

17.03.2021
41 and 42
ns Ct.04

**M.A.T. 773 of 2020
with
I.A. CAN 1 of 2020**

Dr. Sourav Chattopadhyay & Ors.

Vs.

State of West Bengal & Ors.

And

**M.A.T. 774 of 2020
with
I.A. CAN 1 of 2020**

Dr. Moitreyee Chowdhury & Ors.

Vs.

State of West Bengal & Ors.

Mr. Subir Sanyal,
Mr. Amiya Kr. Dutta,
Mr. Swadesh Priya Ghosh for appellants.

Mr. Indranil Roy,
Mr. Sunit Kumar Roy
.... for National Medical Commission.

Mr. D. N. Maiti ... for W.B.U.H.S.

Mr. Swapan Kumar Dutta, Id. A.G.P.,
Mr. Sirsanya Bandyapadhyay,
Mr. Arka Kumar Nag,
Mr. Tapas Kumar Dey
Ms. Soumi Guha Thakurta for State.

Two appeals have been heard analogously, one
after the other, though record of proceedings in order sheet

carry both cause titles. Here we must make correction of a typographical error crept into order dated 9th March, 2021. References to Mandamus Appeal Tender (MAT) numbers have been incorrectly recorded. The first reference is MAT 774 of 2020 and the second reference is MAT 773 of 2020. Said order be read as corrected.

Mr. Sanyal, learned advocate appears on behalf of appellants in both appeals. In MAT 773 of 2020, there are five appellants, of whom three have got admission for post graduate course study. In MAT 774 of 2020, there are three appellants, of whom none got admission. Also, these three appellants were not entitled to and did not get incentive marks, given pursuant to notification dated 26th February, 2020, under challenge in both writ petitions and dealt with by impugned judgment dated 10th November, 2020. All except one petitioner, in the two writ petitions, are before us as appellants.

Mr. Sanyal formulated his point to be that object of Medical Council of India Postgraduate Medical Education Regulations, 2000 is to select on merit. Affidavits filed by State in the two writ petitions are silent regarding the thought process behind issuance of the notification, to give weightage by incentive marks, for service in two categories of places in the State, being 'rural' and 'remote and difficult' areas. Rural areas are defined as certain areas on exclusion of mentioned areas. A separate category being remote and difficult areas would necessarily

have to be added areas to rural areas but cannot include said excluded areas.

He relied on **order dated 15th December, 2017 in Petitions for Special Leave to Appeal C no. 11692/2017 (Dr. Amit Bagra and Ors. vs. State of Rajasthan and Ors.)**, paragraph 1 and extracted paragraphs 10, 11 and 13 to 15 from said Court's **judgment dated 25th May, 2017 in Narendra Soni vs. State of Haryana** reported in **(2017) 14 SCC 645**.

We had noticed from the quoted paragraphs that in **Narendra Soni** (supra), Supreme Court said about identification of areas as made without basis or on no data. We required State to produce additional evidence, on affidavit, to enable us to pass judgment in the appeals. State filed two affidavits. Data given in the two affidavits were treated as additional evidence in appeal, on there being no dispute in regard to it.

Mr. Sanyal pointed out from the first affidavit that there are statements regarding in service doctors, who had served in Bankura Sammilani Medical College (BSMC) and Midnapore Medical College (MMC), of their incentive marks deducted. He clarified, existing provisions / dispensation relating to reservation of seats for in service Government doctors operated in terms of document dated 18th April, 2013, referred in memo dated 4th March, 2020, issued by Government of West Bengal, Health and Family Welfare Department. Said memorandum had done away

with reservation of seats for in service doctors from academic session 2020, reviving the existing provisions. Notification dated 26th February, 2020, impugned in the writ petitions, gave weightage to in service doctors serving in rural areas or remote and / or difficult areas, in manner stated therein. Some of his in service doctor clients have served in rural areas, given meaning by explanation I in impugned notification. Rest of his clients are, as aforesaid, not entitled to incentive marks under the notification. The dispute is elsewhere. It is with regard to explanation II in the notification. Explanation II is reproduced below:

Explanation II : The term “Remote and/or Difficult Areas” means and includes (i) the hill areas (demarcated by the region as defined in Section 2(o) of the Gorkhaland Territorial Administration Act, 2011); (ii) the areas of the Sunderbans under the jurisdiction of the Sunderban Unnayan Parshad, (iii) the areas under the jurisdiction of the Paschimanchal Unnayan Parshad and (iv) the areas under the jurisdiction of the Uttarbanga Unayan Parshad under the Government of West Bengal.”

