IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
20.07.2020	27.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.7543 of 2020

1. Dr.G.P.Arulraj,
   S/o. S.Panchatcharam,
   Senior Resident in Anaesthesiology,
   Government Stanley Medical College,
   Chennai.

2. Dr.P.Sridevi,
   D/o.S.Pichai Pillai
   Casualty Medical Oficer,
   Government Mohan Kumaramangalam
   Medical College and Hospital,
   Salem.

3. Dr.P.Kalaivani
   D/o.Pushpakaran
   Assistant Surgeon,
   Mobile Medical Unit,
   Eriyur, Pennagaram,
   Dharmapuri District.

4. Dr.A.Shanmugapriya
   D/o K.Alagappan
   Assistant Surgeon,
   Government Hospital,
   Tambaram at Chrompet,
   Chengalpattu District.

5. Dr.R.Rajalakshmi,
   D/o N.Radhakrishnan
   Assistant Surgeon,
   Primary Health Centre,
   Perumbakkam,
   Chengalpattu District.

6. Dr. S.Prasanna,
   D/o.S.Muthukrihnan
   Medical Officer,
   Chennai Corporation,
   Zone-XIV, Perungudi,
   Chennai. .. Petitioners

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.Vs.

1. The Government of India,
   Rep. by its Secretary to Government,
   Ministry of Health and Family Welfare,
   Room No.348, 'A' Wing, Nirman Bhavan,
   New Delhi - 110 001.

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

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

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

5. Board of Governors in Super
   session of Medical Council of India,
   Rep. by its Secretary General,
   Pocket 14, Sector - 8,
   Dwaraka, New Delhi - 110 077. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd Respondent in No.11787/MCA1/2020-1 dated 24.04.2020 and to quash the same and consequently directing the respondents to pass orders for granting incentive/weightage marks to the petitioner for the service rendered by them involving Critical Care Life Saving interventions demanding 24 hours duty for admission to Post Graduate Medical Courses for 2020-21 Session, as recommended by the Committee constructed as per G.O.Ms.No.536 Health and Family Welfare (MCA-1) Department dated 15.11.2018.

For Petitioners: Mr.G.Sankaran
For RR2 and 3 : Mr.Vijay Narayan,
Advocate General,
assisted by Mr.E.Manoharan,SPL. G.P.

For R 1 : Mr.R.Sankaranarayanan,
Addl. Solicitor General I
assisted by Mr.Srinivasamoorthy

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For R 4 : Mr.Abdul Saleem,
Standing Counsel

For R 5 : Mr.V.P.Raman,
Standing Counsel

ORDER

The petitioners aggrieved by non grant of incentive/weightage marks for the service rendered by him in the critical care unit, as recommended by the Committee constituted in G.O.Ms.No.536, dated 15.11.2018, has preferred the present writ petition before this Court.

2.In the counter affidavit filed by the 2nd respondent in the above writ petition, the entire sequence of events leading to the filing of the present writ petition, has been captured in seriatim and therefore, it will be opposite to extract the same hereunder:

> "3.....It is submitted that the Government of Tamil Nadu had followed a policy in the admission for P.G. Degree / Diploma Courses right from the year 1991, to encourage Doctors to serve in the rural areas in the State of Tamil Nadu. In fact, in the year 1991, 60% of the Post Graduate Degree/ Diploma seats were allotted to the in-service candidates and only 40% was allotted to the open category. The State Government had also awarded 02 marks to those doctors who have served in Primary Health Centres which are located in the rural areas. This was done, as stated earlier, to encourage Doctors to serve the State Government in rural areas for the reason that there was a wide gap between the demand for basic health care in rural areas and supply of Doctors to serve in such places, since the Doctors were reluctant to serve in such areas because of lack of infrastructural facilities in such areas. Doctors did not want to leave the more advanced facilities available in Cities/Urban areas and serve in Rural areas.
>
> 4. It is submitted that from the year 1991 to till 2007, the State Government continued to award marks to the Doctors serving in these areas. The State Government did not make any differentiation between rural / difficult / hilly areas because according to the State Government all these areas were to be treated equally and the State Government felt that encouragement / incentive of marks is adequate

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motivation to persuade Doctors to serve in Primary Health Centres. In the year 2007, by way of G.O. 456 the Government of Tamil Nadu decided to award 02 marks to the Doctors taking Post Graduate Entrance Examination who were serving in hilly areas as the State Government felt that the Doctors were not interested in going to hilly areas and serve in the Primary Health Centres /Government Hospitals in hilly areas. 01 mark was awarded to doctors serving in rural areas. This practice was continued from 2007 to 2010. In 2010, after analyzing the situation, the Government felt that Doctors were not prepared to serve in the Primary Health Centres / Government Medical College Hospitals / Government Hospitals in the Districts of Tiruvarur, Nagapattinam and Ramnad Districts. This was so because these areas were worst affected during the Tsunami and even after five years of tsunami, the Doctors were not keen to go to these areas and serve the people. This practice was followed up to the year 2017 in the State of Tamil Nadu.

