

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Civil Writ Petition No. 4518 / 2017

Dr.Chandra Prakash Sharma S/o Shri Om Prakash Sharma, aged 30 years, resident of Kherli, District Alwar (Rajasthan), at present, Plot No.4, Mansinghpura Gatta, Jaipur.

----Petitioner

Versus

1. State of Rajasthan through its Principal Secretary, Department of Medical & Health, Secretariat, Jaipur.
2. State of Rajasthan through its Secretary, Directorate of Medical Education Government Secretariat, Jaipur.
3. Rajasthan University of Health Science, Kumbha Marg, Pratap Nagar, Jaipur.
4. Medical Council of India through its Secretary, Pocket 14, Sector 8, Dwarka, New Delhi.
5. Deputy Secretary, Medical Education (Group I) Department, Government of Rajasthan, Secretariat, Jaipur.
6. Chairman, NEET P.G. Medical & Dental Admission/Counseling Board, 2017, Office of the Principal & Controller, SMS Medical College and attached Hospitals, Jaipur.

----Respondent

Connected With

D.B. Civil Writ Petition No. 4662 / 2017

1. Dr.Sandeep Bishnoi S/o Shri Sitaram Karwasra, age about 27 years, resident Village Mankar, Tehsil Suratgarh, District Sriganganagar (Rajasthan).
2. Umesh Chahar S/o Shri Mohanlal Chahar, age about 28 years, resident of Sunder Marg, Piprali Road, Sikar (Rajasthan).
3. Ramratan Bissu S/o Shri Assuram, age about 28 years, resident of Lachhasar, Tehsil Ratangarh, District Churu (Rajasthan).
4. Sunil Kumar Beniwal S/o Shri Ramswaroop, resident of Ward No.25, Bothra Bass, Taranagar, District Churu (Rajasthan).
5. Sunil Garhwal S/o Shri Ganpat Ram Garhwal, aged about 28 years, resident of Ward No.15, Indira Colony, Tehsil Chomu, Jaipur (Rajasthan).
6. Vikas Kumar Barsana S/o Shri Tejaram Barsana, resident of Sukhwas, Post Sakahantal, District Churu (Rajasthan).
7. Dr.Brijesh Kumar Dhakar S/o Devilal Dhankar aged about 25 years, resident of PHC Katuda Chittorgarh (Rajasthan).

8. Vedprakash S/o Shri Devilal Bander, aged about 27 years, resident of Ward No.8, Barwali, District Hanumangarh (Rajasthan).

9. Dr.Sunil Prajapat S/o Shri Hariram Prajapat, aged about 27 years, resident of Taranagar, Churu (Rajasthan).

10. Dr.Aditi Makkar D/o Shri Ajit Singh Makkar, aged about 25 years, resident of Ward No.13, Padampur, District Sriganganagar (Rajasthan).

11. Dr.Vivek Sharma S/o Shri Keshar Dev Sharma, aged about 28 years, resident of Malai Sar, Jhunjhunu (Rajasthan).

----Petitioner

Versus

1. Union of India through the Secretary, Ministry of Health and Family Welfare, New Delhi.

2. State of Rajasthan through the Principal Secretary, Medical Education, Government Secretariat, Jaipur (Raj).

3. The Principal Secretary, Department of Medical & Health, Government Secretariat, Jaipur.

4. Director, Medical & Health, Swasthaya Bhawan, Tilak Marg, C-Scheme, Jaipur.

5. The Medical Council of India through its Secretary, Pocket 14, Sector 8, Dwarka Phase-I, New Delhi-110077.

6. Chairman, P.G. Medical/Dental Admission Board, 2017 (National Board of Examinations) and Principal & Controller, S.M.S. Medical College & Attached Hospitals, Jaipur (Raj.)

7. The Rajasthan University of Health Sciences, through its Registrar, Kumbha Marg, Pratap Nagar, Jaipur.

----Respondent

and

D.B. Civil Writ Petition No. 4911 / 2017

1. Dr. Jitendra Kumar Bagaria Son of Shri Balbir Singh, Aged About 32 Years, Sikar Presently Working At PHC, Ajeetgarh, Sikar.

2. Dr. Vikash Choudhary S/o Shri Om Singh,, Aged About 34 Years, 313, Sector No.5, Nohar, District Hanumangarh (Raj.) At Present Working in PHC, Jasana, Tehsil Nohar, District Hanumangarh (Raj.)

3. Dr. Deepak Sharma S/o Shri Harinarayan Sharma,, Aged About 26 Years, A-49, Jai Ambay Nagar, Gopalpura Mode, Tonk Road, Jaipur (Raj.) At Present Working in PHC, Ladana, Phagi, Jaipur (Raj.)

4. Dr. Vikash Kumar Barsana S/o Shri Teja Ram Barsana,, Aged About 30 Years, Village Sukhawas, Post Sakhantal, Tehsil Rajgarh, District Churu (Raj.) At Present Working in CHC Mandrella, Tehsil Chirawa, District Jhunjhunu (Raj.)

5. Dr. Rakesh Kumar S/o Shri Dharmpal,, Aged About 33 Years, Ward No. 6, VPO Gandheli, Tehsil Rawatsar, District Hanumangarh (Raj.) At Present Working in CHC Ramgarh, Block Nohar, Hanumangarh (Raj.)

6. Dr. Anju D/o Madan Lal,, Aged About 28 Years, C/o Dr. Rakesh Kumar, Ward No. 6, VPO Gandheli, Tehsil Rawatsar, District Hanumangarh (Raj.) At Present Working in CHC Nohar, District Hanumangarh (Raj.)

7. Dr. Janendra Kumar Sharma S/o Shri Dinesh Chand Sharma,, Aged About 34 Years, 58, Patel Nagar, Near Mahesh Nagar Ext. Tonk Phatak, Jaipur – 302015

8. Dr. Abhishek Bendha S/o Dr. Paras Ram Bendha,, Aged About 31 Years, 35, Rajeev Vihar, New Sanganer Road, Jaipur At Present Working in PHC Renwal Manjhi, Phagi, Raj.

9. Dr. Daulat Singh Chauhan S/o Shri Keshave Singh,, Aged About 32 Years, 65, Shiv Nagar Ist, Road No. 2, Murlipura, Jaipur At Present Working in PHC Raipurjawir, Block Neem Ka Thana, Sikar (Raj.)

10. Dr. Sanwarmal Dhaka S/o Shri Gopal Singh Dhaka,, Aged About 33 Years, V.P.O. Netarwas, Via & Tehsil Dhod, District Sikar (Raj.) At Present Working in PHC Ganeshwar, Block Neem Ka Thana, District - Sikar (Raj.)

11. Ashok Chaudhary Son of Shri Kana Ram, Aged About 34 Years, Village Tejsar Tehsil Fatehpur, Sikar Presently Working As DCMO, Sujangarh.

----Petitioners

Versus

1. State of Rajasthan Through Its Principal Secretary, Department of Medical & Health, Secretariat, Jaipur

2. State of Rajasthan Through Its Secretary, Department of Medical Education, Government Secretariat, Jaipur.

3. Chairman, NEET PG Medical & Dental Admission/Counseling Board- 2017, Office of the Principal and Controller, S.M.S. Medical College and Attached Hospitals, Jaipur.

