HIGH COURT OF MADHYA PRADESH

AT JABALPUR

WRIT PETITION NO.4316/2017

PETITIONER **DR. BRIJESH YADAV AND OTHERS**

Vs.

RESPONDENTS **THE STATE OF M.P. AND OTHERS.**

WRIT PETITION NO.4512/2017

PETITIONER **DR. ASHISH KUMAR SINGH**

Vs.

RESPONDENTS **THE STATE OF M.P AND OTHERS.**

WRIT PETITION NO.4526/2017

PETITIONER **DR. NEERAJ BANSAL**

Vs.

RESPONDENTS **THE STATE OF M.P AND OTHERS.**

For the petitioners : Shri Sidharth Gupta, and Shri Ashish Trivedi, Advocates.

For the respondent/State: Shri Deepak Awasthi, Govt. Advocate.

For the respondent MCI : Smt. Indira Nair, Senior Counsel with Shri Rajas Pohankar, Advocate.

For respondent no.6 : Shri Aditya Sanghi, Advocate.

Present : Hon'ble Shri Justice R.S. Jha, J.
Hon'ble Shri Justice A. K. Joshi,J.

<u>O R D E R</u>
(**01/05/2017**)

<u>Per R. S. Jha, J</u>

As all the aforesaid petitions raise a common issue for decision before this Court, they are heard and decided concomitantly.

2. The petitioners who are all MBBS Doctors working in the State of M.P. as Medical Officers, have filed these petitions challenging the constitutional validity of Regulations 9(iv) Proviso and 9(vii) of the Medical Council of India Post Graduate Medical Education Regulation, 2000 (hereinafter referred to as 'the Regulations of 2000') and Rules 2(vi), 2(vii), 5(ii) and 6(iii) of the M.P. Autonomous Medical and Dental Post Graduate Course (Degree/Diploma) Admission Rules 2017 (hereinafter referred to as 'the Rules of 2017') which are in the nature of Executive Instructions and govern admission to Post Graduate Degree and Diploma Medical Education courses in Government Colleges.

3. The petitioners are in-service Doctors who are posted in Government hospitals in the State of M.P. All of them assert that they have rendered more than 3 years of service in rural areas and have appeared in the 2017 National Eligibility cum Entrance Test (NEET) Examination

as in-service candidates and their names are shown in the merit list as they have obtained more than the cut off marks as prescribed in the MCI Regulations. It is submitted that till the year 2016-17 the State of M.P. was and had been granting additional marks and reservation to in-service candidates who had rendered more than 3 years service in rural and notified areas. However, in view of the impugned amendment made in the Rules relating to admission for the year 2017-18 the petitioners have been denied the same on account of the fact that the incentive marks and reservation has now been restricted only to those in-service candidates who have rendered 3 years service in difficult and remote areas which have been defined to mean the areas situated in 89 notified tribal sub-plan blocks (Tribal Development Blocks). Being aggrieved by the Medical Council of India Regulations and the provisions of the Rules of 2017 the petitioners have filed the present petitions.

4. Before we advert to the detailed submissions made by the learned counsel for the parties before us, it is observed that the learned counsel for the petitioners have fairly stated that they do not wish to press the petitions as far as it relates to challenge to the constitutional validity of the provisions of Regulations 9(iv) Proviso and 9(vii) of the

Regulations of 2000, in view of the fact that the constitutional validity of the aforesaid Regulations has already been upheld by the Supreme Court in the case of **State of Uttar Pradesh and Others vs. Dinesh Singh Chauhan** (2016) 9 SCC 749.

5. To appreciate the controversy involved in the present petitions, we think it apposite to first delineate the legal provisions necessary for adjudication of the present petitions.

6. Clause 9 of the MCI Regulations of 2000, lays down the procedure for selection of Post Graduate students. This clause of the MCI Regulation has been subjected to several amendments. By notification published in the Gazettee of India dated 20.10.2008, Clause 9(1)(b) was introduced in the Regulation providing for 50% reservation of seats in Post Graduate Diploma Courses for Medical Officers in Government service who had served for atleast 3 years in remote and difficult areas and who, after acquiring the Post Graduate Diploma, were willing to serve for two more years in remote and/or difficult areas. By Gazette notification dated 17.11.2009 a proviso was inserted after Clause 9(2)(d) for the purposes of providing weightage in marks as an incentive @ 10% marks obtained

for each year of service in remote or difficult areas upto the maximum of 30% of the marks obtained for determining the merit in the entrance test for Post Graduate admissions. By another notification dated 16.4.2010 a line was added in Clause 9(1)(b) empowering the State authorities to decide what would be the remote/difficult areas.

7. Ultimately Clause 9 of the Regulation, have been amended vide notification dated 15.2.2012 and the relevant clauses of the Regulations with which we are concerned in the present petitions are in the following terms:-

> “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 Post Graduate courses from the said merit lists only.
>
> “Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in

National Eligibility-cum-Entrance Test. The remote and difficult areas shall be as defined by State Government/Competent authority from time to time."

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

8. As stated above, the validity of the aforesaid clauses of Regulation 9 has been upheld by the Supreme Court in the case of **Dinesh Singh Chauhan** (supra) and while doing so the Supreme Court has held as under:-

"**32.** The imperative of giving some incentive marks to doctors working in the State and more particularly serving in notified remote or difficult areas over a period of time need not be underscored. For, the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in Public Health Care Units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. This problem is faced by all States across India. This Court in **Snehlata Patnaik (Dr.) V/s. State of Orissa,** 1992 (2) SCC 26, had left it to the Authorities to evolve norms regarding giving incentive marks to the in-service candidates. The Medical Council of India is an expert body. Its assessment about the method of determining merit

of the competing candidates must be accepted as final (**State of Kerala V. T.P.Roshana**, (1979) 1 SCC 572 (para 16); also see **MCI V. State Of Karnataka**, (1998) 6 SCC 131). After due deliberations and keeping in mind the past experience, Medical Council of India has framed Regulations inter alia providing for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, is an attempt to undo the mischief.

33. As aforesaid, the real effect of Regulation 9 is to assign specified marks commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State linked to the marks obtained in NEET. That is a procedure prescribed in the Regulation for determining merit of the candidates for admission to the Post Graduate "Degree" Courses for a single State. This serves a dual purpose. Firstly, the fresh qualified Doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to Post Graduate "Degree" Courses of their choice. Secondly, the Rural Health Care Units run by the Public Authority would be benefitted by Doctors willing to work in notified rural or difficult areas in the State. In our view, a Regulation such as this subserves larger public interest. Our view is reinforced from the dictum in **Dr. Snehelata Patnaik's** case (supra). The three Judges' Bench by a speaking order opined that giving incentive marks to in-service candidates is inexorable. It is apposite

to refer to the dictum in the said decision which reads thus:

> "1. We have already dismissed the writ petition and special leave petitions by our order dated December 5, 1991. We would however, like to make a suggestion to the authorities for their consideration that some preference might be given to in-service candidates who have done five years of rural service. In the first place, it is possible that the facilities for keeping up with the latest medical literature might not be available to such in-service candidates and the nature of their work makes it difficult for them to acquire knowledge about very recent medical research which the candidates who have come after freshly passing their graduation examination might have. Moreover, it might act as an incentive to doctors who had done their graduation to do rural service for some time. Keeping in mind the fact that the rural areas had suffered grievously for non-availability of qualified doctors giving such incentive would be quite in order. Learned counsel for the respondents has, however, drawn our attention to the decision of a Division Bench of two learned Judges of this Court in **Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad,** (1986) 3 SCC 727. It has been observed there that merely by offering a weightage of 15 per cent to a doctor for three years' rural

service would not bring about a migration of doctors from the urban to rural areas. They observed that if you want to produce doctors who are MD or MS, particularly surgeons, who are going to operate upon human beings, it is of utmost importance that the selection should be based on merit. Learned Judges have gone on to observe that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-graduate courses are concerned (see para 12 at page 741).

2. In our opinion, this observation certainly does not constitute the ratio of the decision. The decision is in no way dependent upon these observations. Moreover, those observations are in connection with all India Selection and do not have equal force when applied to selection from a single State. These observations, however, suggest that the weightage to be given must be the bare minimum required to meet the situation. In these circumstances, we are of the view that the authorities might well consider giving weightage up to a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities. We also clarify that these suggestions do not in any way confer any legal right on in-

> service students who have done rural service nor do the suggestions have any application to the selection of the students up to the end of this year." (emphasis supplied)

34. to **39**. xxx xxx xxx

40. **.....** The provision for giving incentive marks to in-service candidates is permissible in law; and thus the proviso to Clause IV in Regulation 9 must be upheld in larger public interest. ....

41. The following questions were raised which were duly answered by the Minister for Health and Family Welfare on 23.12.2014. The same read thus :-

"Questions

(a) The measures being taken by Government to make up for the extreme shortage of qualified and skilled doctors for healthcare in rural areas;

(b) Whether government is planning to introduce measures to measures to introduce and enforce compulsory rural postings for doctors, before or after they have obtained an MBBS degree;

(c) If so, the details thereof; and

(d) If not the reasons therefor?

Answers

(a) At present, in order to encourage the doctors working in remote and difficult areas, the Medical Council of India with the previous approval of Central Government,

> has amended the Post Graduate Medical Education Regulations, 2000 to provide :-
>
> I. 50% reservation in Post Graduate diploma Courses for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas; and
>
> II. Incentive at the rate of 10% the marks obtained for each year in-service in remote or difficult area upto the maximum of 30% of the marks obtained in the entrance test for admission in Post Graduate Medical Courses. (emphasis supplied)
>
> (b)-(d): The proposal of Medical Council of India (MCI) to amend the Post Graduate Medical Education Regulations, which makes one year rural posting at the Public Health Centre (PHC) mandatory for a MBBS student to apply for admission in a PG course is not yet notified." (emphasis supplied)

42. It was then contended that hitherto reservation for in-service candidates was applicable only in respect of Government colleges but on account of interim directions given by this Court, dispensation of giving weightage or incentive marks as per Regulation 9 to the in-service candidates has been made applicable across the board even to non-Government medical colleges where the seats allocated to the State Government are to be filled up. In our opinion, Regulation 9 per se makes no

distinction between Government and non-Government colleges for allocation of weightage of marks to in-service candidates. Instead, it mandates preparation of one merit list for the State on the basis of results in NEET. Further, regarding in-service candidates, all it provides is that the candidate must have been in-service of a Government/public Authority and served in remote and difficult areas notified by the State Government and the Competent Authority from time to time. The Authorities are, therefore, obliged to continue with the admission process strictly in conformity with Regulation 9. The fact that most of the direct candidates who have secured higher marks in the NEET than the in-service candidates, may not be in a position to get a subject or college of their choice, and are likely to secure a subject or college not acceptable to them, cannot be the basis to question the validity of proviso to Clause (IV) of Regulation 9. The purpose behind proviso is to encourage graduates to join as medical officers and serve in notified remote and difficult areas of the State. The fact that for quite some time no such appointments have been made by the State Government also cannot be a basis to disregard the mandate of proviso to Clause (IV) of giving weightage of marks to the in-service candidates who have served for a specified period in notified remote and difficult areas of the State.

