Singh Marhas, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

09.06.2020

1. Improper allocation of 'Bonus marks' in connection with the admission to Post Graduate Medical courses for the year 2020 without declaring the 'rural / remote / difficult / most difficult areas' in terms of the Regulations issued by the Medical Council of India, virtually paying scant regards to the direction given by this Court as per judgment dated 17.05.2019 in WPC No.1029 of 2019 {after setting aside Appendix-III of the Chhattisgarh Medical Post Graduate Entrance Rules, 2018 (hereinafter referred to as "the Rules of 2018")} is the grievance projected in these matters.
2. In WPC No.691/2020, the main prayer is to direct the Respondents to define 'rural / remote / difficult areas' in the Rules of 2018 and to provide upto 10% Bonus marks per year (subject to maximum of 30%) for the eligible in-service candidates and not to follow the old Rules which was already set aside by this Court. WPC No. 1039/2020 came

to be filed by some similarly situated and aggrieved in-service candidates, seeking for almost similar direction and more specifically, to allot Bonus marks with reference to the rural / remote / difficult areas as mentioned in the subsequent Notification dated 07.03.2020 produced along with return filed by the Respondents/State in WPC No.691/2020 and to conduct the counselling afresh.

3. Heard Shri Prafull N. Bharat, the learned counsel appearing for the Petitioner, Shri Satish Chandra Verma, the learned Advocate General assisted by Shri Vikram Sharma, learned Deputy Government Advocate, as well as Shri Ranbir Singh Marhas, the learned counsel appearing for the Respondent/MCI.
4. As mentioned already, the Medical Council of India who is the competent authority has framed Medical Council of India Regulations (Post Graduate Medical Education Regulations 2000) for admission to the Post Graduate courses. The said Regulations are having statutory effect as made clear by the Apex Court. By virtue of Regulation No.9, the in-service candidates working in the rural / remote / difficult areas are entitled to get Bonus marks upto 10% for each year of service subject to a maximum of 30%. However, Appendix-III of the 2018 Rules framed by the State Government, notifying the rural / remote / difficult areas and the allocation of Bonus marks, was stated as not in conformity with the Medical Council of India Regulations and hence the correctness of the Rules was subjected to challenge by the aggrieved persons by filing WPC No. 1029 of 2019 and connected cases.

After hearing both the sides, this Court, as per Annexure P/4 judgment dated 17.05.2019, declared Appendix-III of the 2018 Rules as arbitrary, unconstitutional and hence inoperative. This Court directed the State to undertake a *denovo* exercise for identification and categorization of rural / remote / difficult areas in the State for granting weightage in terms of Rule 7 (vi) of the 2018 Rules and notify such areas after considering all the relevant factors, to be effective prospectively.

5. The grievance of the Petitioners is that, despite the categorical declaration and direction given as per Annexure P/4 judgment dated 17.05.2019, Appendix-III of the 2018 Rules (which was already set aside as unconstitutional) was given effect to for admission to the Post Graduate Medical courses for the year 2020, without making any fresh exercise for identification and categorization of the rural / remote / difficult areas and notify the same. This made the Petitioners in WPC No. 691 of 2020 to seek for immediate interference and prayed for the reliefs as mentioned already. Further developments are discernible from the various interim orders passed by this Court on different dates and hence, it is appropriate to make a reference to the said orders. On 20.02.2020, we passed the following order :

“The grievance of the Petitioners is mainly with regard to non-granting of 10% bonus marks in respect of the candidates like the Petitioners herein who are qualified medical doctors for admission to Post Graduate Courses in conformity with Annexure P/3 regulation No.9, which provides for the allocation of the said marks as incentive for each year working in the remote/rural/difficult areas subject to a maximum/ceiling of 30%. The Rules framed by the State are not in conformity with the said regulations; in

spite of the fact that the Apex Court had already made it clear that the regulations framed by the Medical Council of India are statutory in character.

