

ITEM NO.60

COURT NO.10

SECTION XV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 11692/2017  
(Arising out of impugned final judgment and order dated 07-04-2017  
in DBCWP No. 4518/2017 passed by the High Court of Judicature for  
Rajasthan at Jaipur)

DR AMIT BAGRA &amp; ORS.

Petitioner(s)

VERSUS

STATE OF RAJASTHAN &amp; ORS.

Respondent(s)

WITH

SLP(C) No.11780/2017 (XV)SLP(C) No. 12241/2017 (XV)S.L.P.(C)...CC No. 8270/2017 (XV)S.L.P.(C)...CC No. 8655/2017 (XV)SLP(C) No.13094/2017 (XV)SLP(C) No.15061-15064/2017 (XIV)Diary No(s).14504/2017 (XV)

(IA No.49484/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.49483/2017-PERMISSION TO FILE SLP and IA  
No.55749/2017-APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No.18949/2017 (XV)

(FOR ADMISSION and I.R. and IA No.61897/2017-EXEMPTION FROM FILING  
O.T.)

Diary No(s).20969/2017 (XV)Diary No(s).20966/2017 (XV)SLP (C) No.21094/2017 (XV)

(FOR ADMISSION and I.R. and IA No.64529/2017-CONDONATION OF DELAY  
IN FILING and IA No.64530/2017-EXEMPTION FROM FILING C/C OF THE  
IMPUGNED JUDGMENT and IA No.64532/2017-EXEMPTION FROM FILING O.T.)

SLP (C) No.22991/2017 (XV)

(FOR ADMISSION and I.R. and IA No.73077/2017-CONDONATION OF DELAY IN FILING and IA No.73082/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.73084/2017-EXEMPTION FROM FILING O.T.)

Date : 15-12-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s)

Mr.Shyam Divan, Sr.Adv.

Ms.Purvi Mathur, Adv.

Ms.Kushagra Sharma, Adv.

Mr.Jasmeet Singh, Adv.

Ms.Sonia Mathur, Sr.Adv.

Mr.Sushil Kumar Dubey, Adv.

Mr.Abhishek Chauhan, Adv.

Mr.Noor Rampal, Adv.

Mr.Satya Mitra, Adv.

Mr.S.S.Shamshery, Adv. (AAG)

Mr.Amit Sharma, Adv.

Mr.Sandeep Singh, Adv.

Mr.Ankit Raj, Adv.

Ms.Ruchi Kohli, Adv.

Mr.Pradeep Aggarwal, Adv.

Mr.Lal Pratap Singh, Adv.

Mr.Brijesh Singh, Adv.

Mr.Arjun Aggarwal, Adv.

Mr.Gaurav Kejriwal, Adv.

Ms.Purvi Mathur, Adv.

Ms.Kushagra Sharma, Adv.

Mr.Sahir Hussain, Adv.

Mr.Satyajeet Kumar, AOR

Mr.Amit Kumar, Adv.

Mr.Arijit Mani Tripathi, Adv.

Ms.Neha Rathi, Adv.

Mr.Pranav Sachdeva, AOR

Mr.Sachin Patil, AOR

For Respondent(s)

Mr.Kapil Sibal, Sr.Adv.  
 Ms.Aishwarya Bhati, Adv.  
 Mr.Nizam Pasha, Adv.  
 Mr.Amit Verma, Adv.  
 Mr.Gopal, Adv.  
 Ms.Drishti Singh Rathore, Adv.

Mr.Vikas Singh, Sr.Adv.  
 Mr.Gaurav Sharma, AOR  
 Mr.Dhawal Mohan, Adv.  
 Dr.Hans Raj Yadav, Adv.  
 Mr.Shailendra Yadav, Adv.  
 Mr.Prateek Bhatia, Adv.

Mr.Ram Niwas Buri, Adv.  
 Mr.G.P.Tiwri, Adv.  
 Mr.Nikhil Jain, Adv.