43. xxx xxx xxx

44. Dealing with this contention, we find that the setting in which the proviso to Clause (IV) has been inserted is of some relevance. The State Governments across the country are not in a

position to provide health care facilities in remote and difficult areas in the State for want of Doctors. In fact there is a proposal to make one year service for MBBS students to apply for admission to Post Graduate Courses, in remote and difficult areas as compulsory. That is kept on hold, as was stated before the Rajya Sabha. The provision in the form of granting weightage of marks, therefore, was to give incentive to the in-service candidates and to attract more graduates to join as Medical Officers in the State Health Care Sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in the NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing health care facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to Post Graduate Medical Courses. Not even one instance has been brought to our notice to show that some areas which are not remote or difficult areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular

> proviso to Clause (IV) is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to Clause (IV) in particular is just, proper and reasonable and also fulfill the test of Article 14 of the Constitution, being in larger public interest. "

9. As far as the State of M.P. is concerned, reservation and weightage of marks for in-service candidates was being granted even prior to the above mentioned amendments in the MCI Regulations and the validity of the Rules of 2002, which provided for 20% reservation in Post Graduate Degree and Diploma Courses for in-service doctors of the Govt. of M.P. and also provided for weightage of marks for service in rural and in tribal sub-plan areas was upheld by the Supreme Court in the case of **State of M.P. and others vs. Gopal D. Tirthani and others,** (2003) 7 SCC 83.

10. It is an admitted and undisputed fact that such reservation for in-service candidates and additional marks for serving in rural and notified areas was being granted to in-service candidates till the year 2016-17. It is also an undisputed fact that though the MCI Regulations were amended in the year 2008 and reservation in Diploma Courses as well as the weightage of marks for admission in Post Graduate Degree courses was restricted to only those

in-service doctors who had served in "remote and/or difficult areas", the State of M.P. continued to grant such reservation and incentive marks to in-service candidates for serving in not just notified tribal areas but also in rural areas by treating both the areas as difficult and/or remote areas.

11. To properly appreciate the controversy involved in the present petitions, it is necessary to deal with the progressive amendment made by the State Government in the admission rules from 2013 onwards. The definition of rural area, notified area and tribal area as provided in Rule 2(g) and 2(h) of the Rules of 2015 is as under:-

> "2(g) "Rural Area" means the area other than Municipal Corporation area and Municipal Council area.
>
> 2(h). "Notified area" means: any areas situated in the M.P. State notified 89 Tribal sub-planning development blocks.
>
> 2(m). "Tribal area" means area under tribal sub plan."

12. The same definition of these terms was reiterated and repeated in the Rules of 2014. However, in the admission Rules of 2015, the definition of these terms was changed and the following definition was substituted:-

"2(h) " Rural Area" means the area other than Municipal Corporation area and Municipal Council area :

2(i) Notified area means: any areas situated in the M.P. State notified Tribal sub planning development blocks.

2(q) "Tribal Area" means area under tribal sub plan;"

13. This definition of the term rural area and notified area was repeated in the Rules of 2016. From a perusal of the rules, it is apparent that upto the year 2016, the State was granting incentive marks and reservation for services rendered in rural areas as well as notified areas and the selection criteria for in-service candidates and the grant of incentive marks for preparing the merit-list as prescribed in Rules 8 and 9 of the M.P. Medical and Dental Post-Graduate Courses (Degree/Diploma) Admission Rules, 2016, was in the following terms:-

"8. **<u>Selection Criteria :- (In Service Candidate)</u>**

Selection process and conditions for P.G. Degree and diploma courses for In-service candidates will be as per the policy decided by Department of Public Health & Family Welfare as under :-

(A) **<u>Medical Officer</u>** :-

(a) Only those candidates, who are working as Medical Officers in the Department of Public Health & Family Welfare, Govt. of M.P. & who have completed 3 years of rural service on 30 April, 2016

of year of admission as Medical Officer, or a candidate who is working consecutively as regular/contractual medical officer in Department of Public Health & Family Welfare, Govt. of M.P. or any other department or State/District Health Committee and has completed 3 years of rural notified area service will be eligible as In-service candidate.

9. **<u>Examination and Merit list</u>**:-

(1) The merit list based on the result of AIPGMEE-2016 declared by NBE New Delhi for MD/MS/Diploma courses and results of AIPGDEE-2016 declared by AIIMS for MDS Courses will be considered.

(2) In-service candidates/Demonstrators will be selected on the basis of AIPGMEE 2016 In-service candidates/Demonstrators shall have to secure minimum qualifying marks in the AIPGMEE/AIPGDEE 2016 as prescribed in these rules for entrance examination. A separate eligibility and merit list of successful in-service candidates/Demonstrators will be prepared.

(3) <u>Medical Officer</u>

(b) If such services rendered in District Hospital/Civil Hospital/Community Health Centre/Primary Health Centre situated in area which comes under tribal sub plan of district notified as high priorities district by Government under National Health Mission-Jhabua, Alirajpur, Panna, Mandla, Dindori, Sidhi, Singroli, Anuppur, Umaria and Shahdol then additional marks at the rate of 20 per year, maximum 100 marks for five years will be awarded.”

14. After the decision of the Supreme Court in the case of **Dinesh Singh Chauhan** (supra) a similar matter relating to reservation in Post Graduate Degree Courses travelled upto the Supreme Court in Civil Appeal No.11270-11271/2016 and the Supreme Court by order dated 25.11.2016 quashed the order of the Govt. of M.P. providing for reservation in Post Graduate Degree Courses in view of the decision in the case of **Dinesh Singh Chauhan (**supra) and directed the Govt. of M.P. to amend the Rules in terms of the law laid down therein and the MCI Regulations.

15. Pursuant to the aforesaid direction of the Supreme Court in the above mentioned Civil Appeal, the State Government vide notification dated 28.3.2017 has published the Admission Rules of 2017 and while deleting the provision relating to reservation in Post Graduate Degree Courses has also deleted the definition of Rural areas and has defined “In-service candidates”, “Remote and/or Difficult Area” and “Tribal region” in the following terms in rule 2(vi), (vii), (xv):-

> “2(vi)“In service candidates” means a medical officer whose name appears in the list issued by Commissioner, Health Services, Department of Public Health & Family Welfare Madhya Pradesh for this purpose.

2(Vii) “Remote and/or Difficult Area” means any area situated in “89” notified tribal sub plan blocks (Tribal Development Blocks).

2(xv) “Tribal region” means area under tribal sub plan.”

16. The validity of the aforesaid amendment has been challenged by the petitioners in the present petitions, being aggrieved by the fact that the amendments restrict grant of incentive and reservation in respect of services rendered only in 89 notified tribal sub-plan blocks and tribal region and have deprived the petitioners of such benefit in respect of services rendered by them in other rural areas.

17. Though the petitioners have also challenged the validity of Rule 5(ii) which relates to reservation in Diploma Courses and Rule 6(iii) of the Rules of 2017, which relate to grant of incentive marks for the purposes of determining marks in Post Graduate Degree Courses, however during the course of argument, it is submitted that as the challenge to Rule 5(ii) and 6(iii) is fully dependent upon the success or otherwise of the challenge made by the petitioners to Rule 2(vii) and, therefore, the petitioners shall confine their arguments to the challenge to the validity of Rule 2(vii) of the Rules of 2017.

18. The learned counsels for the petitioners contend that the impugned amendment in the rules offend the petitioners Fundamental Rights under Article 14 of the Constitution of India, inasmuch as the State has confined the benefit of granting incentive marks and reservation only to those candidates who have worked in the 89 notified tribal sub-plan areas without applying its mind to the fact that such benefit has to be given to doctors who have worked in difficult and remote areas. It is submitted that the MCI regulations provide for granting incentive marks and reservation to those in-service doctors who have rendered service in difficult and remote areas and, therefore, the impugned rules, which confine the benefit only to those doctors who have worked in the 89 notified tribal sub-plan areas, amounts to micro classification and sub-classification as several doctors like the petitioners who have infact rendered services in difficult and remote areas which unfortunately do not fall within the 89 tribal sub-plan areas have been deprived of the benefit of incentive marks and reservations though they form a single homogenous class of doctors that have rendered services in difficult and remote areas.

19. The learned counsels for the the petitioners submit that the MCI Regulations do not provide or restrict the

grant of incentive marks to services rendered in tribal areas only. On the contrary, the Regulation provides for granting incentive marks and reservation for services rendered in difficult and remote areas. It is submitted that there are several areas in the State of Madhya Pradesh which are difficult and remote including those areas in which the petitioners have worked and, therefore, in the absence of any clear and specific stipulation in the Rules and Regulations of the MCI restricting the grant of benefit to services rendered in tribal areas only, the act of the State in restricting the benefit only to services rendered in tribal areas is contrary to the object and purpose of providing incentive marks to in-service doctors like the petitioners who have rendered services in remote and difficult areas and, therefore, the impugned Rules offend the provisions of Article 14 of the Constitution of India.

20. The learned counsel for the petitioners submits that the impugned Rules result in treating in-service doctors belonging to one homogenous group differently and discriminately inasmuch as out of all the doctors who have worked in difficult and rural areas, benefit of the incentive marks under the Rules is confined only to those who have rendered service in tribal areas and, therefore, the

impugned Rules falls foul of Article 14 of the Constitution of India.

21. The learned counsel for the petitioners submits that in view of the provisions of law prevailing prior to the introduction of the impugned Rules in the year 2017, the petitioners who were assured of incentive marks on rendering rural service as well as services in notified areas, had opted for serving in rural areas so as to secure benefit under the Rules by taking advantage of this incentive given to the petitioners under the Rules. It is submitted that as the petitioners, on the basis of the statutory promise made by the respondents in the Rules to grant them marks for rendering three years service or more in rural areas, have rendered such service and, therefore, they have acquired a vested right to such a benefit which cannot be taken away by the authorities of the respondent State by introducing such an arbitrary Rule in the year 2017 specifically when the petitioners, after completing more than three years service in rural areas, are about to reap the benefit of the sacrifice that they have made on the basis of the statutory assurance by rendering services in rural areas. It is submitted that such a rule, as framed by the State, cannot be implemented suddenly by the respondent authorities

moreso as it results in taking away a statutorily vested right conferred upon the petitioners by the Rules existing prior to introduction of the impugned Rules. Denying the benefit to the petitioners after they have rendered such rural services is impermissible as the State is prohibited and prevented from doing so on the principle of estoppel as well as promissory estoppel.

22. The learned counsel for the petitioners submits that infact as the petitioners had opted for rural service in notified areas only on account of the statutory provisions which provided for granting incentive marks and reservation to them, they alongwith other in-service doctors working in rural and notified areas have now tendered enmass resignation vide Annexure R-J/6 filed by them alongwith the rejoinder, on account of the fact that inspite of their having rendered rural services for the purposes of obtaining the incentive marks and reservation as per the statutory promise given by the respondent/State under the Rules, have been denied the same by the impugned rules.