He submitted, his clients are questioning, particularly, inclusion of areas under jurisdiction of Paschimanchal Unnayan Parshad and areas under jurisdiction of Uttarbango Unnayan Parshad, to be either remote or difficult areas. On that basis, challenge to the entire

notification. He relied on paragraph 10 in the writ petition.

Statements made therein are reproduced below:-

“10. Your petitioners submit that the classification of the remote and/or difficult areas or Rural areas has not been made following the guidelines laid down by the Hon’ble Supreme Court in the Dr. Amit Bagra vs. the State of Rajasthan case vide no. Special Leave to Appeal C No. 11692/2017 Date of Order : 15.12.2017 ascertained that this demarcation of rural remote and difficult areas should follow guidelines and should not be arbitrary one.....”

On behalf of appellants, following was culled out from data given in the second affidavit filed by State. We give below two charts. The first is regarding those candidates who, according to appellants, ought not to have received incentive marks. The second is chart showing original and aggregate marks obtained by appellants in MAT 773 of 2020.

Name	Original marks	Aggregate marks
Goutam Dhali	242	314.6
Saurav Das	655	851.5
Akhilesh Kumar Verma	660	858
Avijit Jana	354	460.2
Debanjan Roy	605	786.5
Dipankar Das	345	448.5
Kasem Ali	331	430.3
Nannika Pradhan	346	449.8
Parvez Wasif Imam	544	707.2
Samsujjaha	550	715
Santanu Halder	407	529.1

Shampa Mondal	381	495.3
Srikanta Halder	411	534.3
Subhamoy Mal	497	646.1

Name	Original marks	Aggregate marks
Anindya Saha	484	629.2
Jayanta Das	441	485.1 (one year)
Sayantana Rout	489	635.7
Sourav Chattopadhyay	420	546
Syamantak Chakraborty	553	718.9

Mr. Sanyal submitted with reference to impugned judgment, particularly paragraphs 46, 47 and 49 to 51. First Court erred in taking the view that the second explanation adds remote and / or difficult areas to rural areas to comprise entire body of areas, for which incentives / weightage shall be granted, as being clearly in terms of the proviso to clause 9(4) of the Regulations. Guidelines or binding criteria were laid down by Supreme Court in **Narendra Soni** (supra) and **Amit Bagra** (supra). Development cannot be confined to remote or difficult areas only. Development can happen in urban areas as well, let alone municipal areas. As such, impugned judgment is wrong on view expressed that since development was taken to be a yardstick, in classifying such areas, which is undoubtedly an intelligible differentia and has close nexus with the object of the 2000 Regulations, it would be improper for Court to impose its views with regard to such yardstick. He also relied on views of a Division Bench of

this Court in **Sandip Santra vs Papiya Biswas** reported in **2013 (2) CHN 27**, paragraphs 59 to 61 65 and 66.

Mr. Bandopadhyay, learned advocate and Junior Standing Counsel, led by Mr. Dutta, learned advocate and Additional Government Pleader appearing on behalf of State submitted, data given in the affidavits show, incentive marks were duly given in terms of impugned notification. As correctly found by first Court, impugned notification is pursuant to sub-regulation (4) in regulation 9 of the 2000 Regulations. 3 appellants were not entitled to incentive marks and there is no dispute in that regard. Of 5 other appellants, all got incentive marks and 3 of them have also got admission. The remaining two cannot complain since, he reiterated, they did get incentive marks. Referring to **Amit Bagra** (supra), he submitted, Supreme Court had quoted from **Narendra Soni** (supra) as reproduced below.

“Thus an extremist affected district could be as much a problem as distance, but if the facility is an urban or peri-urban area then it would not be the central issue in getting a doctor to that facility. This is based on an understanding that lack of willingness to work in remote areas is due to a combination of economic loss, social and (from community and family and professional isolation and not so much of a problem as distance from an urban area. The criteria for difficulty should be

measurable enough to withstand legal and political contestation, but there would be exceptions that need to be made and these could be made by addition of further qualifying rules and flexibilities that would be defined in writing wherever needed.”