The learned counsel further submits that Appendix-III of the Chhattisgarh Post Graduation Entrance Rules, 2018 ('Rules of 2018' for short), under which the exercise is being pursued by the State has already been declared as bad in law as per Annexure P/4 judgment dated 17.05.2019 passed in Writ Petition (C) No.1029 of 2019 whereby the State has already been directed to reconsider the matter, but no positive action has been taken from the part of the State so far. This made the Petitioners to approach this Court by filing writ petition challenging the Rules of 2018.

Shri Ranbir Singh Marhas, the learned Standing Counsel appears and takes notice on behalf of the Medical Council of India.

Shri Sudeep Agrawal, the learned Deputy Advocate General appears and takes notice on behalf of the State. The learned counsel submits that the apprehension expressed by the Petitioners is rather premature and that steps are being taken to act as directed by this Court vide Annexure P/4 judgment. It is also pointed out that the State is not taking any action to go by the earlier Rules, which has already been declared bad by this Court vide Annexure P/4 judgment.

The learned counsel for the Petitioners submits with reference to Annexure P/5, that the said submission made by learned counsel for the State is incorrect.

The learned Deputy Advocate General representing the State submits that if any mistake has taken place, the same will be examined and necessary correct measures will be taken and seeks for a posting after one week, to put everything in black and white terms in writing."

6. From the above, it is clear that the Government had assured that it was not intending to give effect to Appendix-III of the 2018 Rules already set aside, and steps were going on to give effect to the judgment already passed by this Court vide Annexure P/4. It was accordingly, that a submission was made before this Court on 09.03.2020, that a new Notification had been issued with reference to the rural / remote / difficult areas and hence time was sought for to produce the

Notification. A copy of the said Notification was subsequently produced as Annexure R/1 alongwith the reply dated 12.03.2020 which was taken note of by this Court on 17.03.2020. The preparedness of the Respondents to give effect to the said Notification, as given in paragraph 8 of the return, was also taken note of by this Court. But, since the learned counsel for the Petitioners pointed out that the said Notification does not say anything with regard to the 'rural area' and how the Bonus marks are to be allotted, further deliberation was felt necessary and hence the matter was adjourned. In the meanwhile, with reference to the new Notification dated 07.03.2020, some similarly situated in-service candidates approached this Court by filing WPC No. 1039 of 2020, seeking to have the said Notification enforced and to allot Bonus marks for the service in rural / remote / difficult areas.

7. When WPC No.1039/2020 came up for consideration on 11.05.2020, it was asserted from the part of the Respondents/State that they had never given effect to the invalid Appendix-III of the 2018 Rules (which was declared unconstitutional by this Court as per judgment dated 17.05.2019 in WPC No. 1029 of 2019 and connected cases) and that they were proceeding with further steps only in conformity with the Notification dated 07.03.2020. This was sought to be rebutted by the learned counsel for the Petitioners; which made this Court to pass an order on 11.05.2020 directing the Respondents / Government to reconcile the position with reference to the relevant Rules / Regulations and Notification, if any, to grant the Bonus marks.

8. On 01.06.2020, the discrepancies in the proceedings and the irregular allotment of Bonus marks was demonstrated from the part of the Petitioners, which made us to pass the following order, directing to produce the relevant Notification and such other details as ordered on 11.05.2020, with regard to the allotment of the Bonus marks :

“Shri Prafull N. Bharat, the learned counsel representing the Petitioner in Writ Petition (C) No. 691 of 2020 submits with reference to Annexure R/1 documents that the 2nd Petitioner at Sl. No. 50 is obviously shown as having worked in “difficult area” in Magarload Block of Dhamtari District and hence as per the norms of the MCI, he is entitled to get upto 10% bonus marks. Similarly, reference is also made to the Petitioner No. 1 shown at Sl. No. 81 who has worked in a “most difficult” area in Manora Block of Jashpur District; despite which he has been granted only 3%, instead of allotment upto 10%. The learned counsel submits that the persons have been identified on 'pick and choose' basis, allotting bonus marks in an arbitrary manner, which hence is under challenge. The learned counsel for the Petitioners points out that the second round of counselling is fast approaching and hence the urgency.