23. The learned counsel for the petitioners submits that the State of Madhya Pradesh is predominantly a tribal State and a large part of the State is tribal area. It is

submitted that the respondent authorities have exhibited total non-application of mind by subjecting the petitioners and others to discrimination by confining the benefit of incentive marks and reservations to services rendered only in the 89 tribal sub-plan areas to the exclusion of services rendered by the petitioners and other doctors in the remaining tribal areas of the State of M.P and, therefore, the classification made by the respondent State is unreasonable and violative of Article 14 of the Constitution of India. The learned counsel for the petitioners submit that the State was required to conduct a proper survey, assimilate information and thereafter apply its mind for the purposes of determining and identifying difficult and remote areas in the State of M.P. It is submitted that admittedly and apparently no such exercise was or has been undertaken by the State authorities and they have blindly adopted the list of 89 tribal sub-plan areas as difficult and remote areas. The learned counsel for the petitioners submits that in the absence of such an exercise the impugned classification made by the respondent State is manifestly arbitrary and is against the object and purpose for which the same is being provided thereby rendering it violative of Article 14 of the Constitution of India.

24. The learned counsel for the petitioners submits that if the object and purpose of the State was to grant incentive and reservation to those doctors who had rendered services to Scheduled Caste and Scheduled Tribe residents of the State then the State should also have included the 92 blocks that have been identified as scheduled castes sub-plan areas along with the 89 tribal sub-plan areas notified by the State. In the absence of such an inclusion and in view of the existence of such an unreasonable unjustified exclusion of similar areas, the impugned rule is violative of Article 14 of the Constitution of India.

25. The learned counsel for the petitioners, by placing reliance on the statement of the Minister of Health and Family Welfare, National Rural Health Mission dated 18.7.2014 made in reply in the Lok Sabha, submits that the Government of India has itself identified as many as 17 districts in the State of Madhya Pradesh as high priority districts for the purposes of providing the necessary health services in which several districts like Singrauli, Panna, etc. have been included. It is submitted that while the Government of India has itself identified several districts as high priority districts for the purposes of providing health services the respondent State, while framing the

impugned Rule, has excluded several such high priority districts by confining the benefit of granting incentive marks or reservation to services rendered only in the 89 notified tribal sub-plan blocks which amounts to hostile discrimination.

26. On the basis of the statement of the Minister of Health and Family Welfare made in the Lok Sabha, the learned counsel for the petitioners submit that the very object and purpose for granting incentive marks and reservation is to encourage doctors to work in the rural areas and in such areas where the doctors are generally reluctant to work. It is submitted that the words “difficult and remote areas” used in the Regulations of the MCI were for the purposes of fulfilling the aforesaid object of granting incentive marks and reservation for services rendered in rural areas where the doctors are generally reluctant to serve and, therefore, the impugned Rules which restricts and confines such a benefit only to services rendered in the specified tribal area is apparently contrary to the very object and purpose for which the MCI regulations were amended and, therefore, deserves to be quashed.

27. The learned counsel for the petitioners submits that the petitioners in W.P No.4512/2017 has rendered more than 3 years service in Badaun Block in the district of Singrauli which district has been classified by the Department of Public Health and Family Welfare, Govt. of M.P. as a difficult area in Annxure P-6 and has also been identified as a high priority district by the National Health Mission. It is submitted that, it is for this very purpose that the State is paying an enhanced Honorarium of Rs. 60,000/- instead of the normal Honorarium of Rs.45,000/- to doctors who have rendered contractual service in Singrauli district.

28. By taking this Court through the documents, Annexure P-2, P-7, P-12 and the other additional documents filed by the petitioners, it is submitted that even today on account of the reluctance of doctors to work in Singrauli district the percentage of vacancy of the post of specialists and medical officers in the district of Singrauli as well as in the district hospital at Baidhan is far in excess of the percentage of vacancies existing in other areas including the tribal sub-plan areas notified as difficult and remote areas by the State and in such circumstances excluding the petitioners who have worked in Singrauli district only to obtain incentive marks and

reservation and restricting the benefit to those doctors alone who have worked in the 89 notified tribal sub-plan areas which in fact are much better placed than Singrouli district amounts to hostile discrimination.

29. The learned counsel for the petitioners submit that the impugned definition contained in 2(vii) of the Rules of 2017, is violative of Article 14 of the Constitution of India, as it suffers from sub-classification and mini-classification and has no nexus with the object sought to be achieved. It is further stated that the material on record filed by the petitioners clearly establishes that the decision of the State to confine the benefit of incentive marks and reservation to only 89 tribal sub-plan areas does not find support from the documents and statistics of the State itself. It is submitted that the statistics available with the State and the sufficient, cogent and authentic material placed by the petitioners before this Court in the present petitions clearly establishes the fact that there are several other areas in the State of M.P. which fall within the definition of difficult and/or remote areas and, therefore, confining the benefit of granting incentive marks and reservation only to the 89 tribal sub-plan areas to the exclusion of such benefit to doctors who have rendered services in similar or even more difficult and remote areas

amounts to hostile discrimination thereby rendering the impugned provisions of the rule unconstitutional.

30. The learned counsel for the petitioners submit that the State of M.P. being a backward and tribal State, all areas other than urban areas are difficult and remote areas and the benefit of incentive marks and reservation cannot be confined only to those persons who have rendered services in certain selected 89 tribal sub-plan areas specifically in the absence of any survey being conducted or cogent material being placed on record to establish the difference between the petitioners and those who have served in the tribal sub-plan areas. It is submitted that in the absence of any material being produced by the respondent State to establish that only 89 from tribal sub-plan areas in the State of Madhya Pradesh are remote and difficult areas, the restrictive definition contained in the impugned Rule deserves to be quashed as it is in violation of Article 14 of the Constitution of India.

31. The learned counsel for the petitioners submit that the total non application of mind and unreasonableness of the classification made by the respondent State in the impugned definition is itself evident and apparent from the fact that several areas that have been identified as normal by the Department of Public Health in the State of M.P.

under Annexure P-6 have been included in the 89 tribal sub-plan areas whereas several areas that have been shown as difficult, most difficult or inaccessible have been excluded from the 89 tribal sub-plan areas. It is submitted that in view of the aforesaid apparent discrepancy and admitted facts on record the impugned definition is patently discriminatory, arbitrary, contrary to the object and purpose for which the incentive marks and reservation has been provided and is without application of mind and, therefore, deserves to be declared unconstitutional.

32. The learned counsel for the petitioners further states that the impugned Rule deserves to be quashed as the State Government has till date did not issued any notification in the Official Gazette identifying the 89 tribal sub-plan areas. It is submitted that a bare perusal of the rule itself shows that the difficult and remote areas as defined under the impugned Rule are the 89 tribal sub-plan areas notified by the State. It is submitted that in the absence of such a notification the exclusion of the petitioners from grant of benefit or confining the benefit to such doctors who have rendered services in the 89 tribal sub-plan areas is *per se* illegal and violative of the Rules framed by the State itself and in such circumstances the system of granting incentive marks and reservation as

prevailing prior to the amendment made in the impugned rules be directed to be continued and benefit in this regard be granted to the petitioners.

33. The learned counsel for the petitioners submits that pursuant to the advertisement issued and initiation of the process of selection, all the petitioners have successfully cleared the NEET examination and have also been issued the necessary certificate by the Chief Medical and Health Officer of the Department of Health in February 2017 certifying that they have rendered more than three years service in rural, tribal and nagar panchayat areas. It is submitted that just before the petitioners cases could be considered for drawing up the merit list, the respondent State vide the impugned Gazette notification dated 28.3.2017, has amended the Rules thereby denying benefit of rural service to the petitioners. It is submitted that the impugned Rules are, therefore, unconstitutional on account of the fact that they amount to changing the Rules of the game in between and result in denying the statutory rights that were already acquired and had already accrued to the petitioners. It is submitted that the change in criteria for granting incentive marks could not have been done after the selection process had commenced in accordance with the provisions of the old

Rules and, therefore, the impugned Rules of 2017 have no applicability as far as the selection process of the year 2017 and the petitioners are concerned.

34. The learned counsel for the petitioners has also produced an order issued by the Respondent/State dated 22.4.2017 before this Court during argument which is taken and placed on record and marked as Annexure C-1 as the same has been received by the petitioners during arguments.

35. The learned counsel for the petitioners submits that while the State, on the one hand, is not granting incentive marks and reservation to doctors who have rendered services in rural areas while on the other hand, in accordance with the directions and schemes of the National Rural Health Mission, the respondents have now issued an order on 22.4.2017 by which in-service doctors working in Primary Health Centers and Community Health Centers in all the rural areas have been granted Disability Allowance in the form of a Vyavasayik Dakshta Avrodh Kshatipoorti Bhatta. It is submitted that a bare perusal of this order makes it clear that the aforesaid allowance has been given to in-service doctors as an incentive for rendering rural services. On the basis of the aforesaid order of 22.4.2017, it is submitted by the learned counsel

for the petitioners that while the State on the one hand is denying benefit of incentive marks and reservation to the petitioners for services rendered in rural areas, on the other hand the State treating the same services as essential and necessary are granting incentive to in-service doctors to serve in rural areas and granting them additional allowance which makes it abundantly clear that the same dearth of doctors that exists in Tribal areas also exists in the other rural areas of the State and that the doctors working in Tribal areas and Rural areas form a homogenous class which cannot be bifurcated or artificially classified by treating them differently and granting benefit to one part of the same homogenous group while denying the same to another part of the same homogenous group of doctors.

36. The learned counsel for the petitioners has relied upon the decisions of the Supreme Court rendered in the cases of **Dr. Snehelata Patnaik and others vs. State of Orissa and others,** (1992) 2 SCC 26; **Satyabrata Sahoo and others vs. State of Orissa,** (2012) 8 SCC 203; **Pre-PG Medical Sangharsh Committee and another vs. Dr. Bajrang Soni and others and connected matters,** (2001) 8 SCC 694; **Samatha vs. State of A.P and others,** (1997) 8 SCC 191 and **Shri**

Ram Krishna Dalmia and others vs. Shri Justice S. R. Tendolkar and others, AIR 1958 SC 538 in support of his submissions.

37. The learned Government Advocate for the respondent/State submits that the petitions filed by the petitioners are totally misconceived and devoid of merits on account of the fact that the impugned amendments made in the Admission Rules of 2017 have been made by the respondent/State in view of the directions issued by the Supreme Court on 25.11.2016 in Civil Appeal No.11270-11271/2016 for amending the provisions of the rules to bring them in conformity and in line with the MCI Regulations and the law laid down by the Supreme Court in the case of **Dinesh Singh Chouhan** (supra).

38. The learned Government Advocate for the respondent/State submits that in view of the law laid down by the Supreme Court in the aforesaid decision, the State has now amended the Rules and have done away with the provisions of providing reservation in post-graduate degree courses while retaining the same for diploma courses upto the extent of 50% and at the same time have also restricted the incentive marks to be granted to in-service doctors for determining the merit in post-graduate degree

courses to the extent as provided in the proviso to Regulation 9 (4) of the MCI Regulations.

39. The learned Government Advocate for the respondent/State submits that in terms of the directions issued by the Supreme Court the respondent authorities have also amended the definition clause and have deleted the provisions for granting benefit of rural services alone to in-service doctors and have restricted the same to the services rendered by them in difficult and/or remote areas as prescribed by Regulation 9(4) proviso and 9 (7) of the MCI Regulations.