4. Medical Council of India Through Its Secretary, Pocket 14, Sector 8, Dwarka, New Delhi.

----Respondents

and

D.B. Special Appeal Writ No. 470 / 2017

Dr. Deepak Sharma S/o Shri Harinarayan Sharma, Aged About 26 Years, A-49, Jai Ambay Nagar, Gopalpura Mode, Tonk Road, Jaipur (Raj.) At Present Working in PHC, Ladana, Phagi, Jaipur (Raj.)

----Appellant

Versus

1. Dr. Nitish Mathur, Son of Dr. Sandeep Kumar Mathur, Aged About 24 Years, D-116, Shivad Area, Babu Nagar, Jaipur.

2. Dr. Rachita Mathur, D/o Dr. Deepak Kumar Mathur., D-116, Shivad Area, Babu Nagar, Jaipur.

3. State of Rajasthan Through the Principal Secretary to the Government of Rajasthan Medical, Health and Family Welfare Department, Secretariat, Jaipur

4. Secretary to Government, Medical Education, State of Rajasthan, Secretariat, Jaipur.

5. Registrar, Rajasthan University of Health Science, Kumbha Marg, Pratap Nagar, Jaipur.

6. Medical Council of India Through Its Secretary, Pocket 14, Sector 8, Dwarka, New Delhi.

7. Chairman, NEET PG Medical & Dental Admission/Counseling Board- 2017 and Principal and Controller, S.M.S. Medical College and Attached Hospitals, Jaipur.

----Respondents

For Petitioner(s) : Mr.Ashok Gaur, Sr.Adv. Assisted by Mr.Ajay Choudhary, Adv. & Mr.Ashwini Jaiman, Adv., Mr.Ajeet Bhandari, Adv., Mr.Tanveer Ahmed, Adv., Mr.Shobhit Tiwari, Adv.

For Respondent(s) : Mr.S.K.Gupta, Addl.Adv.General with Mr.Y.S.Jadon, Adv. Mr.M.A.Khan, Adv. for RUHS, Mr.Angad Mirdha, Adv. for MCI, Mr.R.D.Rastogi, Addl.Solicitor General assisted by Mr.Ashok Kumar, Adv. for UOI, Mr.R.K.Mathur, Sr.Adv. Assisted by Mr.Aditya Mathur, Adv., Ms.Purvi Mathur, Adv., Mr.Kushagra Sharma, Adv.

HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE DINESH CHANDRA SOMANI

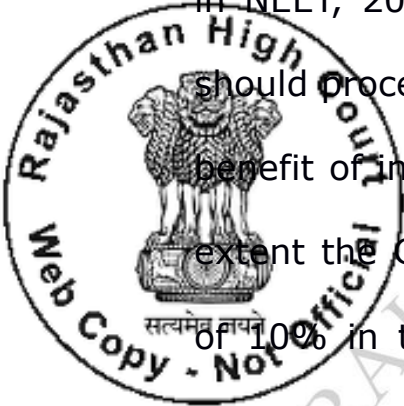
Judgment**Judgment reserved on : 4th April, 2017****Date of judgment: 7th April, 2017.****REPORTABLE****BY THE COURT: (Per Hon'ble Mr. Justice Ajay Rastogi)**

The present batch of writ petitions have been filed by the serving Medical Officers who are members of the Rajasthan Medical and Health Service Rules, 1963 and who appeared in the National Eligibility-cum-Entrance Test, 2017 (in short 'NEET, 2017) and as alleged serving in remote and/or difficult areas in the State of Rajasthan and qualified the test with the minimum benchmark, as referred to u/Reg.9 Proviso-III of the Post Graduate Medical Education Regulations, 2000 which has been lastly amended & notified vide Notification dt.15.02.2012 and became applicable from the academic year 2013-14 and are eligible to claim weightage in marks obtained 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 NEET and that has been subverted by the Government while acting upon the scheme of Regulations, 2000 and Reg.9 in particular by issuance of order dt.20.03.2017 which according to the petitioners is to defeat the mandate of Clause (IV) of Reg.9 of the Regulations, 2000.

Apart from the writ petitions, a special appeal has also been preferred by an in-service Doctor assailing the interim order

passed by the Id.Single Judge dt.03.04.2017 in S.B.Civil Writ Petition No.4759/2017 which came to be preferred by the candidates (Medical Graduates) (non-service candidates) who after completion of their MBBS appeared along with the petitioners in NEET, 2017 and it was prayed by them that the respondents should proceed to undertake the counseling without extending any benefit of incentive marks to any in-service candidate and to that extent the Government order dt.20.03.2017 extending weightage of 10% in the marks obtained as an incentive to the in-service Doctors who as alleged have served in remote and/or difficult areas of the State of Rajasthan may be quashed and set aside. Although either of the writ petitioner who preferred writ petition before the Id.Single Judge are not claiming any benefit/weightage since they are not the in-service Doctors/Medical Officers and are either way not eligible to seek any weightage in the form of incentive under the scheme of Regulations, 2000.

The Id.Single Judge of this court taking note of judgment of the Apex Court in **State of Uttar Pradesh & Anr. Vs. Dinesh Singh Chauhan** reported in **(2016) 9 SCC 749** passed the interim order dt.03.04.2017 that in the absence of a clear decision being taken by the State Government identifying difficult and remote areas to avail incentive to in-service candidates under proviso to Reg.9(IV) of the Regulations, 2000 it cannot be extended to them and granted liberty to the State Government to notify 'difficult and remote area' based on the objective and relevant considerations for the purpose of extending incentive to



the in-service candidates under proviso to Reg.9(IV) of the Regulations, 2000 and what is being identified by the State Government, according to its geographical area as difficult and remote areas in the prima faice view of the Id.Single Judge may not be sufficient for the participants to claim incentive since remote and difficult areas as being referred to u/Reg.9(IV) of the Regulations, 2000, as per the Id.Single Judge, appears to be areas with specific handicaps working within which an element of sacrifice and public service higher than routine is evident and obviously what has been presently identified by the State Government are neither difficult nor remote areas cannot be extended for admitting the students for Post Graduate Degree Courses on the basis of NEET Examination, 2000 and admission to Post Graduate Degree Courses is running behind time schedule and by this mechanism, if the State Government fails to act upon, the mandate of Reg.9(IV) of the Regulations, 2000, as directed by the Id.Single Judge, would very easily frustrate the rights of the in-service candidates/Medical Officers who had appeared & qualified the NEET Examination, 2017 claiming weightage in the form of incentive based on the service which they rendered and treated by the State Government to be working in difficult or remote areas.

In exercise of power conferred by Sec.33 read with Sec.20 of the Indian Medical Council Act, 1956, the Medical Council of India with the previous sanction of the Central Government has framed the Post Graduate Medical Education Regulations, 2000



(hereinafter referred to as "the Regulations, 2000). It may be noticed that the amendments have been made from time to time under the Regulations, 2000. Reg.9 of the Regulations, 2000, with which we are presently concerned, as amended and lastly notified and made applicable from the academic year 2013-14 vide

Notification dt.15.02.2012 reads ad infra:-

"9. Procedure for selection of candidate for Postgraduate courses shall be as follows:-"

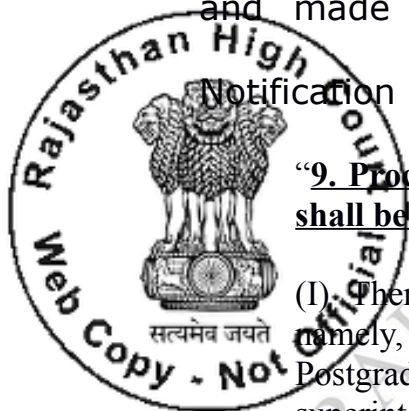
(I) There shall be a single eligibility cum entrance examination namely, "National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses" in each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India.

