

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

S.B. Civil Writ Petition No.5255/2018

1. Dr. Ajeet Bagra S/o Lallu Ram Bagra, Aged About 27 Years, R/o Village Biharipura, Sirsali, Via Chomu, Dist-Jaipur

2. Dr. Ajaram Chaudhary S/o GR Choudhary, R/o Okananda, Sayla, Jalor, Rajasthan-343022.

----Petitioners

Versus

1. Union of India, Ministry of Health and Family Welfare, Through Its Secretary.

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

3. NEET PG Medical & Dental Admission/ Counseling Board- 2018 and Principal & Controller, SMS Medical College & Attached Hospitals, Jaipur, SMS Medical College, JLN Marg, Jaipur Through Its Chairman.

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

5. National Board of Examinations, Medical Enclave, Ansari Nagar, Mahatma Gandhi Marg (ring Road), New Delhi-110029, Through Its Joint Director.

6. Dr. Mukesh Kumar Chopra S/o Shri Ramchandra Chopra, Aged about 29 years, R/o Rajni Vihar, Heerapura, Ajmer Road Jaipur (Rajasthan).

7. Dr. Jeetendra Singh S/o Shri Jawahar Singh, Aged About 33 years, R/o. VPO Gangroly, Tehsil Nadbai, District Bharatpur.

8. Dr. Sumit Raj S/o Shri Jai Singh, aged about 34 years R/o Village and Post Ludhawai (Sewar), Tehsil and District Bharatpur.

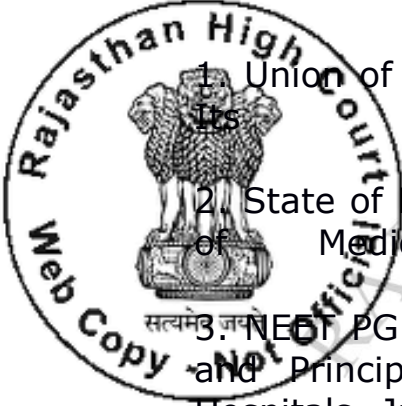
9. Dr. Munesh Kumar Gaur, S/o Shri Gopal Prasad, aged about 33 years, R/o MOIC Barkheda Foujdar, Nagar, District Bharatpur.

10. Dr. Parvez s/o Umar Ansari, aged about 38 years, R/o. H.N.6 G-88, Vigyan Nagar Extension, Kota Rajasthan

11. Dr. Brajesh Kumar Dhaker, S/o Shri Devilal Dhaker, aged about 26 years, r/o Village Parsoli, Tehsil Begun, Distt. Chittorgarh.

12. Dr. Goverdhan Lal saini, s/o shri Banwari Lal Saini, aged about 31 years, r/o Village and Post Prathvipura, Shrimadhapur, District Sikar.

13. Dr. Sunil Kumar Saharan s/o Shri Indra Singh Saharan, aged about 30 years, R/o Gouri Shankar Bhawan, Om Colony, Churu.



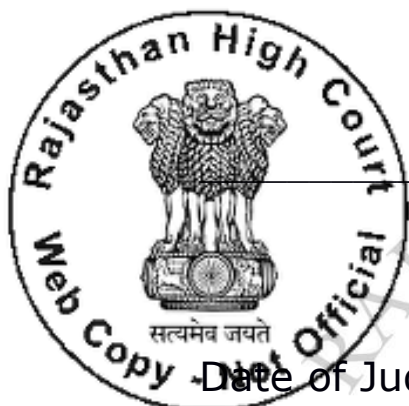
----Respondents

For Petitioner(s) : Mr. RP Singh, Sr. Counsel with Ms. Purvi Mathur, Mr. Kushagra Sharma, Mr. Sahir Hussain

For Respondent(s) : Mr. N.M. Lodha, Advocate General with Mr. Sheetanshu Sharma, Mr. Kunal Jaiman

Mr. Rajendra Prasad, AAG, Mr. Deepak Bishnoi, Mr. Angad Mirdha,

Mr. A.K. Sharma, Sr. Counsel with Mr. A.K. Jaiman



HON'BLE MR. JUSTICE ALOK SHARMA

Judgment

Date of Judgment :: 20th March, 2018

Under challenge is the Notification dated 28.2.2018, whereby the State Government purporting to act pursuant to the judgment of the Apex Court in SLP No. 11692/2017 titled Dr. Amit Bagra & Ors. Versus State of Rajasthan & Ors. decided on 15.12.2017 has notified "remote and / or difficult areas" in the proviso to Regulation 9(IV) of the Medical Council of India Postgraduate Medical Education Regulations, 2000 (hereafter 'Regulations of 2000') for grant of incentive marks to in-service Doctors while drawing of a merit list based on National Eligibility cum Entrance Test, 2018 (hereafter 'NEET 2018') for admissions into Post Graduate Diploma and Degree Courses in Medicine. The petitioners have submitted that the Notification dated 28.2.2018 is not compliant with the directions of the Apex Court to which it adverts, in-fact in its cross-hairs,

contemptuous and also a colourable exercise of power by the State Government. Therefore it is liable to be quashed and set-aside.