40. The learned Government Advocate submits that the aforesaid amendments have been made by the respondent/State pursuant to the directions issued by the Supreme Court and in exercise of the powers conferred by the Medical Council of India Regulation upon the State to define difficult and/or remote areas.

41. The learned Government Advocate submits that while exercising this power to define "difficult and/or Tribal areas" the State has taken into consideration the fact that the President while issuing notification dated 20.2.2003 notifying scheduled areas in the State of M.P. had conducted an extensive survey based on Tribal population,

Geographical isolation, backwardness, distinct culture, language and religion and shyness to contact, preponderance of the Tribal population, reasonable size of the area, undevelopment, nature of the area and the marked disability in the economic standard of the people residing in scheduled areas and those residing outside the same. The learned Government Advocate points out that the respondent/State in its return has specifically made an assertion as aforesaid and have also stated that the notified scheduled areas are the most remote and difficult areas in the State of M.P. and cannot be compared with the other rural areas in the State and that the State after taking into consideration, the Geographical isolation, backwardness, distinct culture, language and religion, undeveloped nature of the area, disability in economic standard and the fact that the scheduled areas notified by the Presidential notification dated 20.2.2003 are the most difficult and remote areas, has amended the definition contained in Rule 2(vii) of the Rules of 2017 and defined "difficult and/or remote area" to mean any of the areas situated in the 89 notified Tribal Sub Plan blocks which are situated in and are contiguous with the scheduled areas notified by the President vide notification dated 20.2.2003.

42. The learned Government Advocate submits that as the object and purpose of the MCI regulations is to grant incentive to Government doctors to go and work in such remote and difficult areas, therefore, in tune with and in line with the object and purpose of the MCI regulations to grant benefit only for services rendered in difficult and / or remote areas, the State Government has defined the same to mean the areas falling within the 89 remote Tribal Sub Plan blocks.

43. It is stated that the very object and purpose for such a definition is to encourage persons to work in Tribal areas and therefore, the laudable object and purpose of the State in amending the definition is in conformity with the constitutional as well as the statutory provisions.

44. The learned Government Advocate submits that the total number of revenue blocks in the State of M.P. is 313 out of which 89 blocks fall within scheduled areas which have been notified as remote and difficult and they constitute almost 25% of the geographical area of the State and therefore, the amendment made by the State in the rules is in accordance with law.

45. The learned Government Advocate submits that when the matter was examined in the light of the directions

issued by the Supreme Court it was found that all the rural areas i.e. the areas other than the Municipal Corporation and Municipal Council areas could not be included in the definition of "difficult and / or remote areas" as most of the rural areas are adjacent to or contagious with urban areas and therefore, treating the doctors who have worked in such rural areas that are practically part of or adjacent to urban areas in the same homogenous class or category as those doctors who have rendered services in remote Tribal areas would result in discrimination and would result in granting unjust benefit to those who are not equally placed as those who have worked in remote tribal areas.

46. The learned Government Advocate for the respondent/State submits that keeping the aforesaid factual aspect in mind, the respondent/State has deleted the definition of rural areas as contained in the previous rules and has defined difficult and / or rural areas to mean the area falling within the 89 tribal sub plan blocks so as to bring it in conformity with the object and purpose of the MCI Regulations.

47. The learned Government Advocate submits that the doctors who have rendered services in tribal areas cannot be equated with nor do they form the same class as those

doctors who have worked in rural areas and therefore, the contention of the petitioners that the doctors working in rural areas have been subjected to discrimination although they are placed equally and form a homogenous class with those doctors who have rendered services in tribal areas is factually incorrect and conceptually misconceived. It is submitted that as the doctors working in tribal sub-plan areas form a distinct class and as there is no doubt or dispute about the fact that the area falling in the 89 sub line blocks is the most difficult and remote areas in the State, the classification made by the State in the impugned amendment does not violate Article 14 of the Constitution of India as alleged by the petitioners and infact is in tune with the same as well as with the object and purpose of the MCI Regulations. The learned Government Advocate submits that in view of the aforesaid, the petitions filed by the petitioners deserves to be dismissed.

48. In support of his submission the learned Govt. Advocate has placed reliance on the decision of the Supreme Court rendered in the case of **Dinesh Singh Chouhan** (supra) and **Gopal D. Tirthani and others** (supra) and a decision of the Himachal Pradesh High Court rendered in the case of **Ravi Verma vs. State of H.P**

and others, (C.W.P No.581/2017 and connected matters) decided on 12.4.2017.

49. The learned Senior Counsel for the respondent/MCI submits that as the petitioners have fairly given up the challenge to Regulation 9(iv) proviso and Regulation 9(vii) of the MCI Regulations, therefore, in view of the decision of the Supreme Court rendered in the case of **Dinesh Singh Chouhan** (supra) no fault can be found with the Regulations made by the MCI confining the grant of incentive marks and reservation to difficult and/or remote areas which is being provided with the specific object and purpose of encouraging doctors to work in such areas so that proper medical and health services are made available in such difficult and/or remote areas.

50. The learned Senior Counsel for the respondent/MCI submits that guidelines in the regulations have been provided by the MCI to enable the State to define difficult and/or remote areas as has been held by the Supreme Court and as the MCI does not posses the wherewithal or the necessary information in respect of the entire country it has conferred the power on the concerned State to define difficult and/or remote areas. The learned Senior Counsel submits that keeping in mind the diversity and the Geographical area of the country namely, hilly areas,

desert areas, areas that are inaccessible on account of natural factors, areas that are cut off from the main stream of development and society and the possibility of certain States having less and other having more rural, tribal or forest areas, the MCI has used the term difficult and/or remote areas in its regulation with the specific object of permitting the State to define such areas as difficult and/or remote areas where health and medical services are scarce or need upgradation and where doctors are reluctant to serve on account of remoteness or lack of other developmental facilities. The learned Senior Counsel for the respondent/MCI submits that in such circumstances as the impugned definition of difficult and/or remote area has been prescribed by the State, who has filed a return and has justified the same, the MCI has nothing further to state in that regard.

51. The learned counsel for respondent no.6 has reiterated the arguments made by the learned Govt. Advocate as well as the learned counsel for the respondent MCI and has also relied upon the decision rendered in the case of **Dinesh Singh Chouhan** (supra) and **Shri Ram Krishna Dalmia** (supra) to submit that the areas defined as difficult and/or remote area are undoubtedly the most remote and undeveloped area in the State of M.P. and,

therefore, the definition contained in the impugned Rules is constitutionally valid and does not offend Article 14 of the Constitution of India.

52. In view of the aforesaid rival submissions of the learned counsel for the parties, it is apparent that the main issues required to be addressed and decided by this Court in the present petition relate to the validity of the exercise of powers by the State to define “difficult and/or remote areas” and whether while doing so, the State has violated Article 14 of the Constitution of India by confining the benefit of incentive marks and reservation only to those doctors who have worked in 89 notified tribal sub plan areas alone and whether such a classification made by the State results in denial of equal treatment to persons similarly situated thereby resulting in violation of the Fundamental Rights of the petitioners under Article 14 of the Constitution of India. In other words whether the classification made by the State under the impugned sub-ordinate legislation is founded on intelligible differentia which clearly distinguishes and separately identifies the doctors who are entitled to the benefit under the impugned Rules from those who are left out of the group of doctors identified and segregated under the Rules.

53. While deciding this issue, this Court is also required to decide as to whether the differentia and classification made by the State under the impugned Rules has a rational relation to the object sought to be achieved by the Regulations of the MCI for the purposes of which the impugned definition has been incorporated by the respondent State in the Rules of 2017. It naturally follows that while deciding the aforesaid issue, this Court is also required to see as to whether the impugned definition is reasonable and is based on or supported by some scientific and empirical study or survey conducted by the State or that the classification has been made on some broad generalization, artificial differentiation and irrelevant assumption. We shall also deal with the other issues raised by the petitioners at the appropriate stage.

54. For properly appreciating the aforesaid issues it is necessary to first appreciate the connotation expansion and meaning of the words "difficult and/or remote areas" mentioned in Regulation 9(iv) proviso and 9(vii) of the MCI Regulations, and the purpose and object sought to be achieved by inserting the aforesaid criteria in the MCI Regulations.

55. The word "***difficult***" as defined in the **New Webster's Dictionary and Thesaurus** is as under:-

Difficult – hard to do or understand; not easy; laborious; hard to please; not amenable.

As per **Black's Law Dictionary, Eighth Edition**, the word "**remote**" means:-

Remote – Far removed or separated in time, space or relation; slight.

As per **Random House Unabridged Dictionary, Second Edition,** the words "difficult and remote" means:-

Difficult – not easily or readily done; requiring much labor, skill, or planning to be performed successfully; hard; a difficult job; hard to understand or solve: hard to deal with or get on with; hard to please or satisfy; hard to persuade or induce; stubborn; disadvantageous; trying; hampering; fraught with hardship.

Remote - far apart; far distant in space; situated at some distance away; out-of-the way; secluded; distant in time; distant in relationship or connection; operating or or controlled from a distance; far off; abstracted; removed; not direct, primary or proximate; not directly involved or influential; slight or faint; unlikely; reserved and distant in manner; aloof, not warmly cordial.

In **The Chambers Dictionary, Deluxe Edition**, the words "difficult and remote" means:-

Difficult – not easy; hard to do; requiring labour and pains; hard to please; not easily persuaded; unmanageable; hard to resolve or extricate oneself from; potentially embarassing.

Remote- far removed in place, time, chain of causation or relation; resemblance or relevance; widely separated; very indirect; located separately from the main processor but having a communication link with it.

In **The Oxford Dictionary, Third Edition**, the word “difficult and remote” means:-

Difficult – needing much effort or skill, not easy to do or practise; troublesome, perplexing, not easy to please or satisfy.

Remote - far apart; far away in place or time; far from civilization; not close in relationship or connection.

56. Apart from the dictionary meaning of the aforesaid words, it is also apparent from a perusal of the Regulations that the words difficult and remote actually relate to and define the word “area” which follows the use of these words in the Regulation and, therefore, there meaning has to be understood by reading the words as “difficult areas” and “remote areas”.

57. It is also relevant to take note of the fact that the words difficult and remote are interspaced by the words “and/or”. The use of the solidus, virgule, slash, oblique between the words and and or indicates that the words “difficult and remote” can be used conjointly as well as separately as and when required in consonance with the object of the Regulations which means that the services of the doctors in difficult areas as well as remote areas both can be considered or, in appropriate cases, services in either difficult area or in remote area can also be considered for the purpose of granting incentive marks

and reservation. Quite apart from the above, it is also apparent that the Regulation has deliberately used the words “difficult” and “remote” to identify the area, both of which have different connotations and, therefore, it is apparent that the object of the Regulation is to grant incentive marks or reservation to a doctor, in case he has rendered service in a “remote area” as also in a “difficult area”, both terms having different meaning and connotations. In other words, in view of the plain meaning of the Regulation benefit thereunder is not restricted to services rendered in remote areas like tribal areas alone but is also available for services rendered in difficult areas. Significantly the words “difficult and/or remote area” in the Regulation are not preceeded by any qualifying word like “most”, “absolutely” or “extremely” and, therefore, the Regulation does not restrict the grant of benefit thereunder to only the most or extremely difficult and/or remote areas, on the contrary the benefit thereunder is available in respect of difficult, more difficult and most difficult areas as well in respect of remote, more remote and most remote areas subject only to the fact that the area is one where doctors are unwilling or reluctant to be posted which is the very object and purpose of the Regulation as we shall presently discuss.