Mr.Varinder Kumar Sharma, AOR  
 Ms.Parul Sharma, Adv.

M/s.Anuradha & Associates

Mr.Dinesh Chandra Pandey, AOR

Mr.H.D.Pithawala, AOR

UPON hearing the counsel the Court made the following  
 O R D E R

SLP (C) No.11692/2017, SLP(C) No.11780/2017, SLP(C) No. 12241/2017, S.L.P.(C)...CC No.8270/2017, S.L.P.(C)..CC No. 8655/2017, SLP(C) No.13094/2017, Diary No(s).14504/2017, SLP(C) No.18949/2017, SLP (C) No.22991/2017, Diary No. 20966/2017, Diary No.20969/2017 & SLP (C) No.21094/2017,

Permission to file SLP is granted.

Delay condoned.

The question involved in these special leave petitions is with respect to the MCI Regulation (as amended on 15.02.2012), wherein a discretionary power has

been given to the State Government/Competent Authority to award incentive marks to the in-service candidates working in the notified remote and difficult areas.

The High Court has passed the following order:-

"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 and 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 simply 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 Ld.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 Ld.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 calender placed on record."

It is submitted by Mr. Shyam Divan, learned senior counsel that the High Court has erred in law to permit state to admit students by awarding marks in the absence of

any specified remote and difficult areas. Learned senior counsel has relied upon the decision of this Court in State of Haryana and Anr Etc. vs. Dr.Narender Soni and Ors. Etc. (AIR 2017 SC 2892). It is, however, submitted by learned senior counsel that State Government provided for 10% marks for such service. The criteria adopted by the Government for difficult and remote areas and approved by the High Court could not be said to be appropriate. He has also urged that reliance placed upon 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 framed vide Notification dated 26.12.2011 under Article 309 of the Constitution could not be said to be appropriate. In view of Reg.9((IV) of the Post Graduate Medical Education Regulations, 2000 framed by the Medical Council of India under the Indian Medical Council Act, 1956, learned senior counsel has submitted that certain areas which are within municipal council or where primary health centres existed could not be treated as remote areas, proper identification of such areas should have been made as observed by the High Court.

Mr. Vikas Singh, learned senior counsel appearing for Medical Council of India, has submitted that it would be appropriate to award marks for the remote as well as difficult areas in terms of Reg.9(IV) of the Regulation of 2000.

In the circumstances, as admissions have already been made for the academic year 2017-2018, we are not inclined to disturb the admissions so made. The appellants have relied on Dr.Narender Soni and Ors. Etc. (supra), wherein it has been laid down as under:

"8. The flawed implementation, by a hasty identification of remote and/or difficult areas is further evident from the fact that out of 150 Community Health Centres, 68 of them have been identified as remote and/or difficult, which amounts to 60 per cent of the total. Likewise, 54 per cent of the Primary Health Centres have been identified as remote and/or difficult areas. It strongly conflicts with the status of Haryana as a developed State and severely reduces the chances of other candidates who may not be entitled to such weightage.

9. The identification, moreover, has been done only for the purpose of admission in postgraduate courses, contrary to the guidelines in D.S. Chauhan (AIR 2016 SC 3841) (supra) that it must be based on general criteria applicable to other Government schemes also. The report of the Committee was submitted in one day and immediately accepted. The conclusion of the High Court that it was done in great haste, therefore, cannot be faulted with.

10. The word remote and/or difficult areas has not been defined anywhere. In common parlance,

identification of the same would require considering a host of factors, such as social and economic conditions, geographical location, accessibility and other similar relevant considerations which may be a hindrance in providing adequate medical care requiring incentivization. A cue may be had from the "Concept and Process Document for Incentivisation of Skilled Professionals to work in inaccessible most difficult and difficult rural areas (draft note)" published by the National Health System resources Centre Ministry of Health and Family Welfare. It outlines the rationale and objectives of a scheme for providing a package of incentives for attracting and retaining skilled service providers that are categorised as inaccessible, most difficult and difficult.