(II) 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%:

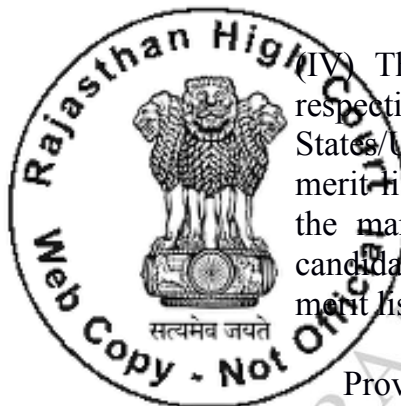
Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% before they are included in the annual sanctioned seats for general category candidates:

Provide further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions.

(III) In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test for Postgraduate courses" held for the said academic year. However, in respect of candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause (II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the all-India common merit list in "National Eligibility-cum-Entrance Test for Postgraduate courses:



Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum- Entrance Test held for any academic year for admission to postgraduate courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to postgraduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.



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

Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/competent authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by the State Government/competent authority from time to time.

(V) No candidate who has failed to obtain the minimum eligibility marks as prescribed in clause (II) above shall be admitted to any postgraduate courses in the said academic year.

(VI) In non-governmental medical colleges/institutions, 50% (fifty per cent) of the total seats shall be filled by the State Government or the Authority appointed by them, and the remaining 50% (fifty per cent) of the seats shall be filled by the medical colleges/institutions concerned on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

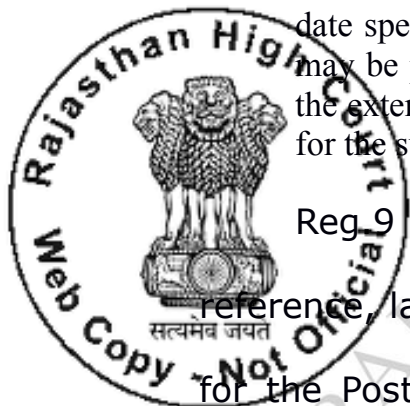
(VII) 50% of the seats in postgraduate diploma courses shall be reserved for medical officers in the government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG diploma, the medical officers shall serve for two more years in remote and/or difficult areas as defined by State Government/competent authority from time to time.

(VIII) The Universities and other authorities concerned shall organise admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super speciality courses each year. For this purpose, they shall follow the time schedule indicated in Appendix-III.

(IX) There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super speciality courses under any circumstances. The

Universities shall not register any student admitted beyond the said date.

(X) The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognised qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year.”



Reg.9 of the Regulations, 2000, of which we have made a reference, lays down the procedure for selection of candidate both for the Post Graduate Degree Courses as well as Post Graduate

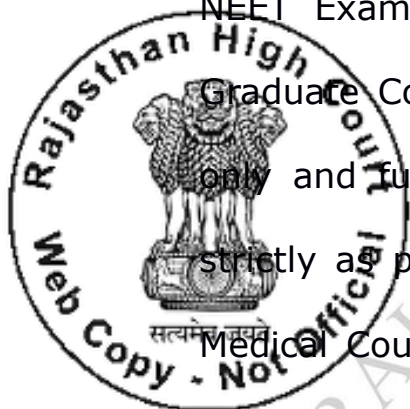
Diploma Courses and it clearly envisages that there shall be a single National Eligibility-cum-Entrance Test (NEET) to be conducted by an authority under overall supervision of the Ministry of Health & Family Welfare, Government of India. Clause (II) thereof provides 3% seats of the annual sanctioned intake capacity to be earmarked to such of the candidates who suffer locomotory disability of lower limbs and Clause (III) lays down the eligibility for admission to Post Graduate Courses secured with minimum benchmark for different categories with which we are not concerned at the moment.

As regards Clause (IV) of Reg.9 is concerned, which is the relevant provision for the present purpose, it provides reservation of seats in Medical Colleges/Institutions for the respective categories as per the laws prevailing in the States/Union Territories, which broadly relates to social reservation in reference to Scheduled Castes/Scheduled Tribes, Other Backward Classes,

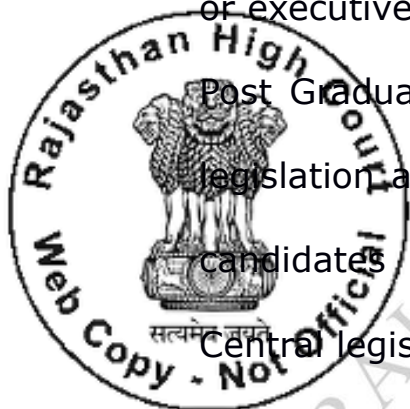
etc., as the case may be, which are horizontal reservations and not for in-service candidates/Medical Officers in service. It also refers that all-India merit list & State-wise merit list of the eligible candidates is to be prepared on the basis of the marks secured in NEET Examination and candidates are to be admitted to Post Graduate Courses from the said merit lists of NEET Examination only and further envisage that a candidate has to be admitted strictly as per merit of the eligible candidates for the respective Medical Courses in the State and while determining the merit of the candidates who are in service of the Government or a Public Authority, weightage in the marks has to be extended by the Government/competent authority as an incentive at the rate of 10% of the marks obtained for each year of service in specified remote or difficult areas of the State upto the maximum of 30% of the marks obtained in NEET.

From bare perusal of the scheme of Regulations, 2000, of which reference has been made, it does not envisage reservation for in-service candidates/Medical Officers in respect of Post Graduate Degree Courses and weightage of marks so allocated is required to be reckoned while preparing the merit list of the candidates at the same time Clause (VII) to Reg.9 do indicates that 50% seats in Post Graduate Diploma Courses shall remain reserved for the Medical Officers serving in the Government service.

After judgment of the Apex Court in **State of Uttar Pradesh & Anr. Vs. Dinesh Singh Chauhan** reported in **(2016) 9 SCC**



749, this remains no more res integra and stands settled that Reg.9 of the Regulations, 2000 is a self-contained Code laying down the procedure to be followed for admissions to Post Graduate Courses and the State has no authority to enact any law or executive instructions to subvert the procedure for admission to Post Graduate Courses which has been laid down by the Central legislation and scheme of Regulations framed for selection of the candidates for Post Graduate Degree & Diploma Courses, the Central legislation and the Regulations indisputably shall prevail.



Validity of Reg.9(IV) of the Regulations, 2000 has also been examined by the Apex Court and that too has been upheld holding that the procedure evolved in Reg.9 in general and the proviso to Clause (IV) in particular is proper and reasonable and also fulfills the test of Art.14 of the Constitution being in larger public interest. It will be appropriate to quote the extract of the judgment which is relevant for the present purpose, which reads ad infra:-

“24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VIII List I Entry 66 of the Constitution (see Preeti Srivastava v. State of M.P.). The procedure for selection of candidates for the postgraduate degree courses is one such area on which the Central legislation and regulations must prevail.

25. Thus, we must first ascertain whether Regulation 9, as applicable to the case on hand, envisages reservation of seats for in-service medical officers generally for admission to postgraduate degree courses. Regulation 9 is a composite provision prescribing procedure for selection of candidates – both for postgraduate “degree” as well as postgraduate “diploma” courses:

25.1. Clause (I) of Regulation 9 mandates that there shall be a single National Eligibility-cum-Entrance Test (hereinafter referred to as “NEET”) to be conducted by the designated Authority.