58. Having considered the literal and grammatical meaning of the words “difficult area” and “remote area”, we proceed to delineate the object and reasons for which the words have been used in the regulations and the contextual and purposive meaning and interpretation that has to be assigned to them as the aforesaid terms have to be understood and defined and must necessarily draw colour from the object and purpose for which they have been used in the Regulation.

59. To interpret and appreciate the meaning of the words difficult area and/or remote area as aforesaid, we may profitable refer to the decision of the Supreme Court rendered in the case of **Dinesh Singh Chouhan** (supra) and **Gopal D. Tirthani and others** (supra) and the speech of the Minister of Health and Family Welfare, National Rural Health Mission made in the Lok Sabha are relevant.

60. The Supreme Court in the case of **Gopal D. Tirthani and others** (supra) upheld the weightage of marks granted for services in rural/tribal areas on the following grounds:-

> “**29**. The next question is - whether weightage can be given to doctors for their having rendered the

specified number of years of service in rural/tribal areas. Four decisions were brought to our notice at the Bar which we would deal with.

30. In **Dr. Dinesh Kumar and Ors. (II) v. Motilal Nehru Medical College,** (1986) 3 SCC 727, the two-judge bench examined a scheme of examination for admission to postgraduate courses suggested by the government of India stipulating a weightage equivalent to 15 per cent of the total marks obtained by a student at the All India Entrance Examination being given if he has put in a minimum of 3 years of rural service. The Court observed that it was eminently desirable that some incentive should be given to the doctors to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected. In spite of recording such justification the learned judges proceeded to opine that they did not think that such incentive should go to the length of giving a weightage of 15 per cent of the total marks obtained by a candidate. The learned judges then examined several reasons why the doctors are not persuaded to go to the rural areas and then concluded (scc p.741,PARA 12(4))

> "we are extremely doubtful if a candidate who has rendered three years rural service for the purpose of getting a weightage of 15 percent would go back to the rural area after he has got MD or MS degree. We are, therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to postgraduate courses are concerned."

It is clear that the Court was dealing with weightage to be assigned at the All-India Entrance Examination and that too from the point of view whether the postgraduates would revert back to rural services after post-graduating and because of this being extremely doubtful there was no point in giving such a weightage.

31. The above said observations came up for the consideration of a three-judge bench of this Court in **Snehlata Patnaik (Dr.) V/s. State of Orissa** 1992 (2) SCC 26, it was held: i) that the said observation does not constitute the ratio of the decision as the decision is not in any way dependent on those observations; (ii) that those observations are in connection with the All-India selection and do not have equal force when applied to selection for a single State, and (iii) that the observations have the effect of only making a suggestion that the weightage to be given must be the bare minimum required to meet the situation. Their Lordships then placed on record their overview by way of suggestion to the authorities who "might well consider giving weightage upto a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities." (SCC p27,para 2)

32. Recently a three-judge bench in **Narayan Sharma (Dr.) V/s. Dr. Pankaj Kr. Lehkar**, (2000) 1 SCC 44, considered a rule which provided for reservation of 20 seats for doctors appointed in the State Health Services on a regular basis and who have worked at least five years on a regular basis in

any health center/institution *which is not situated in the municipal area*. This rule couched in negative terms and not in positive terms replaced the preceding rule which provided for "10 seats being reserved for those doctors who have completed five years or more in rural/hills/char areas". The Court found no justification for making a departure from the earlier rule and converting the reservation into negative in place of positive and increasing reservation from 10 to 20. The Court held,

> "(A) any place just outside a municipal town is one which is not situated in a municipal area and which will fall within the scope of the sub-rule. The doctor working in an institution situated in a place immediately adjacent to but outside a municipal town will get the benefit of the rule, while in practice, he will also get all the benefits available in the urban areas situated within the municipal limits. The rule does not require the doctor to serve in a remote rural area for getting the benefit of the rule."

The Court then went on to add - "Even if the rule had provided for service in a rural area, it has been held that the classification is not a valid one." This latter part is not a ratio of the decision. Moreover, the Court cited in support the observations in **Dinesh Kumar's** case which were adversely commented upon in **Dr. Snehlata Patnaik's** case, as already noticed. The Court also referred to the judgment of this Court in State of **Uttar Pradesh and Ors. V/s. Pradip Tandon and Ors**.(1975) 1 SCC 267.

33. In **Pradip Tandon's** case reservation in favour of people in 'hill areas' and Uttrakhand was held to be constitutionally valid as they were socially and educationally backward classes of citizens. Reservation in favour of 'rural areas' was found difficult to accept as it was sought to be justified on the test of poverty as the determining factor of social backwardness. The Court observed that rural element does not make a class by itself because it could not be accepted that the rural people are necessarily poor or socially and educationally backward just as the urban people are not necessarily rich. We may hasten to observe that what was being dealt with in Pradip Tandon's case was a reservation and not a weightage. The case at hand presents an entirely different scenario. Firstly, it is a case of post-graduation within the State and not an All-India quota. Secondly, it is not a case of reservation, but one of only assigning weightage for service rendered in rural/tribal areas. Thirdly, on the view of the law we have taken hereinabove, the assigning of weightage for service rendered in rural/tribal area does not at all affect in any manner the candidates in open category. The weightage would have the effect of altering the order of merit only as amongst the candidates entering through the exclusive channel of admissions meant for in-service candidates within the overall service quota. The statistics set out in the earlier part of the Judgement provide ample justification for such weightage being assigned. We find merit and much substance in the submission of the learned advocate general for the State of Madhya Pradesh that assistant surgeons (i.e. medical graduates entering the State services) are not temperamentally inclined

> to go to and live in villages so as to make available their services to the rural population; they have a temptation for staying in cities on account of better conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite schools which are to be found only in cities. In-service doctors being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of earning higher professional qualifications, and consequently eligibility for promotion, acts as motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. In the setup of health services in the State of Madhya Pradesh and the geographical distribution of population no fault can be found with the principle of assigning weightage for the service rendered in rural/tribal areas while finalizing the merit list of successful in-service candidates for admission to PG courses of studies. Had it been a reservation, considerations would have differed. There is no specific challenge to the quantum of weightage and in the absence of any material being available on record we cannot find fault with the rule of weightage as framed. We hasten to add that while recasting and reframing the rules, the State government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis.”

61. From a perusal of the aforesaid decisions of the Supreme Court, it is clear that the weightage of marks for service rendered in rural/tribal areas was upheld by taking into consideration the fact that the doctors are

temperamentally not inclined to go, live and serve in villages so as to make their services available to the rural population as they have a temptation and inclination for staying in cities due to better conditions, facilities and quality of life available to them as well as their family members and, therefore, grant of weightage of marks for rendering services in rural/tribal areas is an incentive for encouraging the doctors to render services in rural/tribal areas and to induce them to do so is justified. It was also held that if the doctors are told and informed in advance and know that if they render services in rural/tribal areas, they would be able to obtain higher qualifications in the elite and choice subjects and that rendering such services in rural and tribal areas would also help in enhancing their eligibility for promotion, it would act as a motivating factor and a justified incentive to young doctors to opt for services in rural/tribal areas.

62. In the case of **Dinesh Singh Chouhan** (supra) the Supreme Court while restating the aforesaid and upholding the laudable object and purpose of granting incentive marks and reservation contained in Regulation 9, has upheld the grant of such incentive and reservation in para-33, which has already been quoted in the preceding paragraphs by taking into consideration the fact that such

incentive and reservation serves the dual purpose, firstly, it would attract doctors to opt for rural services on account of the fact that they would stand a good chance to get admission in post-graduate degree courses of their choice on account of the incentive marks and secondly, the rural health care units would be benefitted by the services of such doctors who are willing to work in notified rural or difficult areas in the State and, therefore, such a provision in the Regulation subserves larger public interest. The same view has been reiterated by the Supreme Court in case of **Dinesh Singh Chouhan** (supra) in paragraphs 42 to 44 and it has infact been held in paragraph 44 that having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing health care facilities in rural areas, deserves incentive marks to be reckoned for determining merit. From a perusal of paragraph 44 quoted in the earlier part of the judgment, it is further clear that the Supreme Court has also taken into consideration the fact that the regulation has vested the discretion in the State to notify areas as remote/tribal or difficult areas which decision has to be taken at the highest level and is applicable for all the beneficial

schemes of the State for such areas and is not limited to the matter of admission to the post-graduate courses.

63. The shortage of doctors and specialists in rural areas including tribal areas has been a matter of concern with the Government of India since long. One of the documents in this regard has been filed by the petitioners in W.P. No.4512/2017 as Annexure A/3 alongwith the application for taking additional documents on record, which is a note issued by the Press Information Bureau, Government of India, Ministry of Health and Family Welfare dated 18.7.2014 relating to the National Rural Health Mission. It is pertinent to note that this press note relates to analysing the deficiencies regarding health services in rural areas as a whole, specially 184 high priority districts across the country which were identified as those needing urgent assistance. Relevant portion of this press note is quoted below:-

> "The progress has been uneven across the regions with inter-state variations as some states started with very poor health indicators. Other significant reasons include shortage of Human Resource particularly doctors and specialists, and lack of effective planning and implementation capacities etc. These states are also generally lagging in various social determinants of health.

The Government has identified 184 High Priority Districts (HPDs) across the country. The list of HPDs is given below:-

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S.No.	State		**District**
1 to 31	-----	----	-----
32	Madhya Pradesh	1	Raisen
33	Madhya Pradesh	2	Tikamgarh
34	Madhya Pradesh	3	Sidhi*
35	Madhya Pradesh	4	Singrauli
36	Madhya Pradesh	5	Sagar
37	Madhya Pradesh	6	Damoh
38	Madhya Pradesh	7	Satna
39	Madhya Pradesh	8	Dindori
40	Madhya Pradesh	9	Shahdol*
41	Madhya Pradesh	10	Anuppur
42	Madhya Pradesh	11	Umaria
43	Madhya Pradesh	12	Chhatarpur
44	Madhya Pradesh	13	Panna
45	Madhya Pradesh	14	Barwani
46	Madhya Pradesh	15	Mandla
47	Madhya Pradesh	16	Jhabua*
48	Madhya Pradesh	17	Alirajpur

Public Health is a state subject. However, the steps taken by the government to provide focused attention to improve healthcare in these HPDs are as follows:

(I) States have been requested to allocate more funds per capita as compared to average per capita allocation for other districts of the State, provide enhanced supportive supervision and propose innovative strategies for these districts to address their difficult health challenges.

(ii) Monitoring of Reproductive Maternal New-born and Child Health + Adolescent Strategy (RMNCH+ A) indictors with special focus to these High Priority Districts.

(iii) The States have been requested to undertake facility-wise gap analysis with technical support from development partners to identify the gaps in implementation of high impact interventions and seek support for addressing the gaps through Program Implementation Plans (PIPs) under NHM.

(iv) The States have been advised to first operationalize facilities in high priority districts and also ensure rational and equitable deployment of HR with the highest priority accorded to high priority districts.

(v) A 5x5 Matrix, which includes 5 high impact interventions under each of the 5 thematic areas of RMNCH+A, has been prepared and circulated to all the states.

(vi) Various monetary and non-monetary incentives are provided to health personnel serving in <u>remote, underserved and tribal areas</u>. Generalist doctors are given the following incentives towards post graduate degrees:

(A) 50% reservation in Post Graduate Diploma Courses for Medical Officers in the Government service who have served for at least three years in remote and difficult areas; and

(B) Incentives 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 in the entrance test for admissions in Post Graduate Medical Courses."

64. In the case of **Dinesh Singh Chouhan** (supra) the Supreme Court has also quoted the answer given to the

similar effect by the Minister for Health and Family Welfare on 23.12.2014 in the Rajya Sabha to certain questions raised therein in paragraphs 41 of the judgment, which has been quoted in the preceeding paragraphs.

65. The petitioners in W.P. 4316/2017 have placed on record Annexure R-J/4 alongwith the rejoinder which is the answer given by the Minister of Health and Family Welfare in the Lok Sabha in respect of unstarred Question No.2285 on 29.7.2016. The unstarred questions that were asked and the answers given are reproduced below:-

GOVERNMENT OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
DEPARTMENT OF HEALTH AND FAMILY WELFARE
LOK SABHA
UNSTARRED QUESTION NO. 2285
TO BE ANSWERED ON 29TH JULY, 2016
SHORTAGE OF DOCTORS, SPECIALISTS AND NURSES

2285. SHRI M. MURALI MOHAN:
SHRI SUNIL KUMAR MONDAL:
PROF. SAUGATA ROY:
SHRI RAMESWAR TELI:
SHRI MULLAPPALLY RAMACHANDRAN:
SHRI ASHWINI KUMAR:

Will the Minister of HEALTH AND FAMILY WELFARE be pleased to state:

(a) whether the Government is aware that there are shortage of doctors, specialists, psychologists and nurses in Government hospitals/healthcare centres particularly in the rural areas;

(b) if so, the details thereof, State/UTwise along with the reasons therefor;

(c) whether the Government has taken action/proposes to take action to recruit the said health professionals in all the hospitals in the country, if so, the details thereof;

(d) whether the Government proposes to blend nursing courses with 'Skill India' training courses, if so, the details thereof; and

(e) whether the Government has any plan to increase the number of mobile dispensaries including mobile boat dispensaries to provide basic health services in the remote and inhospitable areas particularly the border areas of Assam, if so, the details thereof?

ANSWER

THE MINISTER OF STATE IN THE MINISTRY HEALTH AND FAMILY WELFARE
(SHRI FAGGAN SINGH KULASTE)

(a) & (b): As per Rural Health Statistics (RHS) 2014-15, there is shortage of doctors, specialists, nurses etc. in Government hospitals/healthcare centres. The State/UT-wise information of Sanctioned and In Position of Doctors, Specialists & Nurses at Primary Health Centres (PHCs), Community Health Centres (CHCs), Sub District/Sub Divisional Hospitals and District Hospitals is at Annexure.

Various reasons attributed for shortage of doctors/specialists/nurses in public health facilities, particularly in rural areas include overall shortage of doctors/ specialists/ nurses in the country, feeling of professional isolation among doctors & specialists, and unwillingness on their part to work in rural areas. (*underlined by us*)

(c): Public health being a State subject, the primary responsibility to ensure availability of health

professionals in public health facilities lies with the State Governments. However, under the National Health Mission (NHM), financial and technical support is provided to States/UTs to strengthen their healthcare systems including support for engagement of health professionals on contractual basis, based on the requirements posed by the States/UTs in their Programme Implementation Plans (PIPs). Support is also provided to States/UTs by giving hard area allowance to health human resources for serving in rural and remote areas and for their residential quarters so that they find it attractive to serve in public health facilities in such areas. (*underlined by us*)

Further, in order to encourage doctors to work in remote and difficult areas, the Medical Council of India, with the previous approval of Central Government, has amended the Post Graduate Medical Education Regulations, 2000 to provide:

I. 50% reservation in Post Graduate Diploma Courses for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas; and

II. Incentive at the rate of 10% the marks obtained for each year in service in remote or difficult areas as upto the maximum of 30% of the marks obtained in the entrance test for admissions in Post Graduate Medical Courses.

The Government has taken the following steps to further augment the supply of doctors in the country:

I. The ratio of teachers to students has been revised from 1:1 to 1:2 for all MD/MS disciplines and 1:1 to 1:3 in subjects of Anaesthesiology, Forensic Medicine,

Radiotherapy, Medical Oncology, Surgical Oncology and Psychiatry.

II. DNB qualification has been recognized for appointment as faculty to take care of shortage of faculty.

III. Enhancement of maximum intake capacity at MBBS level from 150 to 250.

IV. Enhancement of age limit for appointment/extension/re-employment against posts of teachers/dean/principal/ director in medical colleges from 65-70 years.

V. Relaxation in the norms for setting up of a medical college in terms of requirement for and, faculty, staff, bed/ bed strength and other infrastructure.

VI. Strengthening/upgradation of State Government Medical Colleges for starting new PG courses/Increase of PG seats with fund sharing between the Central and State Government.

VII. Establishment of New Medical Colleges by upgrading district/referral hospitals preferably in underserved districts of the country with fund sharing between the Central Government and States.

VIII. Strengthening/ upgradation of existing State Government/Central Government Medical Colleges to increase MBBS seats with fund sharing between the Central Government and States.

(d): Currently, there is no such proposal.

(e): Under NHM, States/UTs have been supported with Mobile Medical Units (MMUs) to provide services at the doorsteps of population living in the remote

> and hard to reach areas, based on the requirements posed by the States/UTs in their PIPs. In 2015-16, 50 MMUs and 15 Boat clinics in the riverline and hard to reach areas of Assam were approved under NHM." (*underlined by us*)

66. The learned Senior Counsel appearing for the MCI has also submitted before this Court that in view of the tremendous diversities in the types of geographical areas in the country it was difficult for the MCI to confine the grant of marks as incentive and reservation for services rendered in particular specified and identified areas alone as there are Union Territories which have no tribal areas and there are certain States specially North Eastern States which have 60-80% of tribal population and are predominantly tribal and at the same time there are other States like Punjab and Haryana where there are no tribal areas at all and, therefore, on account of the diverse factual problems faced by the various States in respect of providing health care services, the MCI has deliberately used such broad terms as difficult areas and remote areas as guidelines and left it to the individual State to define the difficult areas and remote areas keeping in mind the various factors and problems prevailing in the respective States.

67. In the backdrop of the aforesaid facts and circumstances of the case, we are of the considered opinion that the term “remote areas” used in the MCI Regulations has to be understood in the contextual and purposive sense to mean, those areas which are out of the way, far off, secluded and as stated by the State, geographically isolated and difficult to access, due to which doctors are reluctant and unwilling to serve there whereas the word “difficult areas” used in the regulations has to be understood to mean areas where the doctors are unwilling or reluctant to work or areas where it is difficult and hard to persuade or induce the doctors to work which may include remote areas also but may not confined to remote areas alone. We are of the considered opinion that the term “remote areas and difficult areas” used in the regulations, when interpreted in the backdrop of the object and purpose as considered in the preceding paragraphs, would necessarily mean, such parts or areas of the State where the doctors are reluctant, hesitant or unwilling to work although their services are urgently required and such difficult and remote areas would include rural, underserved, tribal, desert, hilly and other such areas.

68. We are of the considered opinion that, while there can be no doubt in our mind that the tribal areas notified

as scheduled areas in the State may in most cases and subject to exceptions be remote and difficult areas however, at the same time it is not possible to hold that it is only the scheduled tribal areas that are remote and difficult for the purpose of the MCI Regulations or that the term remote and difficult areas has to be confined to mean only scheduled tribal areas. In the absence of any such stipulation in the MCI Regulations limiting the identification of difficult areas and remote areas to scheduled tribal areas alone, it is clear that each State has been given elbow room by the Regulations to define the remote and difficult areas keeping in mind and taking into consideration the factual situation prevailing therein with specific reference to the fact that such difficult and remote areas should be those where the doctors are reluctant or unwilling to work or where it is difficult for the State to provide health care services.

69. As far as the present case is concerned, it is clear from the stand of the State in their return that after the direction of the Supreme Court in the Civil Appeal No.11270-11271/2016 dated 25.11.2016 directing the State to amend the Rules to bring them in conformity with the MCI Regulations, the State has admittedly not undertaken any empirical or scientific study or conducted

any survey for the purpose of determining the difficult and remote areas but has simply borrowed from the notification issued by the President in respect of the Scheduled areas in the State of M.P. and notified 89 tribal sub plan blocks for the purpose of defining remote and difficult areas.

70. While we have no doubt and infact agree with the contention of the State that 89 tribal sub plan blocks in the State of M.P. would fall within the definition of remote and difficult areas as prescribed by the MCI Regulations as there can be no doubt about the fact that these areas are remote, geographically isolated and cut off from the main stream of the society, however, the problem does not end there as, in view of the issue raised by the petitioners in the present petitions, this Court is required to examine as to whether no other areas in the State of M.P., apart from 89 tribal sub plan areas, fall within the definition of difficult and remote areas and if so, whether the benefit of incentives marks and reservation can be denied to those doctors on the ground that even though they have worked in difficult and remote areas, as defined under the Regulations, they have not infact worked or rendered services in 89 tribal sub plan areas.

71. For determining the aforesaid issue Document P/6 filed by the petitioners in W.P. No. 4316/2017 is of extreme importance. The aforesaid document has been obtained by the petitioners by downloading it from the official site of the Directorate of Health Services, State of M.P. The existence of the aforesaid document is admitted by the State and is also admitted that it is available on the site of the Directorate of Health Services, State of M.P. and has not been deleted till date specifically, in view of the fact that the said document has been filed by the petitioners in the present petition which is pending decision. The aforesaid document Annexure P/6 is a list of "identified difficult area health institutions in the State of M.P." and is a "district-wise list of health institutions of the entire State of M.P. identified as normal/difficult/most difficult and inaccessible areas."

72. In the aforesaid document all kind of health care institutions of the State of M.P. i.e. District hospitals, civil hospitals, community health centres and primary health centres have been separately classified and identified as normal/difficult/most difficult and inaccessible areas. It is however, an admitted fact that under the impugned Rule the benefit of incentives marks and reservation has not been given to all the doctors that have rendered services in the difficult/most difficult and inaccessible areas as mentioned in

Annexure P/6 but has been confined to only those doctors who have rendered services in the 89 notified tribal sub plan areas even if they have been identified as normal in Annexure P/6. It is also an admitted fact that all the areas identified and enlisted in Annexures P/6 are not included or fall within the areas of the 89 notified tribal sub plan areas and that several of the difficult/most difficult and inaccessible areas identified and enlisted in Annexure P/6, fall outside the area of 89 notified tribal sub plan areas.

73. It is also pertinent to note that in the document dated 18.07.2014, Annexure A/3, of the Ministry of Health and Family Welfare relating to National Rural Health Mission which has been quoted by us in the preceding paragraph, as many as 17 districts in the State of M.P. were identified as high priority districts wherein there was shortage of human resources particularly doctors and specialists and which were lagging behind in various social determinants of health and that, out of the aforesaid 17 identified high priority districts, several districts including the districts of Tikamgarh, Singrouli, Sagar, Damoh, Satna and Panna etc. have not been identified and defined by the State in the impugned rule as difficult areas and remote areas and that none of these districts or parts thereof fall within the 89 notified tribal sub plan areas although they have been identified as

high priority districts wherein there is a shortage of health services including doctors and specialists.

74. It is pertinent to note that the petitioners in this batch of petitions have worked mostly in areas falling under Damoh district and Singrouli district which have been identified as high priority districts wherein several institutions have been classified as difficult/most difficult/inaccessible.

75. At this stage, it is pertinent to note the fact that the respondent/State appears to have been well aware of this fact which is evident from a perusal of the provisions of the 2016 Admission Rules, a copy of which is filed in W.P. No. 4316/2017 as Annexure P/10, wherein though the definition of notified areas was prescribed to mean notified tribal sub plan development blocks, however, while granting incentives marks and reservation under Rule 9, a specific mention of rural/notified area marked as high priority districts was made and in fact specific names of the districts was mentioned under rule 9(3)(b) of the Rules, 2016 in the following terms:-

> "9(3)(b) If such services rendered in District Hospital/Civil Hospital/Community Health Centre/Primary Health Centre situated in area which comes under tribal sub plan of district notified as high priorities district by Government

> under National Health Mission-Jhabua, Alirajpur, Panna, Mandla, Dindori, Sidhi, Singrouli, Anuppur, Umaria and Shahdol then additional marks at the rate of 20 per year, maximum 100 marks for five years will be awarded."

76. It is also evident that while the districts of Jhabua, Alirajpur, Panna, Mandla, Dindori, Sidhi, Singrouli, Anuppur, Umaria and Shahdol were mentioned in the aforesaid Rules fo 2016, under the amended provisions of the impugned Rules of 2017, while confining the definition to 89 notified tribal sub plan blocks, the area comprising of the entire districts of Panna, Singrouli, Umaria and the district of Sidhi, except for one block, has been totally excluded.

77. The fact that there is deficiency of doctors in the remote areas, difficult areas and rural areas in several districts, is also evident from the order dated 11.01.2013 filed as Annexure A/5 by the petitioners in W.P. No. 4512/2017. The aforesaid order has been issued by the Directorate of Health Services granting incentives amount for attracting and inducing doctors to work in as many as 40 high focus districts in the State of M.P. which have been enumerated in the order and contain several districts apart from one's that fall within the 89 tribal sub plan areas.

78. During the course of arguments the petitioners have placed before this court an order issued by the State of M.P. on 22.04.2017 after the notification of the impugned rules which is taken on record as Annexure C-1, whereby the State has taken a decision to grant “Vyavsaik Dakshata Avrodh Kshatipoorti Bhatta” (Professional Proficiency Obstruction Compensation Allowance) to all the doctors working and posted in the rural areas in the State of M.P. in primary health centres and those community health centres situated in small agglomerations. This document clearly indicates that the State taking note of the fact that doctors are still reluctant and unwilling to work in rural areas and special incentives and initiatives are required to be taken to upgrade the health services in rural areas has decided to grant various incentives including incentives in terms of allowances etc. to induce and encourage the doctors to render services in such rural areas. It is pertinent to note that all these incentives and allowance are being granted by the State to doctors serving in rural areas and are not confined to those working in the 89 tribal sub plan areas which clearly establishes the fact that the situation in all the rural areas of the State is the same, irrespective of the fact of their classification as rural, undeserved or tribal areas.

79. The State alongwith the return has filed a chart Annexure AR/2 alongwith its additional return to bring on record the deficiency of specialists and medical officers in the 89 tribal sub plan areas. The aforesaid chart filed by the State as Annexure AR-2 is quoted for ready reference:-

89 Blocks				
	Sanction	Working	Vacant	Working %
Specialist (PGMO)	407	109	298	26.78
MO	684	373	311	54.53

Other than 89 Blocks				
	Sanction	Working	Vacant	Working %
Specialist (PGMO)	2866	2315	551	80.77
MO	4199	1570	2629	37.39

80. A bare perusal of the chart indicates that the statistics produced by the State do not support the contention of the State and infact support the stand of the petitioners in the present petition. We are constrained to say so as in the present petitions we are dealing with the petitioners and doctors who are not yet specialists i.e. who are MBBS and wish to obtain admission in PG courses and till date are not specialists and therefore, for the purpose of the present petition this statistics relating to the specialists is not material, whereas the statistics relating to

the medical officers is of relevance. In accordance with the statistics contained in Annexure AR/2 it is apparent that whereas 54.53% of the posts of medical officers in 89 notified tribal sub plan blocks are occupied only 37.39% of the posts of medical officers are occupied in the areas other than 89 tribal sub plan areas and therefore, as per the statistics submitted by the State itself, more percentage of doctors are available and working in the 89 tribal sub plan areas as compared to other areas in the State and therefore, this statistics produced by the State itself establishes the fact that the State, while amending the provisions of the Rules and defining difficult area and remote areas, has not conducted any kind of study or survey nor has it actually applied its mind to the factual position existing in the State while defining the difficult areas and remote areas.

81. During the course of the arguments, this court had made three specific queries from the State. First related to producing the notification notifying the 89 tribal sub plan areas, secondly; we had asked the State to make a specific statement as to whether any scientific study or any other kind of survey was conducted by the State before amending the provisions of the impugned Rules for the purpose of defining difficult and/or remote areas and

thirdly; what was the response of the State to the document Annexure P/6 which is a district wise list of health institutions identified as normal/difficult areas/most difficult areas/ inaccessible areas.

82. In response to the aforesaid query the State has placed before this Court a letter dated 27.4.2017 which is taken on record as Annexure C/2 issued by the Directorate of Health Services whereby in response to the first query the directorate of Health Services had stated that it has no information as to whether there exists any notification identifying and notifying the 89 tribal sub plan areas and that the department of Health Services has simply picked up the list of 89 tribal sub plan areas and referred them in the definition of difficult and / or tribal areas.

83. In the instant case, it is an admitted and undisputed fact that there is no separate notification issued either by the Government of India or by the State of Madhya Pradesh notifying 89 tribal sub-plan areas. However, from a perusal of the MCI regulations it is apparent that the power given in this regard to the State is to define the difficult and/or remote areas and there is no requirement to issue a notification under the regulations. Quite apart from the above, the impugned Rules of 2017, which are in

fact in the nature of executive instructions, have been duly notified in the Official Gazette wherein it has been stated that the difficult and/or remote areas would mean the 89 notified tribal sub-plan blocks. It is also an admitted and undisputed fact that all persons including the petitioner have knowledge about the 89 tribal sub-plan blocks, more so, as reference to these 89 tribal development blocks has been and is being made by the State in its rules since the year 2013 onwards and, therefore, we are of the considered opinion that the word **"notified"** used in the definition of the difficult and/or remote areas in the Rules of 2017 has been made only with the purposes of bringing to the notice of the public that the area comprising the 89 tribal sub-plan blocks would be considered as difficult and/or remote areas and in such circumstances even if no separate notification notifying 89 sub-plan blocks has been issued by the State that would not render the impugned definition unconstitutional only on that count and the contention to the contrary of the learned counsel for the petitioners is hereby rejected.

84. In respect to the second query made by this Court, the aforesaid letter dated 27.4.2017 states that only the department of tribal welfare is authorised to give information relating to the survey in respect of

identification of scheduled areas, if any, conducted by the authorities prior to issuance of the Presidential notification dated 20.02.2003 notifying scheduled areas.

85. As far as the third query in relation to Annexure P/6 is concerned, it is noteworthy that the said list of identification of normal/difficult/most difficult/ inaccessible areas in respect of health institutions in the State of M.P. is not denied, on the contrary it is admitted that the aforesaid identification was undertaken for the purpose of granting incentives to in-service doctors. All that has been stated before this Court is that the said list was uploaded in the departmental portal in 2009 but no decision in that regard was taken and a decision to re-examine the same was taken in the departmental meeting held on 29.3.2010 copy of which has been placed on record as Annexure C/3. However, when agenda No.5 of the said proceedings of the departmental committee dated 29.03.2010 as contained in Annexure C/3 is examined, it appears that the list was prepared for the purpose of identifying health institutions with a view to grant financial incentives to the doctors posted therein, however, on account of objections by the Finance Secretary regarding financial incentives, the matter was deferred. Apparently though such response has been placed before this Court vide letter dated

27.4.2017 Annexure C/2, the said list of health institutions in the State of M.P. identified by the State for the purpose of granting incentives has continued to remain on the portal of the Directorate of health services since 2009 onwards and still continues to be displayed therein.

86. At this stage the learned Government Advocate submits that the aforesaid classification made by Annexure P-6 cannot now be taken into consideration after the impugned amendments in the rules have been made pursuant to the directions of the Supreme Court as after the aforesaid amendments and in view of the provisions of the MCI Regulations, the State has no power to sub-classify difficult and/or remote areas into difficult areas, most difficult areas and inaccessible areas, more so, as the regulations provide for granting 10% marks for each year's service in difficult and/or remote areas up to a maximum of 30%. It is stated that prior to the impugned amendments the State had been granting graded incentive marks to doctors having worked in rural areas by granting additional incentive marks to those who had worked in notified tribal areas. It is submitted that in view of the MCI Regulations the State has now done away with such classification and the award of graded incentive

marks and is granting incentive marks at the flat rate of 10% for each year of service in difficult and remote areas up to a maximum of 30% and it is for this reason that the State has selected and defined difficult and remote areas to mean the 89 notified tribal sub-plan areas which are the most difficult and remote areas in the State.

87. In view of the submissions of the learned Government Advocate we think it necessary to reiterate that this Court in the preceding paragraphs has already held that the words “difficult and/or remote areas” used in the MCI Regulations have to be interpreted and understood in reference to the words which have been used in the regulations and the objects and purpose for inserting them in the regulations and after detailed discussion we have held that the words “difficult and/or remote areas” have not been used strictly in the sense of their geographical connotations but have been used and have to be interpreted and understood in accordance with the contractual and purposive meaning as delineated by us with reference to being those areas in the State which fall within the rural, under-served, tribal and other areas where there is deficiency or shortage of doctors on account of unwillingness, reluctance or other factors including geographical factors due to which the doctors are not

willing to serve in such areas in the absence of any incentive. We have also taken note of the facts in the preceding paragraphs that for this very purpose the MCI is granting incentives in terms of additional marks and reservation in PG courses and the State is granting incentives in terms of cash, monetary and other benefits.