5. It is submitted that in the meantime, the Medical Council of India amended Regulation 9 of The Post Graduate Medical Education Regulation 2000 by introducing proviso to Para-IV and Para-VII. Para-IV and Para-VII as amended read as under:-

"(IV) The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all-India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to postgraduate 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 the State Government /competent authority from time to time".

"(VII) 50% of the seats in postgraduate diploma

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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".

6. It is submitted that the Government of Tamil Nadu have identified the rural / hilly / difficult areas for awarding the incentive marks to the in-service doctors for the purpose of admission to Post Graduate Courses vide G.O.Ms. No. 29, Health and Family Welfare Department, dated 8.2.2017. However, the Government took a decision to keep the above said G.O. in abeyance due to the representations received from various doctors to add or to delete the areas specified in the said G.O. It was also decided to follow the procedure adopted by the State Government in the year 2016-17 for the purpose of awarding bonus marks for experience of the service candidates while admitting the Post Graduate Medical Students for the year 2017-18.

7. It is submitted that a Writ Petition (W.P.No.6031/17) was filed by one Dr Rajesh Wilson before this Hon'ble Court with a prayer to provide the incentive marks in accordance with the proviso to Para-IV to Regulation 9 of the Post Graduate Medical Education Regulation 2000. In its order dated 17.04.2017 in W.P.No.6031/17, this Hon'ble Court has allowed the writ petition and directed as follows :-

"to follow Regulation 9 (IV) of the Post Graduate Medical Education Regulations, 2000 of the Medical Council of India by adding 30% marks on the marks secured by the petitioner in the NEET examination while preparing the rank list for admission to the Post Graduate Course in 50% reserved category for Government Servants for the academic year 2017-2018, as Regulation 9 is the only effective and permissible basis for granting admission to in-service candidates. It is made clear that admissions can and ought to be made only on the basis of the above."

8.It is submitted that aggrieved by the above orders of this Hon'ble Court, the Government have filed a Writ Appeal (W.A.No.484 of 2017) before the Division Bench of this Hon'ble Court. In its orders dated 03.05.2017,

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in the above said Writ Appeal, this Hon'ble Court has given a split verdict. One view taken was that the policy of the State Government for giving weightage marks for the in-service candidates was not in conflict with the method evolved by the Medical Council of India. The other view was that the judgment of the Learned Single Judge was upheld holding that the method of awarding incentive marks is not in accordance with the Regulation 9 of the Post Graduate Medical Education Regulations, 2000 and directed the State Government to formulate the admission process in accordance with the said Regulation. The matter was, therefore, referred to a Third Judge. In the orders dated 6.5.2017, the Learned Third Judge held that the incentive marks should be given in accordance with Regulation 9 of the Post Graduate Medical Education Regulations, 2000. However, the Learned Judge held that the decision of the Government in identifying the rural / remote / difficult areas for the year 2017-18 does not warrant any interference in view of the paucity of time. The Hon'ble Court has also observed that, except with regard to identification of hilly and remote / difficult areas done by the appellants in W.A. No. 484/ 2017, the proviso to Regulation 9 [IV] of the Post Graduate Medical Education Regulations, 2000 is to be implemented forthwith.

9.It is submitted that based on the above orders of the Hon'ble Court, the Government issued an amendment to notify the remote / difficult areas, those places included in Clauses 17(b) and Annexure VII of the Prospectus for the year 2017-18 without adding any new places vide G.O.(D) No.1054, Health and Family Welfare Department, dated 06.05.2017 and admission for the academic year 2017-18 was completed. It is submitted that aggrieved with the above said Government Order certain Writ Petitions were filed (W.P.No.12246/17 and Others) before this Hon'ble Court with a prayer to strike down the said G.O. In its common orders dated 16.06.2017, this Hon'ble Court has struck down portions of the G.O. by observing as follows :-

"That G.O.Ms.No.1054, dated 06.05.2017 is quashed to the extent that amendments to prospectus dated 27.03.2017 which allow the State Government to grant weightage in terms of proviso to Regulation 9 (IV) qua PHCs located in rural areas and to the Government Hospitals / Primary Health Centres / Government Medical

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College Hospitals located in TNR Districts".

10.It is submitted that the Government have filed a SLP (SLP Nos.16541-16542) before the Hon'ble Supreme Court of India against the above said orders of this Hon'ble Court. In its interim orders dated 6.7.2017, the Hon'ble Supreme Court of India, has granted the interim orders as follows:

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

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

1. Dr.P.Umanath, IAS., — Chairman

   Managing Director,

   Tamil Nadu Medical Services Corporation,

   Egmore, Chennai-600 008.