He submitted, said Court said that identification and criteria will, inter alia, vary from State to State to some extent, despite identification of certain common criteria.

Mr. Roy, learned advocate appeared on behalf of National Medical Commission and adopted submissions made by Mr. Bandopadhyay. He added, with reference to Final Combined Eligible Candidate List with Serial Number, only a few pages in the list disclosed by appellants in the writ petitions, there are several candidates under serial numbers and ranks, whose names have been omitted as not appearing on the disclosed pages in the list. One of the appellants, Dr. Partha Sarathi Ray, who did not get incentive marks, obtained total marks 623 and rank 999. Another two appellants, both in service doctors, got respective 436 and 432 marks to have ranked 1824 and 1838. These three appellants did not get incentive marks as were not entitled to get them. Even if 14 candidates, who according to appellants, were allegedly wrongly given incentive marks though they had served in super speciality hospital or sub-divisional hospitals located in municipal areas, have their incentive marks deducted, it will not raise the ranks of appellants for purpose of those of them who

did not get admission, to become eligible for it. As such, the writ petitions are vexatious and there should be no interference, more so, since we are seven months into commenced current academic year. He relied on following sentence from **Amit Bagra** (supra):-

“Without commenting on merits of the case, in the circumstances, we dispose of these special leave petitions and hold that the admissions made for the present academic year shall not be disturbed.....”

Mr. Bandopadhyay adopted the submissions made in addition by Mr. Roy.

The controversy is regarding categories (iii) and (iv) areas under explanation II of impugned notification.

Sub-regulation (4) in regulation 9 had amendments made to it by substitution, firstly in terms of notification dated 21st December, 2010. Thereby reservation of seats was made for respective categories as per applicable laws prevailing in States / Union Territories. A proviso was added by notification dated 15th February, 2012. The proviso introduced weightage in marks of in service candidates as incentive @10% of the marks obtained for each year of service in remote and / or difficult areas, up to the marks of 30% of the marks obtained in National Eligibility-cum-Entrance Test (NEET). Inter alia, sub-regulation (4) was again substituted by notification published on 5th April, 2018. The substituted sub-

regulation (4), as it stands today and applicable to the case, is reproduced below:-

“(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 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.”

On query we have ascertained from Mr. Bandopadhyay that Paschimanchal Unnayan Parshad was formed by Paschimanchal Unnayan Development Affairs Department on 18th May, 2000. Uttarbango Unnayan Parshad was formed by the Home Department on

notification dated 8th July, 2011. These two categories of areas were demarcated for purpose of development and the administrative exigencies in relation thereto. In tracing the history of the sub regulation, we find weightage by incentive marks was introduced under notification dated 15th February, 2012. Remote and difficult areas were said to be 'as shall be defined by State Government / competent authority from time to time'. This was carried in the substituted sub-regulation, as included in the proviso. Appellants have clarified that for the selection to current academic year course study, existing provisions as in document dated 18th April, 2013, referred in memo dated 4th March, 2020 were applied.

The sub-regulation mandates remote and / or difficult areas to be as defined by State Government / competent authority. There is no challenge to the demarcation made of the two categories, being Paschimanchal Unnayan Parshad and Uttarbango Unnayan Parshad, as defined by the State Government through its respective departments. The demarcation of rural and remote and/or difficult areas were made by respective departments prior to 15th February, 2012. The sub-regulation does not say that the definition of the areas to be given by the State Government/competent authority has to be pursuant to it.

The contention has been that these areas include municipal areas and therefore cannot be said to be

either remote or difficult areas. Here we accept reliance by Mr. Bandopadhyay on the extract from **Narendra Soni** (supra) in **Amita Bagra** (supra), as quoted above. Supreme Court referred to basis of understanding that lack of willingness to work in remote areas is due to a combination of factors and not so much of a problem as distance from an urban area. We are not persuaded by view taken in **Sandip Santra** (supra) as it related to provisions in regulation 9(2)(d) of the Regulations and consequential Government notification dated 23rd November, 2011. The Division Bench confirmed finding of the first Court in that the Government notification could only be prospective.

For reasons aforesaid, there is no case for interference with impugned order. The appeals and the applications are dismissed.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)