Shri Vikram Sharma, the learned counsel representing the State submits that the second round of counselling is still to be completed and only after the release of the vacant seats, if any, in the Central Quota, to be made available in the State Quota, will the proceedings be taken to issue a fresh Notification as to 'second counselling'.

In the said circumstance, we grant further time to the State/Respondents to produce the relevant Notification and such other details as ordered on 11.05.2020 with regard to the allotment of the bonus marks forthwith.”

9. The Respondents have filed their reply dated 08.06.2020, now conceding that, there occurred some mistakes with regard to the allotment of the Bonus marks to some of the candidates, however, adding that the norms as per the Notification dated 07.03.2020

regarding categorization of the rural / remote / difficult areas will be strictly followed. The returns filed from the part of the Respondents in WPC No. 691 of 2020 and the subsequent reply dated 08.06.2020 filed in WPC No. 1039 of 2020 clearly demonstrate that the apprehension and the grievance expressed from the part of the Petitioners is quite genuine and justified. The Respondents have virtually conceded their mistake and have made it clear that the norms given in the new Notification dated 07.03.2020 will be followed for allocation of Bonus marks, however, adding that 'first counselling' is already over and that the 'second counselling' will be conducted in a short while.

10. Though the learned counsel for the Petitioners asserted that there was a conscious attempt on the part of the Respondents to deviate from the proper course and to allot Bonus marks to the persons of their choice without paying any regard to the clear cut direction given as per Annexure P/4 judgment dated 17.05.2019 and there was misrepresentation as well in this regard. On going through the pleadings, we find that the Respondents have conceded the mistakes and we take note of the assertion made as to corrective measures proposed to be taken in the light of new Notification dated 07.03.2020.
11. Considering the nature of grievance, there cannot be any dispute with regard to the Notification dated 07.03.2020 identifying the rural / remote / difficult areas for giving admission to the Post Graduate Medical courses. In the above circumstance, no further discussion is necessary, but for extracting the relevant portions of the

reply/statements filed by the Respondents/State in both the writ petitions undertaking to give effect to the same. Accordingly, paragraphs 4 and 8 of the reply in WPC No. 691/2020 are reproduced below :

“4. That, instant writ petition has been filed by the petitioners herein on the pretext that the State Government is continuing with the same old Appendix III referable to Rule 7(vi) of the 'Rules of 2018', which has already been declared as arbitrary and violative of Article 14 of the Constitution of India. It is categorically submitted that on the first date of hearing i.e. on 20.02.2020, it was specifically stated by the State Counsel that the apprehension expressed by the petitioners is rather premature and that steps are being taken to act as directed by this Court vide Annexure P-4 judgment. It was also pointed out that the State is not taking any action to go by the earlier Rules, which has already been declared bad by this Court vide Annexure P-4 judgment and also on 09.03.2020, it was submitted before this Hon'ble Court that a new notification has been issued by the State defining the areas with regard to which the benefit sought for could be granted, adding that, the earlier Rule 7 (vi) of the Chhattisgarh Postgraduate Entrance Rules, 2018 is not intended to be given effect to.

8. That, it is most humbly submitted by the answering respondents that award of bonus marks would be done strictly in accordance with the aforesaid Notification dated 07.03.2020 read with Rule 7 of the 'Rules of 2018' and the old Appendix III appended to the aforesaid Rules would not be given effect to as it has lost its efficacy. Thus the writ petition in its present form has been rendered infructuous as the State Government has formulated a new set of categorization for award of bonus marks and the said Notification dated 07.03.2020 has not been challenged in the instant writ petition, as being a subsequent development therefore writ petition deserves to be dismissed as having become academic in nature.”