2. The Director of Public Health and — Member

   Preventive Medicine, Chennai-6

3. The Director of Medical Education, — Member

   Chennai-10

4. The Director of Medical and Rural — Member

   Health Services, Chennai-6

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5.	One Demography expert from the University of Madras / Anna University / Department of Statistics as decided by the Chairman	Member	
6.	Additional Director of Medical Education / Secretary, Selection Committee, O/o. the Director of Medical Education, Chennai-10	Member Secretary / Convenor	

12. The following Terms of Reference was given to the above said Committee:-

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

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

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

13.It is submitted that in the meantime, the Hon'ble Supreme Court of India, in its orders dated 31.01.2018, has disposed of the SLPs (SLP Nos.16541-16542) filed by the Government and ordered as follows:

"Classification made under Regulation No.9(IV) of Post Graduate Medical Education Regulations, 2000, as amended in 2012 was questioned by the respondent writ petitioners before the High Court. The High Court has directed the State to identify remote and difficult areas. It is stated by the learned counsel appearing on

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behalf of the State that State has initiated the process of identifying the remote and difficult areas for the academic session 2018-19 and is going to complete the process soon and issue relevant notification identifying remote and difficult areas as per the law laid down by this Court vide order dated 15.12.2017 in SLP(C) No.11692 of 2017 titled Dr.Amit Bagra and Others Vs. State of Rajasthan and State of Haryana and Another, Etc. Vs. Dr. Narender Soni and Others. Etc. (AIR 2017 Sc 2892).

In the circumstances, we direct the State to complete the process by 10.3.2018 and notify remote and difficult areas as provided in the order. However, admission in the year academic Session 2017-18 are not to be disturbed.

The Special Leave Petitions stand disposed of accordingly."

14. It is submitted that the Expert Committee constituted by the Government to identify the remote / difficult / rural areas, has submitted their report to the Government. In their report, the Committee has examined the issues by considering three trends in availability / non-availability of doctors in certain set of districts, locations, institutions and functional domains, as follows:

???The trend of preferred and less preferred districts.

???The trend of preferred and less preferred locations.

???The trend of preferred and less preferred areas of function.

15.The Committee has suggested the following incentive arrangements:

???Since the actual incentivization regulation by Medical Council of India may be subject to change, the frame work recommended by this Committee is being defined only as a percentage of maximum permissible incentive marks by the current / future regulations decided by Medical Council of India in consultation with the Union Government.

???The categorization of Government Health Institutions and other respective eligibility are recommended as follows by relevant categorization of posts into three.

???In case of partial services in one category for a certain period, the same may be proportionately rewarded incentives subject to completion of a minimum period of one year.

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???In case of a doctor in any post being deputed to any other post for a period of more than 28 days, then such periods in that deputed post be considered under this arrangement based on only incentives specified for that deputed post and not for the original post.

???The certification for the entitlement of incentive has to be provided by the relevant DDHS / JDHS, with the prospectus for admission prescribing the formats and the procedure in details.

???With reference to the reservation of 50% of the Post Graduate Diploma seats to the Government Doctors, the Committee recommends to continue the same but provide such reservation based on incentive only to such doctors who have put in three years of service in such posts categorized under Category A.

???The Committee, after taking note of the excellent progress being made in creating DNB seats in needy specialities in Government Hospitals, also recommends to follow the same above principle for allotting the above as well as all existing DNB seats in the State, in any probable future scenario of the National Board of Examinations allowing State Governments to fill up DNB seats in Government / Private Institutions.

16.In fine, the Committee in their recommendations has concluded for awarding incentive marks to the Medical Officers by considering their working places in the three categories:-

Category-(A) - Posts eligible for 100% of the maximum permissible incentive marks.

1. Posts in all Government Health Institutions located in hilly areas, as notified earlier in the prospectus for ADMISSION TO POST GRADUATE DEGREE / DIPLOMA / 6 YEARS M.Ch. (NEURO-SURGERY) COURSES 2016-2017 Session (As per G.O.(D) No.1680, Health and Family Welfare (ME) Department, dated 31.12.2015) and subsequent additions for new institutions in such areas, if any;

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

3. Posts in all CEmONC / Trauma / Accident /

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Emergency care / NICU / SNCU Units, irrespective of the location of such units in any type of institution, district and geography.

Category (B), Posts eligible for 40% of the maximum permissible incentive marks.

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

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

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

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

17. The Committee has identified the Medical Institutions located the following 16 districts as difficult areas:

Sl. No.	Name of the District	Sl. No.	Name of the District
01	Ariyalur	09	Ramanathapuram
02	Cuddalore	10	Sivagangai
03	Dharmapuri	11	Theni
04	Dindigul	12	Thiruvannamalai
05	Nagapattinam	13	Thiruvarur
06	Nilgiris	14	Vellore
07	Perambalur	15	Villupuram
08	Pudukottai	16	Virudhunagar

18. It is submitted that in the meantime, the Medical Council of India, New Delhi has amended Regulation 9(4) of the Post Graduate Medical Education Regulations to modify the incentive marks from "at the rate of 10%, 20% and 30% to the Medical Officers who have worked in remote / difficult areas" into that of "upto 10%, 20% and 30% to the Medical Officers who are working in rural / remote / difficult areas" and the State can decide the percentage of marks to be given to the Medical Officers based on the geographical conditions vide its Notification dated 5.4.2018. The amended regulation read as follows:

(4) 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

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well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only.