88. We are of the considered opinion that when the definition of "difficult and/or remote areas" is understood in the light of the purposive construction given by us, the objections raised by the learned Government Advocate pale into insignificance as all areas whether rural, under-served, tribal, desert, hilly etc. etc. where there is deficiency of doctors and where the State thinks it necessary to provide the services of doctors, would fall within the definition of "difficult and/or remote areas". In the circumstances, the issue regarding award of graded incentive marks pales into insignificance and infact need not be gone into by this Court in the present petition as it has neither been raised by the petitioner nor has the State taken any such stand in the return or made any such provision under the impugned rules and, therefore, we refrain from entering into that controversy. We, however, make it clear that in case the State feels that any such amendment in the rule is required or that clarification in

this regard is required to be obtained from the MCI or that the MCI on its own feels that any clarification in this regard is required to be issued, the State or the MCI, as the case may be, would be free to do so.

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89. In view of the aforesaid facts and circumstances of the case and the discussions in the preceeding paragraphs, it is apparent that till 2016 the State of M.P. was providing incentive marks and reservations to the doctors who had rendered services in rural, tribal and notified areas;

that a specific exercise had been undertaken by the State for identifying the health institutions in the State of M.P. as normal/difficult/most difficult/ inaccessible areas vide Annexure P-6, and the result thereof has been displayed by the Directorate of Health Services in its portal from the year 2009;

that though the Ministry of Health, Government of India under the National Rural Health Missions has admittedly identified 17 districts in the State of M.P. as high priority districts on account of the fact that they are deficient in health services due to paucity of doctors and other facilities but several of such high priority districts are not included in the 89 tribal sub plan blocks and are therefore, excluded

and not included in the definition of “difficult and/ or tribal areas”;

that, while rural areas have not been included in the definition of difficult and/ or tribal areas which have been confined to 89 tribal sub plan areas alone, the State of M.P. continues to grant financial and other incentives to doctors posted in Primary Health Centers and Community Health Centers in rural areas as they require the same attention and treatment as tribal sub plan areas;

that the statistics specifically Annexure AR/2 filed by the State itself establishes that while as many as 54.53% of the posts of medical officers in the 89 tribal sub plan blocks are occupied only 37.39% of the posts of the medical officers in areas other than the 89 tribal sub plan blocks are occupied and therefore, deficiency in respect of availability of the medical officers in areas other than 89 tribal sub plan blocks is much more, as compared to 89 tribal sub plan blocks;

that, while the object and purpose of grant of incentive marks and reservation as contained in Regulation of the MCI, was to provide incentives with a view to encourage doctors to render services in

such areas and places where they were otherwise reluctant and unwilling to serve and that the MCI for that purpose had conferred powers on the State Government to define such areas as “difficult and/or remote areas”, by keeping the aforesaid object and purpose in mind, the State has not done so and has infact not conducted any survey immediately prior to issuance of the impugned notification and has also not considered or applied its mind to the previous classification made by it by Annexure P/6 before amending the rules relating to the admission and notifying the impugned Rules, and therefore the impugned rule is in conflict with the MCI Regulations;

that the State while notifying the impugned Rules has not applied its mind to the fact that the MCI Regulations did not command or restrict or for that matter make any mention to the effect that only tribal areas could be or were required to be notified as difficult and / or tribal areas, nor has the State taken into consideration that there is no stipulation in the Regulation that only the <u>most</u> difficult and <u>most</u> remote areas have to be included in the definition of difficult and/ or remote areas;

that inspite of absence of any such stipulation or mention in respect to the degree of difficulty or remoteness in the Regulations, the State in its return has stated that it has notified the 89 tribal sub plan areas only on account of the fact that they are the most remote and most difficult areas in the States;

90. We are of the considered opinion that while there can be no dispute or cavil about the fact the 89 tribal sub plan areas fall within the definition and parameters as prescribed by the MCI Regulations in the definition of difficult and/or tribal areas however as the definition of the difficult and/or tribal areas is not and cannot be confined only to tribal areas and as there is material on record which has been considered in the preceding paragraphs to establish that there are several other areas outside the 89 tribal sub plan areas that have been identified by the State and are infact being treated as difficult/most difficult/inaccessible areas, high priority and high focus areas, therefore, the classification made by the State is discriminatory and unjust as it results in treating a homogenous class of doctors who are rendering services in difficult and remote areas differently and discriminately by confining the benefits only to services rendered in 89 tribal sub plan blocks, moreso as

such a definition is apparently not in consonance with the object sought to be achieved by the MCI Regulations.

91. We are also of the considered opinion that while determining the definition of word "Difficult areas" and / or Remote areas", the State has only taken into consideration geographical considerations alone and has not kept in mind the contextual and purposive meaning of that term and its object and purpose for which they have been used in the MCI Regulations and, therefore, the impugned definition has no rational relationship with the object sought to be achieved.

92. We accordingly record our conclusion on these issues and hold that the impugned definition of "difficult and/ or remote areas" contained in rule 2(vii) of the Rules, fails to pass the test of reasonable and permissible classification as it does not fulfill the two mandatory conditions as laid down by the Supreme Court in a series of judgments including the decision in the case of **Ram Krishna Dalmia** (supra) namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. As the impugned definition contained in rule 2(vii) is

violative of Article 14 of the Constitution of India, it hereby declared ultra vires and unconstitutional and is accordingly quashed.

93. Before we proceed any further, we think it necessary to clarify and emphatically state that though we have held the classification made by the State in the impugned definition to be violative of Article 14 of the Constitution of India and are of the opinion that the State is required to either adhere to the identification made in Annexure P/6 or undertake a specific survey and empirical study for the purpose of re-defining difficult and / or remote areas, if it thinks that the previous study undertaken by it and the classifications made pursuant thereto by Annexure P/6 is inadequate, however, at the same time we are also unable to agree and accept the arguments of the counsel for the petitioners that for the purpose of defining the Difficult and/ or remote areas, all areas other than the urban areas should be included.

94. We are constrained to say so in view of the law laid down by the Supreme Court in the case of **Gopal D.Tirthanni** (supra), wherein the Supreme Court after considering the decision rendered in the case of **Narayan Sharma (Dr) Vs. Dr. Pankaj Kr. Lekhar (2000) 1 SCC 44** in paragraph 32 of the judgment which has already been

quoted in the preceding paragraphs to the effect that "*any place just outside a municipal town is one which is not situated in a municipal area and which will fall within the scope of the sub-rule. The doctor working in an institution situated in a place immediately adjacent to but outside a municipal town will get the benefit of the rule, while in practice, he will also get all the benefits available in the urban areas situated within the municipal limits. The rule does not require the doctor to serve in a remote rural area for getting the benefit of the rule.*" and has held that all areas not situated in Municipal areas or situated just outside or near such Municipal areas cannot be treated as rural areas or for that matter difficult and / or remote areas.

95. In view of the law laid down by the Supreme Court as aforesaid, the contention of the learned counsel for the petitioners and the prayer made therein to grant incentive marks for all services rendered outside urban areas, cannot be accepted and is hereby rejected. As we have stated earlier, the benefit of incentive marks and reservation for services in difficult and remote areas in terms of the MCI Regulations, have to be granted keeping the purposive definition of the words and the object and purpose contained therein in mind which we reiterate to mean considering the services of doctors in those areas where

health services are deficient and where the doctors are generally reluctant and unwilling to work and avoid posting on account of non-availability and lack of good living conditions, absence of modern facilities and quality of life which is otherwise available to them and their family members in the urban areas including better educational facilities of their children and other such factors which generally compel the doctors to avoid posting in the areas and where the State Government has to grant special benefit and incentives to obtain the services of the doctors. We, however, reiterate that such areas would not include urban areas and such rural areas which are adjacent or contiguous to urban areas in view of the law laid down by the Supreme Court in the case of **Gopal D. Tirthani** (supra).

96. In view of the aforesaid facts and circumstances of the case, while we have held the definition of difficult and/or remote areas as contained in Rule 2 (vii) of the impugned Rules to be unconstitutional being violative of the Article 14 of the Constitution of India, however, at the same time we are of the considered opinion that benefit of incentive marks and reservation to the in-service candidates who have rendered services generally in all the areas other than the urban areas cannot be extended in view of the law laid

down by the Supreme Court and that benefit of services rendered in such rural areas that are contiguous or adjacent to the urban area cannot be granted as they would not satisfy the test of reluctance of the doctors for being posted in such places.

97. We are also of the considered opinion that as the MCI Regulations had restricted the grant of incentive marks to those candidates who had worked in the difficult and/or remote areas since 2012 itself inspite of which the State continued to grant reservation in post-graduate degree and diploma courses to in service candidates and also continued to grant incentive marks for all kinds of service rendered by the in-service candidates including services in urban and rural areas in different proportions which apparently and admittedly was contrary to the MCI Regulations and was, therefore, quashed by the Supreme Court in Civil Appeal No. 11270-11271/2016 decided on 25-11-2016, therefore, as far as the contention regarding estoppel and promissory estoppel raised by the petitioner is concerned, it is held to be meritless to the extent that the benefit granted by the admission rules to candidates working in urban and sub-urban areas was contrary to the binding statutory MCI Regulations, however, as far as those in service candidates are concerned who are entitled to incentive marks and

reservations in accordance with the MCI Regulations, we propose not to express any opinion in respect of issue of estoppal raised by them in the present petition in view of the directions that this Court presently proposes to issue.

98. As far as the challenge to the provisions of Rule 2(vi) is concerned we abstain from expressing any opinion in respect of the same and leave it open for being considered in some appropriate case as and when occasion arises moreso, in view of the directions that we propose to issue in the present case.

99. In view of the aforesaid analysis, while allowing the petitions and quashing Rule 2(vii) of the Rules of 2017, we direct that for the time being and till such an identification as contained in Annexure P/6 exists and a fresh identification is not made by the State, the authorities shall grant benefit of incentive marks and reservation to such in-service candidates who have rendered services in difficult / most difficult / inaccessible areas as identified in Annexure P/6, after excluding therefrom urban areas and such areas which are near to, adjacent or contiguous with urban areas, if such areas are included in difficult areas/most difficult areas/inaccessible areas classified in Annexure P-6, and thereafter re-draw up the merit list for the purpose of allotting courses and colleges on that basis.

100. Two intervention applications have been filed before us by the students who have been granted admission in the first round of counselling opposing the petitions. We are of the considered opinion that in view of the directions issued by the Supreme Court in S.L.P. (C) Nos. 9249/2017 filed by the petitioners against the order passed by this court dated 21.03.2017 rejecting the prayer for interim relief, to the effect that the equities shall be worked out by this Court if the petitioners succeed and keeping in mind the law laid down by the Supreme Court in the case of **Dinesh Singh Chouhan** (supra), wherein, in paragraph 40 of the judgment it has been held that no person has a right to get subject or college of one's choice and the fact that the process of admission is still going on, the admission made in the meanwhile during the pendency of these petitions shall be readjusted after drawing up a fresh merit list in accordance with the directions issued by this Court.

101. With the aforesaid directions, the writ petitions filed by the petitioners are allowed to the extent indicated above.

There shall be no order as to costs.

(R. S. JHA)
J U D G E

(A K. JOSHI)
J U D G E

msp.mms/-