12. Similarly, to have clarity and to avoid repetition of further discussion, it will only be appropriate to extract the version of the Respondents/State as given in paragraphs 3 to 7 of the return filed in WPC No.1039/2020 :

“3. It is further worthy to state here at this juncture that, when the reply was filed in the Writ Petition No. 691/2020 i.e. (Dr Kishore Chouhand Vs State of CG), at that time, since the registration for first round of counselling was going on, therefore the answering respondent was of view that the new revised list of areas dated 07.03.2020 will be followed for giving the bonus marks to the in-service candidates.

4. That, when the first round of counselling was over and the present petition was filed by the petitioners after remaining unsuccessful in selection, challenging the same distribution of bonus marks and categorically making a submission that new order dated 07.03.2020 is not followed, the matter was again looked into by the answering respondents seriously, and it was found that few of the in-service candidates Bonus Marks need correction, and at that time, for the very first time, it appeared that, due to miscommunication with regard to interpretation of order dated 07.03.2020, regarding how the bonus marks were to be allotted to candidates belonging to Inaccessible, Most Difficult as well as difficult areas, and further due to non-notification of executive order dated 07.03.2020, the bonus marks were not distributed as per the new executive order dated 07.03.2020.

5. It is further most humbly and fairly submitted before this Hon'ble Court that as soon as it appeared before the answering respondent that distribution of bonus marks were given as per old appendix III of Rule 2018, to rectify the mistake, the answering respondents i.e. the Directorate of Health Service revisited all the previously issued Work Experience Certificates and have amended them with new experience certificates with corrected bonus marks dated 04.06.2020. The copy of this being annexed here with as **ANNEXURE R-1(CoII.)**.

6. It is further most humbly and respectfully submitted before this Court that the above distribution of bonus marks was done inadvertently as per old Appendix III of Rules 2018 due to miscommunication, and to rectify this inadvertent mistake steps were already taken and new amended certificates were already issued to the in-service candidates as per order dated 04.06.2020.

7. It is further fairly submitted by the answering respondent before the Hon'ble Court that, the First Round of Allotment has already been completed on 12.04.2020 and admission to allotted seats is done. Out of total 113 Seats, 75 seats in State Quota, including Government and Private

Colleges were lying vacant after the completion of First Round of allotment and admission, and this number may increase after reversion of some of the vacant seats after the completion of second round of counselling of All India Quota, which will be added subsequently to the State Quota in the Second Round of allotment. The copy of the vacant seats after first round of counselling is being annexed as **Annexure R-2**.”

13. On going through the specific pleadings as above and as putforth by the learned counsel appearing for the parties on both the sides, it stands concluded that the rural / remote / difficult areas have been identified by the Government pursuant to Annexure-P/4 judgment, as per Notification dated 07.03.2020. Insofar as the Respondents have conceded in 'paragraph 6' of the return dated 08.06.2020 filed in WPC No.1039/2020 that distribution of Bonus marks was done inadvertently as per “old Appendix-III of the 2018 Rules” due to miscommunication and that, to rectify this inadvertent mistake, steps were already taken and new amended certificates were already issued to the in-service candidates as per order dated 04.06.2020; it is very much essential that the entire counselling exercise has to be re-done with reference to the actual extent of eligibility of Bonus marks in tune with the identified areas notified as per Notification dated 07.03.2020. In other words, the mischief resulted by following the wrong norms while conducting the first round of counselling also requires to be rectified and that the corrective measures cannot be confined to the second round of counselling alone.

14. In the above circumstance, the Respondents are directed to take all necessary steps for proper allocation of the Bonus marks to the eligible candidates with reference to the rural / remote / difficult areas as per Notification dated 07.03.2020 and to conduct the counselling for the admission in the Post Graduate Medical courses afresh within the time as stipulated by the competent authorities.
15. Both the writ petitions are allowed to the above extent. No cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge