

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**W.P.A. No. 5592 of 2020
With
IA No. CAN 1 of 2020
(Old No. CAN 3346 of 2020)**

**Dr. Anupam Mitra
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Gazi Faruque Hassain, Ms. Priyanka Mondal
For the National Medical Commission	:	Mr. Indranil Roy, Mr. Sunit Kumar Roy
For the WBMC	:	Mr. Saibalendu Bhowmick, Mr. Biplab Guha, Mr. Rajsekhar Basu
Hearing concluded on	:	23.12.2021
Judgment on	:	04.01.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner did his MBBS from the Burdwan University in the year 2003 and was registered with the West Bengal Medical Council. Thereafter, allegedly, the petitioner has been practising medicine as a General Duty Medical Officer at the Pancagram Rural Hospital under

Diamond Harbour- I Block since November 6, 2012 for over seven years. The petitioner terms the area of his work as a “remote area”.

2. The petitioner took the National Eligibility cum Entrance Test – Post Graduate 2020 (in short, “the NEET-PG”) and secured a rank of 25296, with a score of 5917 out of 1200 and a state wise combined rank of 1145.
3. Reliance is placed on Clause 9 (2) (d) of the Postgraduate Medical Education Regulations 2000 (in short, “the Regulations”) the proviso to which, after its amendment on November 17, 2009, reads:
 - i. *“ Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks may be given as an incentive at the rate of 10% of the marks obtained for each year in service in remote or difficult areas up to the maximum of 30% of the marks obtained. ”*
4. Upon giving such weightage, the petitioner argues, his score would stand at 597 plus 30%, which comes to $(579+179.1) = 776.1$ and his ranking in the state panel would be 215.
5. In terms of a notification dated February 26, 2020, issued by the Special Secretary to the Government of West Bengal under the proviso to Clause 9 (4) of the Regulations, the petitioner gave a representation, first on March 16, 2020 and again, by an email dated March 28, 2020 to the Principal Secretary, requesting for being granted such incentive marks as weightage allowable for an in-service doctor.

6. The second round of counselling (allotment process) started and the final list for round 2 publication and seat matrix was scheduled on June 23, 2020 and the results for allotment in round 2 were to be published on June 30, 2020. Since the petitioner's request for being considered as an eligible candidate and to come within the zone of consideration for counselling by virtue of the 30% incentive had not yet been considered, the present writ petition was filed on June 19, 2020.
7. Learned counsel for the petitioner contends that the petitioner has been in service in a State Government hospital as a doctor in a remote area for above seven years and is, thus, eligible to take the admission test for the MD/MS/Post Graduate Diploma Courses upon the improvement of his rank on the 30% incentive being given, in terms of Clause 9 (2) (d) of the Regulations.
8. The West Bengal Medical Council ("WBMC" for short), as Respondent No. 7 in the writ petition and the Medical Council of India ("MCI" in short), being Respondent No. 8, who are the state medical council and the parent body in the country respectively, contested the writ petition.
9. All the contesting parties have filed written notes of arguments.
10. As per the contention of Respondent No. 7, the writ petition has become infructuous since the Post Graduate Medical Education in 2020 Session has already started, with successful candidates participating in different post graduate courses and having completed a "good portion" of their study, thus excluding any scope of entry of

any student by disturbing the entire curriculum. For the proposition no further relief can be granted in an infructuous writ petition, learned counsel cites *2000 (2) SCC 439*.

11. Respondent No. 7 further argues that the petitioner failed to substantiate his case on merits and relies, in this context, on *2010 (10) SCC 677*, *1988 (4) SCC 534 (Bharat Singh vs. State of Haryana)*.
12. It is denied that the petitioner has worked at a remote and/or difficult area of the stage, as fixed by the State Government in their discretion as per notification dated February 26, 2020. In such context, Respondent No. 7 cites *2016 (9) SCC 749 (State of U.P. vs. Dinesh Singh)*.
13. The writ petitioner, it is argued, could not substantiate his case that he rendered service as an officer of the West Bengal Health Service (WBHS) or of the West Bengal Public Health and Administrative Service or the West Bengal Medical Education Service.
14. Learned counsel for Respondent No. 8 reiterates the submission that the writ petition has become infructuous and rendered academic in view of the fact that the last date for admission to Post Graduate Medical Courses for the academic session 2020 was August 31, 2020 as directed the Supreme Court in M.A. No. 1282 of 2020 in Writ Petition (C) No. 76 of 2015. The academic session, in fact, has commenced from August, 2020 and almost one year and four months have already elapsed thereafter. The admission process for the academic session 2021 has already commenced, it is submitted. It is argued that the Supreme Court has deprecated the practice of mid-

stream admissions to medical courses and held in several judgments that the time schedule for admission to medical courses have to be strictly adhered to. On the said proposition, learned counsel places reliance on the following judgments:

(i) (2005)2 SCC 65;

(ii) (2002) 7 SCC 258;

(iii) AIR 2012 SC 2413; and

(iv) (2019) 7 SCC 38.

- 15.** The petitioner has neither been an officer in any state service, nor has he been posted in any “rural” or “remote and/or difficult” area. Thus, learned counsel contends that the Notification dated February 26, 2020 (Annexure P/4 at page 17 of the writ petition) is not applicable to the petitioner at all.
- 16.** Upon hearing learned counsel for the contesting parties, the document which acquires prime importance is the Notification dated February 26, 2020, bearing No. HFW-23099/29/2019/373 issued by the Special Secretary to the Government of West Bengal Health and Family Welfare Department (Annexure P/4 at page 17 of the writ petition).
- 17.** As per the contemplation of the said Notification, weightage would be given to the “in-service doctors who are the officers of the West Bengal Health Service/West Bengal Public Health cum Administrative Service / West Bengal Medical Education Service serving in rural areas or remote and/or difficult areas” in the manner as specified therein.

- 18.** The State-Respondent itself denies in its arguments that the petitioner was an officer in any of the aforementioned services. By way of proof, the petitioner has produced a purported certificate dated March 23, 2020, issued by the Block Medical Officer of Health, Panchagram Rural Hospital, Diamond Harbour Block – 1. Such document, however, does not prove conclusively that the petitioner has been posted as an officer within the contemplation of the February 26, 2020 Notification. The least that the petitioner ought to have done in the teeth of the State’s objection was to produce any document to directly show such appointment. However, no such document has been produced.
- 19.** In his Supplementary Affidavit affirmed on September 21, 2020, the petitioner has annexed Memo No. CMOH (SPG)/4407 dated October 16, 2012, apparently issued by the Chief Medical Officer of Health, South 24-Parganas. Although the said document refers to selection of the petitioner, among others, for engagement as “General Duty Medical Officer”, the said designation was qualified by the phrase “on contractual basis”. The petitioner was engaged for a State Govt. Health Institution merely on contractual basis for a period of 11 (eleven) months only, on a “consolidated contractual remuneration” of Rs.40,000/- per month.
- 20.** The Attendance Register annexed to the Supplementary Affidavit of the petitioner affirmed on July 24, 2020 pertains only to the month of November, 2012. The “salary” slips annexed thereto, collectively as Annexure “P7”, are only in respect of two months, that is, December,

2012 and February, 2013. The Release Order annexed as Annexure “P9” thereto was also issued by the CMOH, Diamond Harbour Health District on March 31, 2017 and indicates that the petitioner successfully completed a Medical Officers training course, conducted from March 30, 2017 to March 31, 2017.

21. The period covered by the salary slips (P7) and release order (P9) are of different periods and do not corroborate each other. Moreover, merely being selected on contractual basis for a stray period of 11 months does not bring the petitioner within the ambit of the Notification-in-question, which envisages at least a year’s completed service. Even the two so-called ‘salary slips’ produced by the petitioner clearly exhibit that he was paid merely ‘monthly consolidated salary’ and not any other allowance. More importantly the “Deduction” head reflected only professional tax, and not TDS/Income tax, EPF or any other deduction which would normally be associated with a permanent government service.
22. Even if the above considerations were to be brushed aside and the benefit of doubt extended to the petitioner, the mere pleading in the writ petition that the petitioner’s location of service was a “remote area” is insufficient to prove such component of his service. The Notification under consideration has clearly defined the terms “rural areas” and “Remote and/or Difficult Areas” as follows:
23. Explanation I of the Notification states that the term “rural areas” *means* areas other than the areas under the jurisdiction of a Metropolitan Area, Municipal Corporation, Municipality, Cantonment

Board, Notified Town Area Committee or Industrial Township Authority and/or other Urban Local Bodies of the like as may be prescribed/notified by the appropriate Government from time to time.

- 24.** Explanation II stipulates that 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 Sundarbans under the jurisdiction of the Sundarban Unnayan Parshad, (iii) the areas under the jurisdiction of the Paschimanchal Unnayan Parshad and (iv) the areas under the jurisdiction of the Uttarbanga Unnayan Parshad under the Government of West Bengal.
- 25.** There is no specific pleading and/or proof by the petitioner to establish that Diamond Harbour Block-1, where he served as a doctor, comes within the purview of either of the two definitions.
- 26.** It is well-settled that the expressions “means” and “means and includes” are exhaustive and specific in nature, unlike “includes” in isolation, which may indicate an inclusive definition.
- 27.** Thus, the petitioner has failed to satisfy any of the mandatory yardsticks which are the pre-requisites of entitlement to the benefit conferred by the Notification dated February 26, 2020.
- 28.** Furthermore, as rightly pointed out by Respondent No. 8 (National Medical Commission), there is nothing on record to establish that the petitioner would come within the zone of consideration for admission even if incentive marks were awarded to him. Thus, the petitioner has

merely taken a chance by filing the writ petition without clearly disclosing any specific cause of action.

- 29.** Although, as opposed to the stand taken by the contesting respondents, mere delay on the part of the petitioner is insufficient to defeat the petitioner's otherwise just cause, if any, since the petitioner approached this court with the writ petition prior to completion of the admission process for the 2020 session, in view of the facts of the case, no such cause can be said to have been made out by the petitioner in the instant case at all.
- 30.** In such view of the matter W.P.A. 5592 of 2020 is dismissed on contest. CAN 3346 of 2020 also stands disposed of consequently.
- 31.** There will be no order as to costs.
- 32.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)