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

19.It is submitted that on perusal of the report of the Committee, it has been found that the Committee has elaborately analyzed the working conditions of the Medical Officers, density of the doctors in the region, etc. and therefore, the Government have decided to accept the recommendation of the report of the Committee. Further, it has been decided to publish the report of the Committee in the public domain viz. www.tnhealth.org and www. tnmedicalselection.org. Accordingly, the Committee's report has been published in the above said public domain on 26.02.2018.

20.It is submitted that in the meantime, the Heads of Departments, viz. Director of Public Health and Preventive Medicine, Director of Medical and Rural Health Services including ESI and the Director of Medical Education have furnished the list of places to accommodate the Medical Officers in the categories specified by the Committee. It is submitted that the Government have again examined the report of the Committee and decided to accept the same. Accordingly, the Government have issued orders vide G.O.Ms.No.75, Health and Family Welfare Department, dated 8.03.2018.

21. It is also submitted that subsequently, the Director of Medical and Rural Health Services has brought to the notice of the Government that some of the places included in the list of places have been inadvertently included, since the said places comes under the Municipal and Corporation areas and therefore,

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the in-service Medical Officers working in these areas are not eligible to get the incentive marks and therefore, requested the Government to delete the said places in the list annexed to the G.O.s.No.75, Health and Family Welfare Department, dated 8.3.2018. After careful examination, the Government have decided to delete such places inadvertently included in the Annexures of the above said G.O. and replace the list of places annexed to the said G.O. vide G.O.Ms.No.96, Health and Family Welfare Department, dated 23.03.2018, so as to benefit the Medical Officers who are working in the remote and difficult areas alone.

22. It is submitted that as per the above said long legal deliberation alone, the Government have identified the remote / difficult areas for giving incentive marks to the in-service Medical Officers for getting admission in the P.G. Degree / Diploma courses based on the marks obtained by them in the NEET examination.

23. It is submitted that against the above orders of the Government, certain in-service and non-service Medical Officers have filed Writ Petitions (W.P. Nos. 7231, 7857 to 7861, 8116, 8117 and 8442 of 2018) before the Hon'ble High Court of Madras. In its common orders dated 18.04.2018, this Hon'ble Court has among others held that the impugned Government Orders should be reviewed and the exercise in identifying the remote / difficult areas should be re-done in a proper manner in consultation with the Expert Committee. Aggrieved with the above orders of the Hon'ble High Court of Madras, the Government have filed Writ Appeals (W.A. Nos. 1051, 1117 to 1124 of 2018 in W.P. Nos. 7231, 7857 to 7861, 8116 and 8117 of 2018) before the Hon'ble Division Bench of the High Court of Madras. In its orders dated 17.5.2018, the Division Bench of this Hon'ble Court has ordered as follows:

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

24.In the said orders, this Hon'ble Court has further, expressed a view, which is as

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detailed below:-

"39. .....In order to avoid such recurrence in future towards categorization of Doctors who are employed in remote, difficult and rural areas for the purpose of benefit of additional weightage as envisaged in proviso to Sub-clause IV of Regulation 9, it is suggested that the Committee of experts may be headed by a retired Judge of the High Court. This is more so, when repeatedly such identification or categorization is put to challenge in the legal forum, so that the experts who are part of the Committee, will have the benefit of legal acumen from the Judge concerned while making the recommendations for identifying the areas in tune with the proviso to Sub-clause IV of Regulation 9 and also in line with the directions of the Hon'ble Supreme Court of India and other High Courts. We do hope that the Government bear this in mind while constituting any further Committee/s for future academic years in respect of admissions to Post Graduate Degree / Diploma courses."

25.It is submitted that the Committee constituted by the Government had examined the issue in detail and submitted their recommendations. However, to comply with the above orders of this Hon'ble Court, the Government have constituted a Committee under the Chairmanship of Hon'ble Justice Thiru A. Selvam, (Retd.), High Court of Madras, to identify remote / difficult / rural areas for awarding incentive marks to the in-service Medical Officers for the admission to Post Graduate Degree / Diploma Courses from the academic year 2019 – 2020 along with the following members vide G.O. (Ms) No.536 Health and Family Welfare (MCA-1) dated 15.11.2018 as detailed below:-

1) Hon'ble Thiru Justice A. Selvam, High Court of Madras, Chennai - Chairman
2) The Managing Director, Tamil Nadu Medical Services Corporation, Chennai-8 - Member
3) The Director of Medical Education, Chennai-10 - Member
4) The Director of Medical and Rural Health Services, Chennai - Member

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5)	The Director of Public Health and Preventive Medicine, Chennai	-	Member
6)	One Demography expert from the University of Madras / Anna University / Department of Statistics as decided by the Chairman	-	Member
7)	Additional Director of Medical Education / Secretary, Selection Committee, O/o. the Director of Medical Education, Chennai-10	-	Member Secretary Convener

27. It is submitted that in fine, the Committee in their recommendations, concluded for awarding incentive marks to the Medical Officers by classifying the institutions into five categories as mentioned below:

1.Difficult Areas in Hills	- 10 % of marks per year
2.Difficult Areas in Plains	- 9 % of marks per year
3.Remote Area	- 8 % of marks per year
4.Rural Areas	- 5 % of marks per year
5.Urban Areas (Municipal / Corporation Areas)	- No incentive marks

28.The Committee has further requested the Government to consider the following recommendations: -

I. To take up the issue of awarding marks on the basis of nature of work (Critical Life Saving interventions demanding 24 hours duties like NICU, CEmONC, Trauma, Casualty) in addition to area based incentives with Medical Council of India for bringing in necessary amendments in the relevant Act.

II. To reintroduce 50 percent reservation for in - service candidates in Post Graduate Medical Seats, considering the fact that the Government of Tamil Nadu has decided to convert all Post Graduate Diploma in to Post Graduate Degree courses in line with the decision of Medical Council of India to do away with Diploma Courses.

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29.It is submitted that the Government have examined the report of the Committee headed by Hon'ble Thiru A. Selvam, High Court Judge (Retd.) and the recommendation of the Ministry of Health and Family Welfare, Government of India, New Delhi to modify the percentage of marks to the Medical Officers and the list of places identified by the Director of Medical and Rural Health Services and the Director of Public Health and Preventive Medicine, and the Government decided to accept the recommendation of the Committee in regard to awarding of incentive marks to the in-service candidates for their service rendered in the Government Hospitals / Primary Health Centres for admission to Post Graduate Medical Courses as per Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000 by considering their working places, be accepted and the incentive marks to the in-service Medical Officers be awarded based on their working place as classified under the following categories for getting admission in Post Graduate Medical Degree / Diploma and MDS Courses, subject to the amendments to Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000 that would be made by the Medical Council of India in respect of awarding of incentive marks. Accordingly G.O.Ms No: 86 Dt: 06.03.2019 came to be passed.

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

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

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

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

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

30. The following abstract shows the details of places to be provided incentive marks:

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Sl. No.	Category	Percentage of marks per year of service	Government Health Facilities	
1.	Difficult Areas in Hills (shown in Annexure-I10	10	119	20
2.	Difficult Areas in plains (shown in Annexure-II)	9	660	85
3.	Remote Areas (shown in Annexure-III)	8	23	3
4.	Rural Area (shown in Annexure-IV)	5	1021	119
		TOTAL	1823	227

Also, to award 10% of the marks secured in NEET per year of service to the Health Officers who are working in Tamil Nadu Public Health Services for getting a Post Graduate seat in M.D. (Community Medicine) alone, since all the Diploma Courses were converted as Post Graduate Degree Courses. They are not eligible to get the above said incentive marks, if they select other than the M.D. (Community Medicine) course.

3.The petitioners made a representation to the respondents to the effect that the persons like the petitioners and similarly placed Doctors who are posted in the critical life saving intervention demands 24 hours duty to manage the critically ill patients and therefore, they should also be granted incentive weightage marks for the services rendered by them. The 4th respondent proceeded to publish the prospectus for admission to Post Graduate Medical Courses. Therefore, the petitioners and similarly placed persons approached this Court and filed writ petitions to direct the respondents to consider the representation made by the petitioners.

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4.This Court passed the following order on 20.03.2020 in W.P.Nos.7208 & 7210 of 2020 and W.M.P.Nos.8616, 8617, 8620 & 8621 of 2020, and the same is extracted hereunder:

> Mr.Akhil Akbar Ali, learned Government Advocate, takes notice for the 2nd and 3rd respondents. Mr.Abdul Saleem, learned Standing Counsel, takes notice for the 4th respondent. Mr.V.P.Raman, learned Standing Counsel, takes notice for the 5th respondent.
>
> 2.The only issue that arises for consideration in the present writ petitions is that

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the committee that was constituted pursuant to the judgment of this Court had made various recommendations. The relevant recommendation insofar as the present writ petitions are concerned is extracted hereunder :

"i.To take up the issue of awarding marks on the basis of nature of work (Critical Life Saving interventions demanding 24 hours duties like NICU, CemONC, Trauma, Casualty) in addition to area based incentives with Medical Council of India for bringing in necessary amendments in the relevant Act."

3.The learned counsel for the petitioner submitted that, G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019, was passed by the Government, however, these recommendations were never taken up and therefore, the persons who are working in the Casualty Ward are not considered for incentive marks. According to the learned counsel for the petitioner, a representation has been made in this regard and the same has not been considered by the Government till date. In the meantime, the 3rd respondent has already issued the prospectus for appointment.

4.The learned Government Advocate appearing on behalf of the 2nd respondent submitted that the specific issue raised by the petitioner will be answered by the Government in the next date of hearing.