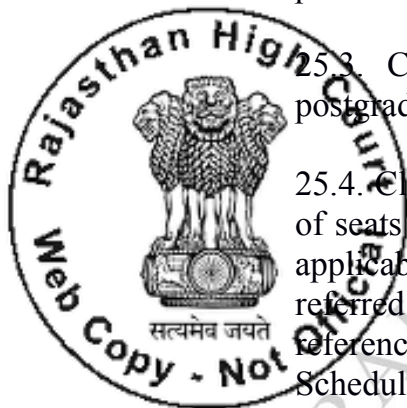
25.2. Clause (II) provides for three per cent seats of the annual sanctioned intake capacity to be earmarked for candidates with locomotory disability of lower limbs. We are not concerned with this provision.

25.3. Clause (III) provides for eligibility for admission to any postgraduate course in a particular academic year.

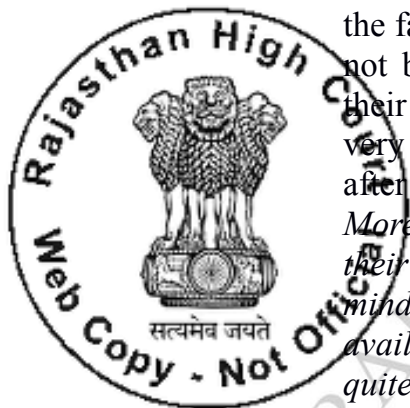
25.4. Clause (IV) is the relevant provision. It provides for reservation of seats in medical colleges/institutions for reserved categories as per applicable laws prevailing in States/Union Territories. The reservation referred to in the opening part of this clause is, obviously, with reference to reservation as per the constitutional scheme (for the Scheduled Caste, the Scheduled Tribe or the Other Backward Class candidates); and not for the in-service candidates or medical officers in service. It further stipulates that 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 NEET and the admission to postgraduate courses in the State shall be as per the merit list only. Thus, it is a provision mandating admission of candidates strictly as per the merit list of eligible candidates for the respective medical courses in the State. This provision, however, contains a proviso. It predicates that in determining the merit of candidates who are in service of Government or a public authority, weightage in the marks may be given by the Government/competent authority as an incentive @ 10% of the marks obtained for each year of service in specified remote or difficult areas of the State up to the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified remote and difficult areas in the State).

26-32. XX XX XX

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 postgraduate “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 postgraduate “degree” courses of their choice. Secondly, the rural healthcare 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 Snehelata Patnaik case. The three-Judge 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: (SCC pp. 26-27 paras 1-2)



“1. We have already dismissed the writ petition and special leave petitions by our order dated 5-12-1991. 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.* The 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 *Dinesh Kumar v. Motilal Nehru Medical College*. It has been observed there that merely by offering a weightage of 15% 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. The 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 postgraduate courses are concerned (see *Dinesh Kumar case*, SCC para 12 at p. 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% 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. The crucial question to be examined in this case is: whether the norm specified in Regulation 9 regarding incentive marks can be termed as excessive and unreasonable? Regulation 9, as applicable, does not permit preparation of two merit lists, as predicated in the

case of *Tirthani*. Regulation 9 is a complete code. It prescribes the basis for determining the eligibilities of the candidates including the method to be adopted for determining the inter se merit, on the basis of one merit list of candidates appearing in the same NEET including by giving commensurate weightage of marks to the in-service candidates.

35. As aforesaid, Regulations have been framed by an expert body based on past experience and including the necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks @ 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks; and if the candidate has worked for two years, the candidate would get another 15 marks. Similarly if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200 marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks en bloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, much less reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational.

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43. Presumably, realising this position, a writ petition has been filed to challenge the validity of the proviso to clause (IV) of Regulation 9. According to the writ petitioners, the prospectus provided for 30% reservation in favour of in-service candidates for admission to postgraduate medical courses. The application of Regulation 9 results in an absurd situation because of giving weightage to specified in-service medical officers in the State. Neither there is any committee set up nor guidelines made as to which area can be notified as remote and difficult area. The power vested in the State is an uncanalised power and disregards the settled position that for consideration after the graduate level, merit should be the sole criteria. Further, there is

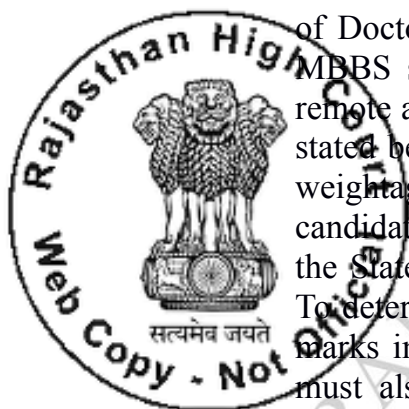


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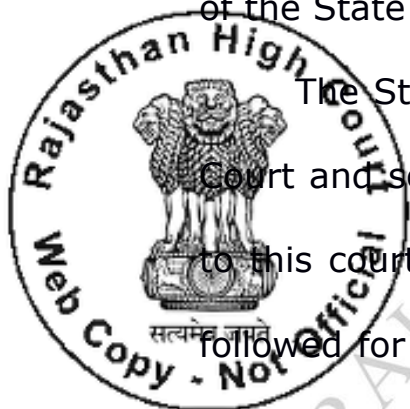
no nexus with the object sought to be achieved for providing weightage to the extent of 10% of the marks obtained by the candidate in the common competitive test and to the extent of maximum of 30% marks so obtained.

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 healthcare 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 postgraduate 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 healthcare sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in 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 healthcare 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 postgraduate 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 fulfills the test of Article 14 of the Constitution, being in larger public interest.”

Thus, from the procedure prescribed u/Reg.9, of which reference has been made, and also taken note of by the Apex Court in the judgment (supra), it clearly indicates that there shall be only one merit list for filling the State quota seats by adding the weightage of marks assigned to in-service candidate for determining their merit in NEET Examination and the mechanism to be adopted in giving incentive marks has been explained by the



Apex Court in para-35 of the judgment (supra) and it leaves no room for further discussion that the selection has to be made strictly as per the norms specified in the MCI Regulations and any law with regard to that will be beyond the legislative competence of the State legislature.



The State Government, taking note of judgment of the Apex Court and scheme of Reg.9 of the Regulations, 2000, as informed to this court, after deliberation laid down certain guidelines to be followed for admission to Post Graduate Degree/Diploma Courses, 2017 vide its executive order dt.20.03.2017 and in terms thereof issued a further Notification on 24.03.2017 to conduct counseling for admission to Post Graduate Degree/Diploma Courses in the State. We consider it appropriate to quote the relevant directions of the State Government which has to be followed by the Chairman, NEET PG Medical & Dental Admission/Counseling Board, 2017 while admitting the students in the Post Graduate Degree/Diploma Courses, the English translation of the order reads ad infra:-

“According to the guidelines given by the Hon’ble Supreme Court, Government of India and MCI Regulations along with the changes in Ordinance of RUHS, the Regulations for the admission of PG Medical/Dental students on the basis of NEET PG 2017 and provision of giving bonus marks to the in-service candidates are herein as follows:-

1. For all the Government and non-Government Medical/Dental College PG Seats common counseling will be conducted by PG Counseling Board headed by the Principal and Controller of SMS Medical College, Jaipur.
2. For all the seats of Government Medical College under State Quota and 50% seats of non-Government College, all MBBS degree holders (Government/Non-Government) including in-service Doctors/Demonstrator will be eligible. Rest 50% seats of private/non-

Government Institute will be opened for all NEET PG 2017 qualified candidates.