11. Dwelling upon the past experiences on 02-07-2009, the Hon'ble Minister of Health and Family Welfare wrote to the Chief Ministers of States, about the challenges in reaching health services in hilly areas, desert areas, areas affected by Naxalite problem, areas having poor connectivity and un-served and under-served tribal areas. The third Common Review Mission (CRM) of the Ministry of Health and Family Welfare in November, 2009 invited suggestions from all States. After noticing drawbacks in the same, the Ministry of Health and Family Welfare requested the National Health System Resources Centre (NHSRC) to conduct an independent survey for categorization of difficult, most difficult or inaccessible areas and evolve a set of criteria. NHSRC evolved

the criteria on the following five principles:

"a. That the facilities are identified on the basis of how difficult it is for service providers to go and work in these areas-not on how well the health programmes are faring or how difficult it is to provide services in these areas.

b. That the basis of identification would be an objective and verifiable data base which measures difficulty in four dimensions: the difficulty posed by the remoteness of a rural area, the difficulty posed by natural and social environmental factors, the difficulty a family would have in terms of housing, water, electricity and schooling and the record of success of the system in filling up the post in the past. The data-base to be prepared would be stored in such a manner that it could be regularly updated.

c. That once the data base is defined the scoring could be done by giving weightage to the various factors in any way the State or the Center wants it, and if need be different elements of the incentive package could be defined by different weightages and selections.

d. Of the four dimensions of difficulty, the most important would be assumed to be the remoteness and physical inaccessibility of the area, while other factors would be considered only if the distance from an urban area of district headquarters criterion was satisfied. Thus an extremist affected district could be as much a problem as distance, but if the facility is an urban or peri-urban area then it would not be the central issue in getting a doctor to that facility. This is based on an understanding that lack of willingness to work in remote areas is due to a combination of economic loss, social and (from community and family and professional isolation and not so much of a problem as distance from an urban area.

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

12. Annexure 1 to the draft note on "the measurement of inaccessibility and difficulty of health facilities" stipulates as follows:

"1.Accessible: Any health facility less than 60 km from any district hospital/district headquarters OR less than 60 km. From any urban area-(not counting very small townships) is accessible. It would not be considered difficult even if there are other adverse environments or housing situations. (exceptions only in extreme situations like Upper Himalaya districts or in some NE districts). In terms of scoring, these facilities within the 60 km. is chosen as in most circumstances 60 km. is less than two hours motorable distance.

2.Inaccessible: Any health facility which is not on a motorable road or where the road gets cutoff for more than 6 months and one has to walk to reach the facilities-is Inaccessible irrespective of other factors. Not to count as inaccessible, if the walking part is only within the village/town. (Motorable road to the village, not necessarily to the facility). A walking time of over half hour or 2 km. Distance is taken as cut-off. Usually above a

one-hour walking time and 5 km. distance, it is safe to declare it as "Inaccessible." At the lower limit, one needs to verify the data more carefully. In terms of scoring these are scored A4 or A5. A5 is if the distance is over 15 km-or three hours walking time.

3. Difficult and Most difficult: If the facility is more than 60 km. from urban areas/district headquarters it would be considered difficult if in addition if

a. The facility is more than 30 km. from block headquarter and over 10 km. Away from national highway or other main busy highway-irrespective of other adverse environment or housing criteria:

OR

b. The facility is less in one of the above two distances (from block and from highway) but there are adverse environment factors or housing factors to compensate for it.

OR

c. If the road gets cut off for more than a month every year.

In terms of scoring an A2 is difficult and A3 is most difficult A1 is accessible.

A facility which is over 60 km from any urban area or any district headquarters gives it a score of 12 A1. To this we add another score of 0.5 for being more than 30km from block HQ and another 0.5 for being more than 10 km off the national highway. This makes any facility conforming to paragraph "3a" above get a score of A2.

If the facility had a score of A1 or A1.5 score from its distance or for road cut-off reasons but as an environment score of more than 2 or an environment score of 1 plus a housing score or a vacancy score then this A1 or A1.5 would become a net A2 and get categorised as difficult.

If the facility had a score of A2 or A2.5 from its distance scores and cut-off reasons and then also has an environment score of more than 2 or an environment score of 1 plus a housing score or a vacancy score then this A1 or A1.5 it would become a net A3 and get categorised as Most difficulty

4. Scoring for Environment: Any hilly forest, tribal or desert or island area would attract an environment score of 1. These are not additive. If it is a facility located in a tribal hilly forest area, the environment score is still only 1-not 3. If the hills are above 5000 ft then one could put it as two. We can also add one to three points for Left Wing violence depending on the stage of police operations. Generally other forms of conflict which are occasional and widely dispersed would not attract a disturbed area score. Factors like dacoit infested, caste conflicts etc are not given any score. The important point to note is that an environment 13 score would make an A1 to an A2 or an A2 into an A3. It would seldom make an A1 to A3 and it would never make an A0 into any level of difficulty.

5. Scoring for Housing: Poor quality of housing, lack of water supply and electricity, and lack of access to a higher secondary school within one hour of bus journey (30 km) also are scored. In combination with an environment score they could make an A1 to an A2 (difficult) or an A2 to an A3 (most difficult), but would not make an A0 into a difficult category.

6. Scoring for Vacancy : If medical posts are vacant for one to three years we indicate it by V1 to V3 scores. This is just used to check whether we are on the right track. The pattern of vacancies is inconsistent and changing and the data on it is of too poor a quality to use it for decision making."

13. It is, therefore, apparent that the Notification dated 05.05.2017 is based on a completely flawed process of identification, applying irrelevant criteria and ignoring relevant considerations. The High Court has rightly observed that the State power for transfer and posting is sufficient to take care of the unwillingness of Doctors to join at specified locations. The identification and criteria, will naturally vary from State to State to some extent, despite identification of certain common criteria.

14. We, therefore, find no reason to interfere with the order of the High Court.

15. The conduct of the State in issuance of the notification dated 05.05.2017 based on no data,

formulation of the same in a day, implementation before publication in the Gazette, after publication of the NEET, reflects inadequate preparation by the State, acting more in the nature of a knee jerk reaction to situations. It does not meet the approval of the Court. The proviso to Regulation ((IV) is not a compulsion but an enabling provision vesting discretion in the State. Any discretionary power has to be exercised fairly, reasonably and for the purpose for which the power has been conferred. The observations of the High Court meet our approval."

Reliance has also been placed on the decision of this Court in State of Uttar Pradesh and Ors. vs. Dinesh Singh Chauhan [(2016) 9 SCC 749] in which the following observations have been made:

"44...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 for the State for such areas and not limited to the matter of admissions to postgraduate medical courses...."

(Emphasis supplied)

There is yet another aspect that State rules provide for 10% marks not to the extent of MCI regulation. The

High Court has observed that in tune with Reg.9(IV) of the Regulations 2000 framed by Medical Council of India, the marks should be upto 30% to be awarded of marks obtained in test, 10% to be awarded for each year. Let the State Government take a decision also with respect to the marks to be awarded in terms of Reg.9(IV) which reads as under:

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

(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 mark 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."

Without commenting on merits of the case, in the circumstances, we dispose of these special leave petitions and hold that the admissions made for the present academic year shall not be disturbed. However, by the end of February, 2018, the State Government to consider the remote as well as difficult areas consider the judgments mentioned supra and also the extent of

percentage of marks in terms of Reg.9(IV) may also be specified as may be considered appropriate. Accordingly, the petitions are disposed of. No costs.

SLP(C) No.15061-15064/2017

List the matters on 8<sup>th</sup> January, 2018.

Let a copy of the special leave petition be served to the learned counsel in opposite.

(Ashok Raj Singh)  
Court Master

(Madhu Narula)  
Court Master