5.In the considered view of this Court, this issue will have a lot of bearing not only on the petitioner, but on many of the similarly placed persons who are working in the Casualty Ward. The Government will have to take a very specific stand with regard to the recommendations made by the committee in this regard.

Post the matter at the end of the motion list on 27.03.2020.

5.The Government of Tamil Nadu wrote a letter dated 14.03.2019, to the 1st respondent requesting to bring necessary amendments to the Post Graduate Medical Regulation to enable the State Government to award incentive marks. The 1st respondent in turn wrote a letter to the Medical Council of India on 29.03.2019 and the 5th respondent responded for the same by stating that incentive marks cannot be granted on the basis of nature of a work in a hospital. For this purpose, the 5th respondent also relied upon the judgment of the Hon'ble Supreme Court in Dinesh Singh Chowhan's case. The 1st respondent informed this decision to the 2nd respondent by letter dated 25.10.2019. It is under these circumstances, the present

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writ petition has been filed before this Court.

6.Mr.G.Sankaran, learned counsel appearing on behalf of the petitioners submitted that Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000 uses the term "difficult areas" and the said term cannot be given literal meaning. The learned counsel for the petitioners further submitted that the 5th respondent has mechanically relied upon the judgment of the Hon'ble Supreme Court and has read the judgment of the Hon'ble Supreme Court like a statute. The learned counsel for the petitioners submitted that the judgment cannot be read like a statute and to support his submissions he relied upon the judgments of the Hon'ble Supreme Court report in [1992 4 SCC P 363] and [1996 6 SCC P 44].

7.The learned counsel for the petitioners further submitted that there is no requirement for the amendment of the regulation and it is well within the powers of the State Government to provide for weightage marks to Doctors working in critical care units. According to the learned counsel, the State Government should not requested the 1st respondent to amend the regulation and the incentive marks must have been granted by treating it as a difficult area. To substantiate this submission, the learned counsel for the petitioners relied upon the judgment of the Himachal Pradesh High Court reported in 2020 SCC Online HP Page 572. The learned counsel for the petitioners specifically relied upon paragraph 28 of the said order. The relevant portion at paragraph 28 of the order is extracted hereunder:

> "28..... As already observed, it is for the state to decide as to which of its areas would fall as difficult, remote or rural area under the applicable policy for the purposes of eligibility to percentage incentive. Petitioner has not demonstrated as to how the judgment dated 30.01.2018 passed by the Hon'ble Apex Court in Civil Appeals No.1521-1524/2018 has not been complied with by the respondent-State. The stand taken by the State is that in its PG Policies, the departments in its wisdom has differentiated difficult/remote areas through a reasonable classification on the basis of difficultly, topography and geographical location of a particular institute. And that distinction has been made between institutions located even in a particular block which are relatively less difficult as compared to more difficult institutions in that particular medical block".

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8.The learned counsel for the petitioners submitted that the term difficult is a stand alone word and it should not be given a restricted meaning, as if, it indicates only a geographical location. The learned counsel for the petitioners submitted that it should also include the place of work where the Doctors are placed in a difficult environment like in a critical care unit.

9.The learned counsel for the petitioners therefore submitted that the 2nd respondent ought to have provide for incentive marks in the prospectus based on the recommendation made by Justice A.Selvam Committee.

10.Mr.Vijay Narayan, learned Advocate General appearing on behalf of respondents 2 & 3 explained the entire facts leading to the filing of the present writ petition and submitted that there are absolutely no merits in the present writ petition since the petitioners are trying to reopen the issue which has already been concluded by the judgment of the Division Bench made in W.A.Nos.1051,117 & 1124/2018 dt.17.05.2018. In order to substantiate his submission, the learned Advocate General specifically relied upon paragraph 8, 16, 30 & 31 of the judgment and the same is extracted hereunder:

> 8. Thereafter, the committee had examined and deliberated on the terms of reference and submitted its report. The Government, by its letter dated 26.02.2018, had uploaded the report on the website also. The Committee has given various recommendation and as far as these appeals are concerned, what is relevant is the recommendations in relation to the implementation of proviso to Sub-clause IV of Regulation9 of the Regulations 2000, which are stated as under:
> "Category (A): Posts eligible for 100% of the maximum permissible incentive marks:
>
> 1. Posts in all Government health institutions located in hilly areas, notified earlier in the prospectus for ADMISSION TO POST GRADUATE DEGREE/DIPLOMA/6 YEARS M.Ch. (NEURO-SURGERY COURSES 2016-17 session (As per G.O.(D) No.1680, Health and Family Welfare (ME) Department dated 31.12.2015) and subsequent additions for new institutions in such areas, if any.
>
> 2. All posts in all Government institutions in backward districts with difficult areas, having low density of doctors, high vacancies and poor health indicators, as per Annexure-I, except those posts excluded under Category (C).
>
> 3. Posts in all CEMONC/Trauma/Accident/Emergency

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care/NICU/SNCU units, irrespective of the location of such units in any type of institution, district and geography.

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

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

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

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

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

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

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

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

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

11.The learned Advocate General by relying upon the above portions in the judgment passed by the Division Bench of this Court, submitted that the Division Bench has considered the very same issue and categorically rejected the said contention and therefore, the same cannot be reopened once again in the present writ petition.

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12.The learned Advocate General further relied upon the following judgments of the Hon'ble Supreme Court:

i. Sudhir N .vs. State of Kerala reported in [2015] 6 SCC 685.

ii. State of Uttar Pradesh .vs. Dinesh Singh Chauhan reported in [2016] 9 SCC 749,

iii. State of Haryana .vs. Narendra Soni and Ors reported in [2017] 14 SCC 642 and

iv. Tamil Nadu Medical Officers Association and Ors .vs. Union of India reported in [2018] 17 SCC 426.

By relying upon these judgments, the learned Advocate General submitted that the Hon'ble Supreme Court has made it very clear that Regulation 9 (IV) is directly traceable to entry 66 of list one and therefore, the State Government does not have the power to tamper with the same since it is exclusively within the domain of the center.

13.The learned Advocate General concluded his arguments by submitting that even though the 2nd respondent empathise with the nature of work that is performed by the Doctors in the critical care unit, the State Government has no power to provide for any incentive marks only based on the nature of work performed by the petitioners and Regulation 9 (IV) is clearly relatable to the physical territorial area relatable to a geographical location and the State Regulation cannot be expanded beyond the clear term provided therein.

14.Mr.R.Sankaranarayanan, learned Additional Solicitor General I, appearing on behalf of the 1st respondent submitted that the terms remote and difficult are adjectives and the term area is a noun and both the terms will have to be read ejusdem generis and its place centric. The learned Additional Solicitor General I submitted that extending the meaning of Regulation 9 (IV) to include the place of work will cause violence to the scope of the very regulation itself. The learned Additional Solicitor General I, also relied upon the counter affidavit filed by the 1st respondent and the relevant portions in the counter affidavit is extracted hereunder:

> 8.It is submitted that the provision for providing incentive marks for the in-service candidates was originally introduced vide notification dated 15.02.2012 and the same provided for icentive marks to be awarded only to in-service candidates working in remote/difficult areas. Thereafter, vide the notification dated 05.04.2018 as extracted above, rural areas were also added to this classification. The quantum of incentive to be awarded was also modified as 'upto 10%' to provide more leeway for the State Governments to classify and award incentive marks appropriately to

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various areas identified by the State government. It is submitted that the purpose of enabling various state governments to award incentive marks to doctors in government employment was that this would serve as a motivation for the doctors to work in remote/difficult/rural areas where doctors are generally not available or unwilling to serve due to hurdles in reaching the location or inaccessibility of the areas which results in non-availability of health care facilities. In return for teir services in remote /difficult/rural areas, the doctors would receive additional marks depending on the length of service as determined by the State government.

9.It is submitted that the identification, classifying and assigning an area as remote/difficult/rural areas in a particular State rests with the respective State Government. It is submitted that in identifying the areas, the emphasis is placed on the geographical location or physical accessibility of the area. The claim of the petitioners that the nature of the work must be criteria for awarding incentive marks cannot be accepted since the same is not contemplated in the regulations as extracted above. It is also stated that awarding any type of incentive, contingent on the nature of the work, would also not be within the primary objective behind the provision. It is submitted letter dated 14.03.2019 of the respondent No.2 was forwarded by the answering respondent to the respondent No.5 for comments. Respondent NO.5 (MCI) vide its letter dated 14.09.2019 stated that nature of work cannot be a criteria to award incentive marks.

15.Mr.V.P.Raman, learned counsel appearing on behalf of the 5th respondent adopted the arguments made by the learned Advocate General and the learned Additional Solicitor General I, and also relied upon the counter affidavit filed by the 5th respondent. The relevant portions in the counter affidavit is extracted hereunder:

"5..It is submitted that the identification of the remote/difficult/rural areas is within the discretion of the respective State Governments. It is submitted that in identifying the areas, the emphasis is placed on the geographical location or physical accessibility of the area. The claim of the petitioners that the nature of the work must be criteria for awarding incentive marks cannot be accepted since the same is not contemplated in the provision extracted above. Awarding incentive

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contingent on the nature of the work would also not be within the primary objective behind the provision. It is submitted that letter dated 14.03.2019 from Government of Tamil Nadu was forwarded to the answering respondent by the Ministry of Health and Family Welfare. Govt of India and the answering respondent warequested to forward comments on the same. This respondent vide its letter dated 14.09.2019 stated that nature of work cannot be a criterion to award incentive marks..

6. The stand of the answering respondent is supported by the judgment of the Hon'ble Supreme Court in State of Haryana v Narendra Soni reported in (2017) 14 SCC 645. The Apex Court dealt with a challenge to notification issued by State of Haryana for awarding incentive marks for the purpose of PG Medical admissions. The Hon'ble Court pointed out various factors which must be considered for the purpose of classification. The Supreme Court also suggested that the criteria evolved by National Health System Resource Centre (NHSRC) in identifying difficult/most difficult/inaccessible areas could be a guiding factor in identification. The criteria evolved by NHSRC points to physical distance from urban areas and availability of transport facilities etc to reach the location among other as factors. It is submitted that 'nature of the work or long hours of duty are not factors considered either by the NHSRC or the Hon'ble Court for this purpose. The above judgment of the Supreme Court approved only a geographical/physical location-based approach.

7.. Further, the argument of the petitioner that since they work in 24*7 living saving units, it must be considered difficult cannot be sustained. It is submitted that the words 'remote/difficult/rural' has to be read necessarily with the word 'area' and therefore the emphasis is only on geographical location of the heath centre or hospital. The petitioner contends that 'difficult' is to be read alone and since nature of the service rendered by the petitioner in critical lifesaving interventions is difficult, they must be awarded incentive marks. If the claim of the petitioner is accepted it would open a pandora's box for persons working in urban areas to claim incentive marks on similar grounds".

16.The learned counsel submitted that if the plea made by the petitioners is accepted, it will open Pandora box and the very substance of the Regulation 9 (IV) which is

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relatable to geographical location, will be obliterated.

17.Mr.Abdul Saleem, learned counsel appearing on behalf of the 4th respondent adopted the submissions made by the learned Advocate General and the learned Additional Solicitor General I.

18.This Court has carefully considered the submissions made on either side and the materials available on record.

19.The only issue that requires consideration of this Court is as to whether the Doctors working in the trauma care, emergency units and other relatable units can be considered to be working in a difficult area and consequently can be brought within the ambit of Rule 9(IV) of the Regulations?

20.For better appreciation, Regulation 9(IV) is extracted hereunder:

> "(IV) The reservation of seats in Medical Colleges/Institutions for respective categories shall be as pere the applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate 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 upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."

21.The Hon'ble Supreme Court in more than one judgment has categorically held that Regulation 9 is a complete code by itself and it is traceable to list one entry 66 of Schedule VII of the Constitution of India and the State has no authority to enact any law much less by executive inspection that may under mine the regulation.

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22.The Committee appointed by the State Government under the Chairmanship of Justice Thiru.A.Selvam, while identifying the area and the percentage of marks to be awarded has specifically identified difficult areas, remote areas and rural areas. This identification is purely based on geographical location. The Committee has rightly made recommendation to the State Government to seek for an amendment of the regulation fee, any award of marks is to be made considering the nature of work performed in critical units. As rightly contended by the learned Advocate General, the Committee did not intend to bring in the category of persons working in critical care unit within the term "difficult area" since the difficulty was sought to be identified based on the nature of work and not the area of work. The term difficult, remote and rural is relatable only to geographical location and by no stretch the nature of work can be brought within these terms. It is not necessary for this Court to deal with this issue all over again since the Division Bench has already dealt with it and has come to a categorical conclusion that such a claim completely false outside the scope of Regulation 9 (IV) of the 2000 Regulations. This judmgnet has become final and I am bound by the said judgment.

23.It is not necessary to go into the judgment of the Himachal Pradesh High Court since the Division Bench of this Court has already settled the law on the issue.

24.As rightly contended by the learned Advocate General, the State Government did not have the power to come up with an executive order and add any category apart from the one contemplated under Regulation 9(IV) and if any such attempt is made, it will be directly in violation of the judgments of the Hon'ble Supreme Court referred supra.

25.This Court is in complete agreement with the submissions of the learned Additional Solicitor General I, to the effect that while identifying the areas as remote/difficult/rural, the emphasis is placed on the geographical location or the physical accessibility of the area. The claim made by the petitioner is that the nature of work must also be taken as a criteria within the term "difficult area" on the face of it, it is unsustainable and is liable to be rejected. The same will result in causing violence to the language used in Regulation 9(IV). It will in fact upon Pandora box and each Section of Doctors will start expressing the difficulties faced by them while performing the work and incentive marks will be claimed even by those persons working in urban areas. That is not the object of Regulation 9(IV) of 2000 Regulations.

26.In the considered view of this Court, the claim made by the petitioner is totally unsustainable and the petitioner has attempted to reopen an issue which has already

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been decided by the Division Bench of this Court in a batch of writ appeals. There are absolutely no merits in the present writ petition and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (Writ)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Secretary to Government,
   Government of India,
   Ministry of Health and Family Welfare,
   Room No.348, 'A' Wing, Nirman Bhavan,
   New Delhi - 110 001.

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

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

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

5. The Secretary General,
   Board of Governors in Super session
   of Medical Council of India,
   Pocket 14, Sector - 8,
   Dwaraka, New Delhi - 110 077.

+1cc to Mr.V.P.Raman, Advocate, S.R.No. 25345

W.P.No.7543 of 2020

BR(CO)
GN(07/08/2020)

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