3. 50% of total seats (degree/diploma), which come under, State Quota (i.e. 25% of total seats) will be only for the students who have received degree from Colleges affiliated to Rajasthan University of Health Sciences/Rajasthan University.

4. For the purpose of equating the in-service candidates for the grant of benefits, as per the previous policies of the State the candidates who have worked for 2 or more years of regular service in Hilly/Desert/Tribal areas (difficult areas) and 3 or more years in other rural areas (remote areas), maximum of 10% of the marks obtained in the NEET as bonus marks as per the service actually rendered by the in-service candidate in the remote and/or difficult (rural) areas will be granted as an incentive.

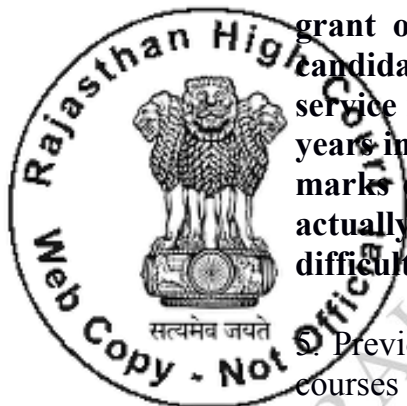
5. Previously reserved 50% quota in State quota seats for PG degree courses (MD/MS/MDS) for in-service candidates and Senior Demonstrators will be removed but 50% of seats for diploma courses under State Quota will continue to be reserved for in-service candidates who have served in rural/tribal areas for at least 3 years.

6. Rest all policies for reservation and preferences shall remain the same.

7. Rajasthan University of Health Sciences ordinance shall be changed to incorporate above points accordingly.”

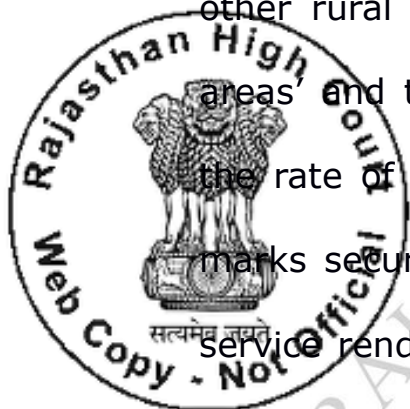
The State Government in its executive fiat has made amendments while implementing Reg.9 of the MCI Regulations, 2000 para-3 & 4 with which the petitioners primarily are concerned which according to them are not in conformity with Clause (IV) of Reg.9 of the Regulations, 2000.

Para-3 of the Government's decision bifurcate the State Quota and 25% of total seats remain reserved for the students who have received degree from Colleges affiliated to RUHS/Rajasthan University. At the same time, para-4 provides that the State Government looking to the geographical conditions of the State and keeping in view the requirement of extending the weightage of marks to in-service candidates as referred to in the



proviso to Clause (IV) of Reg.9 of the Regulations, 2000 indicated that as per the policy of the State Government, those Doctors who are serving for two year in hilly/desert/tribal rural areas may be treated as 'difficult areas' and those Doctors who are serving in other rural areas for three years be in the category of 'remote areas' and they shall be entitled to claim incentive maximum at the rate of 10% of the marks may add to the weightage of the marks secured in the NEET Examination irrespective of length of service rendered by the in-service candidate. Both the conditions referred to by the State Government in its order dt.20.03.2017 indeed are not in conformity with Reg.9(IV) of the Regulations, 2000 and such of the in-service Doctors who are serving in remote or in difficult areas and eligible for the weightage in the marks as an incentive at the rate 10% of the marks obtained for each year of service with a rider upto 30% of the marks obtained in NEET Examination remain deprived of incentive and which areas are to be notified remote and/or difficult areas, it has been left to be specified by the State Government/competent authority from time to time.

The State of Rajasthan is located at the North-Western part of India is the biggest State in the Country. This colossal State has an area of 3,42,239 Sq.Km. Encompassing 11% of the total geographical area of the country. Rajasthan has an atypical rhomboid shape and stretches lengthwise 869 Km. from West to East and 826 Km. from North to South. It shares its North-Western and Western boundary with the Indo-Pakistan



international border that extends about 1,070 Km. and touches the major districts Barmer, Bikaner, Ganganagar and Jaisalmer. Although Rajasthan has 33 District and its geographical area is marked with diversity and is characterized by rolling sand dunes, fertile plains, rocky undulating land and some forested regions.

The huge portion of the State of Rajasthan is desiccated and houses the biggest Indian desert-the Thar Desert known as the 'Maru-kanthar'. Only 9.36% of the total geographical region lies under forest vegetation.



As per last census – Census of India, 2011, the population size of Rajasthan is much larger in comparison to other States of India and the rural population size of Rajasthan is 5,15,00,352 and that of urban population is 1,70,48,085 and the State Government, keeping the geographical conditions of the State into consideration, has provided that such of the Doctors, who are serving in hilly/desert/tribal areas, notified by the State Government, may be considered as working in difficult areas and those Doctors who have been serving in other rural areas notified by the State Government, they shall be considered in the category of 'remote areas' and difficult and/or remote areas have been defined of every District panchayat samiti-wise and that was finally approved by the competent authority upto the Minister-in-Charge and the State Government has made amendment vide Notification dt.26.12.2011 in exercise of powers conferred by the proviso to Art.309 of the Constitution in the Rajasthan Civil Services (Revised Pay) Rules, 2008 in 'Schedule-II – Special Pay'

to those Medical Officers who are posted in the rural dispensaries and Primary Health Centres which are duly notified as difficult/remote areas and situated at places other than Municipal Towns of which the population at Tehsil Headquarters is below 5000 became eligible for grant of special pay and we consider it appropriate to quote the extract of the Notification dt.26.12.2011 which is relevant for the present purpose, which reads ad infra:-



**“GOVERNMENT OF RAJASTHAN
FINANCE DEPARTMENT
(RULES DIVISION)
NOTIFICATION**

No. F. 14(92)FD/Rules/2008

Jaipur, dated 26 DEC 2011

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan is pleased to make the following rules to amend further the Rajasthan Civil Services (Revised Pay) Rules, 2008, namely:-

1. These rules may be called the Rajasthan Civil Services (Revised Pay) (Fifth Amendment) Rules, 2011.
2. These rules shall be deemed to have come into force with effect from 20.12.2011.
3. In the Rajasthan Civil Services (Revised Pay) Rules, 2008, in Schedule II – Special Pay – the existing entry appearing at S. No. 10 under heading “Medical Department - (i) General Branch” shall be substituted by the following, namely:-

S. No.	Name of the Post	Rate of Special Pay in rupees per month	Remarks
1	2	3	4
10	Medical Officer/ Senior Medical Officer posted in Rural Dispensaries and Primary Health Centres situated at places other than Municipal	500	The grant of Special Pay (Rural Allowance) shall be subject to the fulfillment of following conditions:- (i) that the places are not Tehsil Headquarters. (ii) that the places are Tehsil Headquarters but have population below 5000. (iii) Medical Officer/ Senior

	Towns.		Medical Officer resides at the place as in (i) or (ii) above.
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By Order of the Governor,
Sd/-

(Akhil Arora)

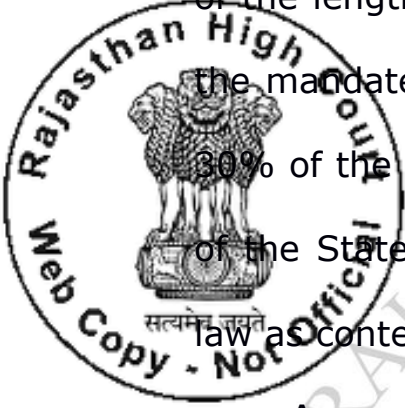
Secretary to the Government,
Finance (Budget)”



Counsel for the petitioners jointly submit that Reg.9 envisages one merit list for admitting to the State quota and the State Government has contemplated two separate merit lists of in-service candidates/Medical Officers and Medical Graduates under para-3 of its Executive Order dt.20.03.2017 which is impermissible and in utter violation of Reg.9 of the Regulations, 2000.

Counsel further submits that restriction of incentive upto 10% of the marks secured irrespective of the length of service rendered in remote and/or difficult areas of the State is also bad and in contravention of the Clause (IV) of Reg.9 of the Regulations, 2000 and once the State Government under its policy has identified which areas are to be considered as difficult and/or remote areas, such identification made by the State Government in treating a particular backward area as remote area or difficult area unless in a given facts & circumstances that identification is per-se found to be an arbitrary decision of the Government, this court may not like to examine & scrutinize under the limited scope of judicial review and further submits that those in-service Doctors/Medical Officers who have discharged their services in remote and/or difficult areas as identified by the State

Government in its Notification, no restriction could be imposed by the State Government that in-service candidates/Medical Officers remain entitled for weightage of marks in the form of incentive upto 10% of the marks secured in NEET Examination irrespective of the length of service rendered by the candidates is supplanting the mandate of Clause (IV) of Reg.9 which grants extension upto 30% of the marks obtained in NEET Examination and this decision of the State Government is clearly over-reaching the mandate of law as contemplated u/Reg.9(IV) of the Regulations, 2000.

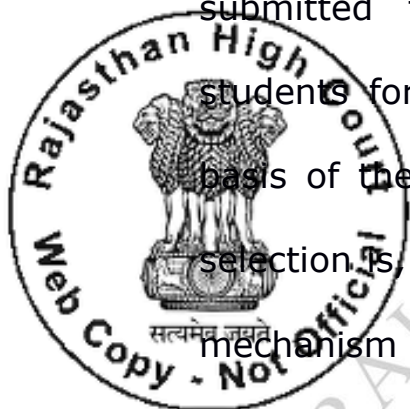


As regards the special appeal which has been preferred against interim order passed by the Id.Single Judge of this court is concerned, counsel submits that what should be the difficult and/or remote area, it is always within the competence of the State Government to consider and the decision of the State Government are, keeping the geographical conditions of the State into consideration, that those in-service candidates/Medical Officers who are serving in hilly/desert/tribal areas be treated as 'difficult areas' and those who are serving in other rural areas with certain restrictions which have been placed under the Notification dt.26.12.2011, they are not Tehsil Headquarters of which the population is below 5000 and the Medical Officers residing at those places and fulfill the conditions for rural allowance, will be treated as 'remote areas', no adverse inference could be drawn and personal perception could not prevail upon the decision of the competent authority and what is being observed by the Id.Single

Judge under its interim order impugned is not sustainable in law and deserves indulgence of this court.

Mr. Angad Mirdha, Counsel appearing for Medical Council of India has supported the cause of the writ petitioners and submitted that MCI Regulations categorically postulate that students for Post Graduate Course can only be selected on the basis of their inter se academic merit and any other method of selection is, therefore, by necessary implication forbidden and the mechanism which the State Government has attempted to introduce has the effect of subverting the MCI Regulations and such impugned decision of the State Government dt.20.03.2017 para-3 & 4 in particular to the extent it is not in conformity with the MCI Regulations is bad and could not be implemented.

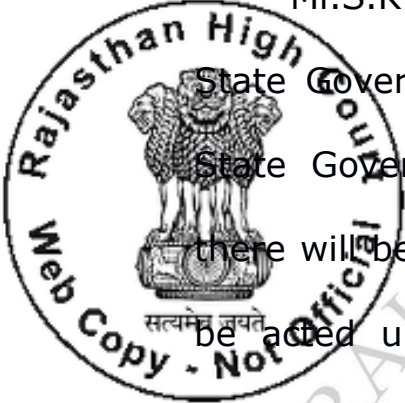
Mr. Mirdha further submits that there shall be only one merit list by adding the weightage of marks assigned to in-service candidates/Medical Officers for determining their merit in NEET Examination & that has to be taken note of for the purpose of admitting the candidate in the Post Graduate Medical Course and those in-service Doctors for each year of service in the remote and/or difficult areas, they indeed are entitled for at the rate of 10%, 20%, or to the extent of 30% of the marks obtained in NEET Examination and which are the remote and/or difficult areas, it is open for the State Government/competent authority to identify from time to time and it is not for the Medical Council of India to lay down and leaves no room for interpretation of the scheme of Regulations, 2000 and the restriction which has been put by the



State Government to give weightage in the marks as an incentive upto 10% of the marks obtained irrespective of the year of service rendered in remote and/or difficult areas of the State is not in conformity with Clause (IV) of Reg.9 of the Regulations, 2000.

Mr.S.K.Gupta, Additional Advocate General appearing for the State Government while supporting the norms laid down by the State Government under its order dt.20.03.2017 submits that there will be only one merit list of State quota seats which has to be acted upon for admitting the candidates in Post Graduate Degree Courses based on NEET Examination, 2017 but the State can always lay down the reasonable criteria in filling the State Quota and non-service candidates cannot be practically ruled out in totality from participating in the open competition and adding the weightage of marks assigned to in-service Doctors/Medical Officers as defined u/Reg.9(IV) of the Regulations, 2000 will certainly take away right of fair participation of the Medical Graduates (freshers) for their admission to the Post Graduate Courses.

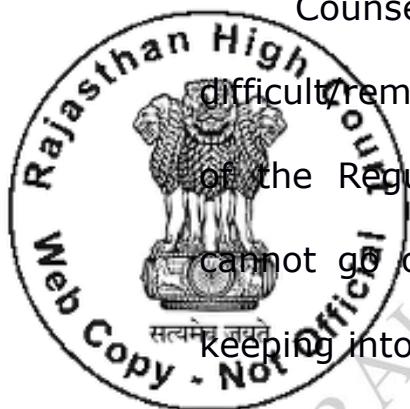
Counsel for the State further submits that u/Reg.9(IV) of the Regulations, 2000, 10% of the marks is the minimum to be awarded to the in-service Doctors for each year of their working in remote and/or difficult areas which may extend upto 30% of the marks obtained in NEET Examination but the State Government in its discretion and in the given facts & circumstances has considered to grant benefit only upto 10% of the marks obtained in NEET Examination to the in-service Doctors/Medical Officers



irrespective of the service rendered in remote/difficult areas in the State and at least it cannot be said to be supplanting the scheme of Regulations, 2000 by the State Government while admitting the students in Post Graduate Medical Degree Courses.

Counsel for the State further submits that as regards difficult/remote areas, referred to under the proviso to Reg.9(IV) of the Regulations, 2000 is concerned, the State Government cannot go on literal meaning of remote and difficult areas and keeping into consideration the geographical conditions of the State and the practice which has been followed for a sufficient long time, the Doctors who are serving in hilly/desert/tribal areas for two years, they shall be treated to be the 'difficult areas' and such Doctors who are serving in other rural areas for three years, they are considered to be the 'remote areas' and what has been observed by the Id.Single Judge in its interim order that remote and difficult areas in the context of the incentive are prima facie required to be areas where specific handicaps working within which an element of sacrifice and public service has certainly kept in mind by the State Government while identifying remote and difficult areas and accordingly the rural allowance has been made admissible to the in-service Doctors/Medical Officers in terms of the Notification dt.26.12.2011 and there is no need for further identification, as referred to by the Id.Single Judge under its interim order dt.03.04.2017.

Mr.R.K.Mathur, Senior Advocate, Ms.Purvi Mathur and Mr.Kushagra Sharma, Advocates appearing for the Medical



Graduates jointly submits that although the writ petition was filed before the Id.Single Judge on behalf of the writ petitioners who are not in-service Doctors but in the absence of any specific identification/notification by the State Government that which are the difficult & remote areas, at least no weightage in the marks obtained in the form of incentive to in-service Doctors/Medical Officers be extended in the garb of proviso to Reg.9(IV) of the Regulations, 2000 and this what the Id.Single Judge has observed under its interim order impugned dt.03.04.2017 and further jointly submit that if the State Government fails to notify remote and difficult areas, certainly based on the objective and relevant considerations, in-service Doctors are not eligible for grant of weightage in the marks in the form of incentive while preparation of merit list which is to be acted upon by the State Government for admission to the Post Graduate Degree Courses.

It may be noted at this stage that initial Schedule notified by the State Government has been amended facing out the difficulties coming forward and as per the present amended/revised Schedule, which is available on record, issued from the office of the Chairman, NEET PG Medical & Dental Admission/Counseling Board, 2017, the combined merit list after adding weightage marks to in-service candidates/Medical Officers has to be displayed by 07.04.2017 and further process of on-line choice filling by the eligible candidates and so on & so forth has to be followed further and since the admissions are to be made by the end of April, 2017 and the academic session has to commence



from 01.05.2017 & we are running behind the time, after hearing the matter at length and reserving the order, on 04.04.2017 and taking note of the exigency, displaying of combined merit list which has been scheduled on 07.04.2017 it was deferred by us for 08.04.2017.

We have heard counsel for the parties and with their assistance perused the material available on record.

After noticing the details of the scheme of Reg.9 of Regulations, 2000, the crucial question which emerges for consideration is how far the directions of the State Government for admitting students in Post Graduate Degree Courses and particularly para-3 & 4 of its order dt.20.03.2017 are in conformity with the Reg.9(IV) of the Regulations, 2000.

The scheme of Reg.9 and the procedure to be followed for admissions to Medical Courses by the State has been elaborately referred to by us and this remains no more res integra to hold that Reg.9 of the Regulations, 2000 is a self-contained Code and admission to the Medical Courses has to be made strictly in accordance with the procedure prescribed therein. At the same time, the State Government has no authority to enact any law or issue any executive instructions which in any manner either supplant or overreach the procedure for admission to Post Graduate Medical Courses laid down by the Central Government in exercise of its powers conferred under the Indian Medical Council Act, 1956.

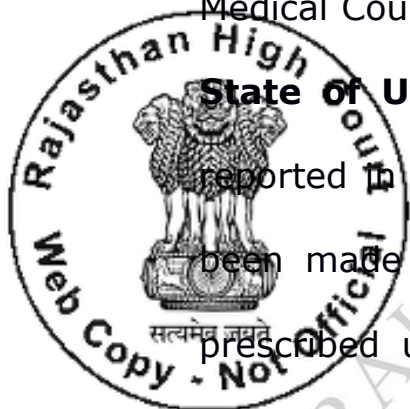


The present Regulations of which reference has been made namely the Post Graduate Medical Education Regulations, 2000 have been framed by the Medical Council of India in exercise of the powers conferred u/Sec.33 read with Sec.20 of the Indian Medical Council Act, 1956 and after judgment of the Apex Court in

State of Uttar Pradesh & Anr. Vs. Dinesh Singh Chauhan reported in **(2016) 9 SCC 749**, of which detailed reference has

been made by us, no further interpretation that the procedure prescribed under the Reg.9 of the Regulations, 2000 is a self-contained Code has to be strictly followed for admitting the students in Post Graduate Degree/Diploma Courses and it is left for the State Government to implement policy of reservation in fulfillment of the Constitutional obligation as the prevailing applicable laws and define remote and difficult areas from time to time.

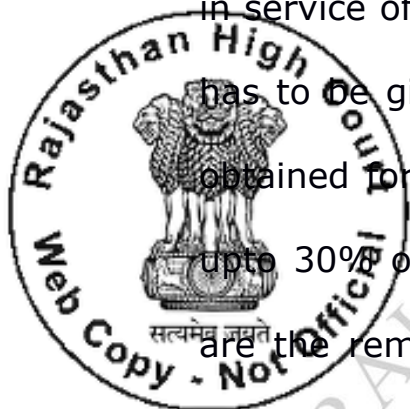
Indisputably, the present scheme of Regulations do not provide for reservation to in-service candidates in Post Graduate Degree Courses and there is no express provision prohibiting reservation to in-service candidates in respect of admission to the Post Graduate Degree Courses and any such reservation provided by the State Government or either by the legislature or by executive order is certainly not impermissible in law and there has to be all India merit list as well as State-wise merit list of all the eligible candidates to be prepared on the basis of the marks obtained in the NEET Examination and the candidates are to be admitted to Post Graduate Degree Courses from the said merit list



and this what being envisaged u/Reg.9(IV) of the Regulations, 2000.

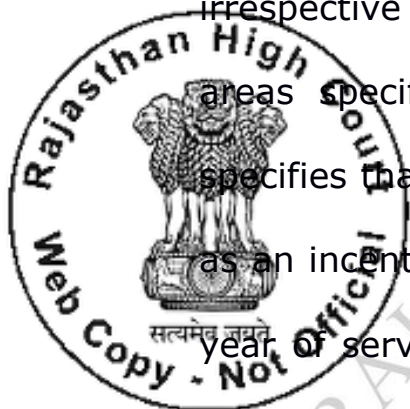
At the same time, the proviso added to Reg.9(IV) further envisages that while determining merit of the candidates who are in service of Government/public authority, weightage in the marks has to be given as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto 30% of the marks obtained in NEET Examination and which are the remote and difficult areas, it has been left open for the State Government/competent authority to define from time to time.

After we have heard counsel for the parties, in our considered view, the quota which has been fixed for in-service candidates and non-service (Medical Graduates) in para-3 of the Order dt.20.03.2017 is not permissible under scheme of Reg.9 of the Regulations, 2000 and at the same time, proviso to Clause (IV) of Reg.9 predicates that in determining the merit of candidates who are in service of the Government or a public authority, they will be eligible for weightage in the marks to 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 specified remote/difficult areas of the State upto maximum of 30% of the marks obtained in NEET and indisputably, this provision does not provide any reservation for in-service candidates but only of giving weightage in the form of incentive marks as specified to the class of in-service candidates, obviously who have served in



the notified remote and/or difficult areas in the State but the State Government under para-4 of its order dt.20.03.2017 has put a restriction of grant of weightage in the form of incentive to the extent of 10% of the marks obtained in NEET Examination irrespective of length of service rendered in remote and/or difficult areas specified by the State it eliminates the mandate which specifies that the candidate became eligible for grant of weightage as an incentive at the rate of 10% of the marks obtained for each year of service upto the extent of 30% of the marks obtained in NEET has been given a complete go-bye by the State Government by putting restriction irrespective of length of service rendered in remote or difficult areas as specified by the State to the extent of 10% of the marks obtained in NEET Examination which certainly, in our opinion, is supplanting the scheme of Regulations, 2000 and that deserves to be interfered by this court.

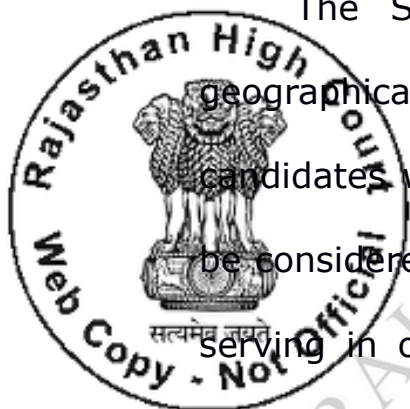
The submission made by Mr.S.K.Gupta, Additional Advocate General that these are the State quota seats & allocation *inter se* can be made on the basis of institutional preference, after the judgment of the Apex Court, of which we have made a reference in detail supra, the submission of institutional preference deserves outright rejection more so when Reg.9 does not provide any reservation either to in-service or non-service Doctors and it only envisages one merit list of the candidates who have participated in the NEET Examination by adding weightage of marks assigned to in-service candidates for determining their merit in NEET Examination and all are on equal footing and obviously the



mandate of Reg.9 is to assign specified marks which may commensurate with the length of service rendered by the candidate in notified remote and/or difficult areas in the State which is linked to the marks obtained in NEET Examination.

The State Government has indeed notified keeping its geographical conditions into consideration that such of the candidates who are serving in hilly/desert/tribal areas, they shall be considered serving in 'difficult areas' and such Doctors who are serving in other rural areas they shall be treated as serving in 'remote areas' and there cannot be any literal/dictionary meaning of 'remote' & 'difficult' which can be borrowed and it is always for the State Government to take its decision in identifying the remote & difficult areas and ordinarily it is not open for the courts for judicial scrutiny/review unless there is any impeachable evidence on record, in rebuttal, to re-visit the decision of the State Government.

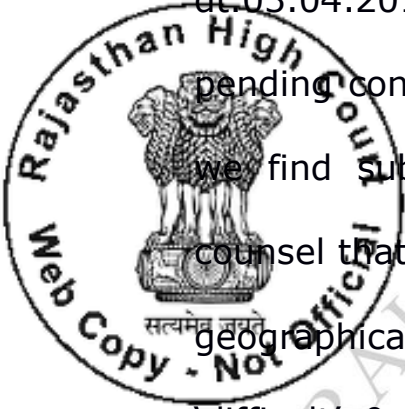
We find substance in the submission made by the writ petitioners that once the proviso to Reg.9(IV) of the Regulations, 2000 envisages giving of weightage of marks in the form of incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas of the State upto 30% of the marks obtained in NEET, there appears no reasonable justification for the State Government to restrict in awarding to the eligible in-service candidates upto 10% of the marks secured irrespective of length of service rendered and such restriction imposed by the State Government in para-4 of its order



dt.20.03.2017, in our considered view, is not in conformity with the mandate of Reg.9(IV) of the Regulations, 2000 & deserves to be quashed.

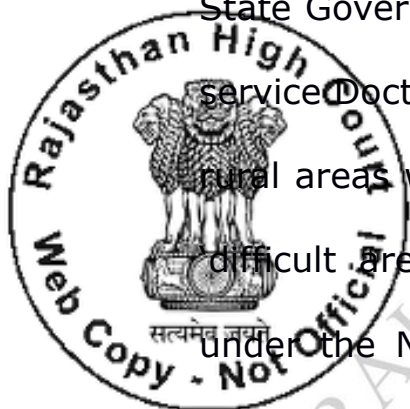
As regards the interim order passed by the Id.Single Judge dt.03.04.2017 is concerned, although the writ petition is still pending consideration before the Id.Single Judge of this court but we find substance in the submission made by the appellant's counsel that once the State Government in its wisdom keeping the geographical conditions into consideration has defined/notified 'difficult' & 'remote' areas and amendment has been made to simplify that those who have been granted rural allowance for rendering their services in such identified areas, they shall be treated to be working in difficult and/or remote areas is ordinarily not open to be interfered with by this court under its extraordinary jurisdiction u/Art.226 of the Constitution unless there is any impeachable evidence being placed on record, in rebuttal, which is not the case of the petitioner's being made while asking for interim order dt.03.04.2017.

That apart, we find that the writ petitioners before the Id.Single Judge are not in service candidates and indisputably they are not eligible for any weightage in the marks obtained in the form of incentive, which is available for in-service Doctors who, as alleged, have served in remote or difficult areas and who amongst in-service Doctors be entitled for the incentive marks for the service rendered in remote/difficult areas is their inter-se & at least may not be open for challenge from such candidates who are

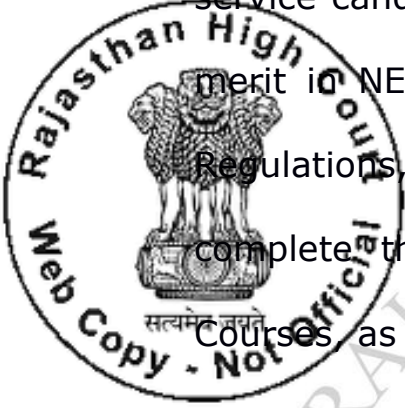


not in-service Doctors and this litigation has come to this court at the behest of the non-service Doctors at the fag end just to adopt indirect method in defeating the mandate of the proviso to Reg.9(IV) of the Regulations, 2000 & to put a rider before the State Government in extending benefit of marks to the eligible in-service Doctors/candidates who are serving in hilly/desert/tribal or rural areas which has been identified by the State Government as 'difficult areas' and 'remote areas' fulfilling the relevant norms under the Notification dt.23.12.2011 for the purpose of availing incentive for the services rendered by them as contemplated under the proviso to Reg.9(IV) of the Regulations, 2000 and to further reiterate the State Government could not be held justified in restricting grant of weightage of marks in the form of incentive to the limited extent of 10% irrespective of length of service rendered, when the proviso to Clause (IV) of Reg.9 envisages at the rate of 10% of marks for each year of service upto 30% of the marks secured in NEET Examination and such decision of the Government is not in conformity with the scheme to the proviso to Reg.9(IV) of the Regulations, 2000. At the same time, it is always open for the State Government to re-visit in identifying the remote and difficult areas of the State in fulfillment of the mandate of Clause (IV) of Reg.9 of Regulations, 2000.

Consequently, the writ petitions succeed and are hereby allowed. Para-3 & 4 of order of the Government dt.20.03.2017 are quashed & set aside and order of the Id.Single Judge dt.03.04.2017, assailed in the special appeal, is also quashed and



set aside and while treating in-service Doctors who are serving in hilly/desert/tribal areas as 'difficult areas' and other rural areas as 'remote areas' as identified by the Government, the respondents are directed to grant them weightage of marks, assigned to in-service candidates, in the form of incentive, for determining their merit in NEET Examination, 2017, in terms of Reg.9(IV) of the Regulations, 2000 and it is expected from the respondents to complete the process of admission to Post Graduate Degree Courses as per the revised calendar placed on record.



No costs.

(DINESH CHANDRA SOMANI)J.

(AJAY RASTOGI)J.

Solanki DS, PS



सत्यमेव जयते