The case of the petitioners is that having completed their MBBS Degree programme and eligible, they wrote the NEET, 2018 seeking admission to the courses of their choice

in P.G. (Medical) and secured merit positions at the examination. They are all aggrieved of the Notification dated

28.2.2018 which the State has issued without due process and in complete disregard of the directions of the Apex Court

in SLP No.11692/2017 titled Dr. Amit Bagra & Ors. Versus State of Rajasthan & Ors. (supra). It has been submitted that

the State Government has not notified "remote and/or difficult areas" in the light of the said judgment whereunder it

was under an obligation to adhere to the criterion and guideline of the Apex Court's judgments in the case of State

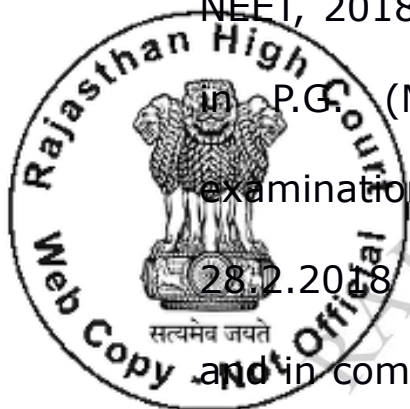
of Haryana & Anr. Versus Dr. Narender Soni & Ors. (AIR 2017 SC 2892) and State of Uttar Pradesh & Ors. Versus Dinesh

Singh Chauhan [(2016) 9 SCC 749]. In State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) the Apex Court

had held that incentives under the proviso to Regulation 9(IV) of the Regulations of 2000 could only be granted if "remote

and / or difficult areas" as referred to therein were rationally defined and categorized in a wholesome manner and founded

upon detailed and objective studies / surveys of the

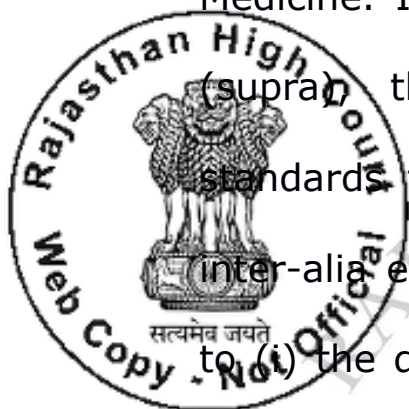


concerned State. It has been submitted that the State is under an obligation to disclose the objective studies / surveys of the areas defined by it to be "remote and / or difficult" for the purposes of incentivizing in-service Doctors for admissions to Post Graduate Diploma / Degree Courses in Medicine. It has been submitted that in Dr. Narender Soni

(supra) the Apex Court carved out certain objective standards to identify remote and / or difficult areas. That inter-alia entailed identification of such areas with reference to (i) the difficulty posed by remoteness of a rural area; (ii)

the difficulty posed by natural and social environmental factors; (iii) the difficulty a family would have in terms of housing, water, electricity and schooling; and (iv) the record of success of the system in filling up the post in the areas being declared "remote and / or difficult" in the past.

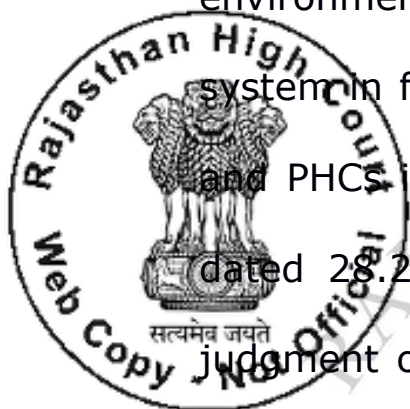
The petitioners submitted that the State Government was under the Apex Court's judgment to notify the "remote and / or difficult areas" in the State not only for the purposes of the proviso to Regulation 9(IV) of the Regulations of 2000, but also with reference to all other beneficial and welfare schemes in the State. That was not done. It was further submitted that under the impugned Notification dated 28.2.2018 1003 Nos. Primary Health Centres (PHCs) and Community Health Centres (CHCs) have been mechanically defined as "remote and / or difficult areas"



only with reference to distances from the State Capital and the District Headquarters without regard to other relevant aspects adverted to in State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) such as difficulty of accessibility, difficulty posed by natural and social environmental factors and the record of success of the

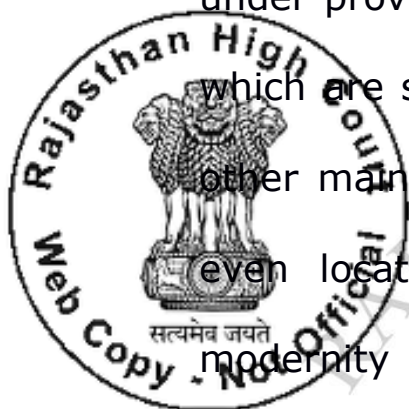
system in filling up the post of Medical Officers in such CHCs and PHCs in the past. It was submitted that the Notification dated 28.2.2018 is more blatantly in the cross-hair of the judgment of the Apex Court in the case of Dr. Amit Bagra &

Ors. Versus State of Rajasthan & Ors. (supra), inasmuch as after identifying the purportedly remote and / or difficult areas with reference to their distance from the State Capital and District Headquarters alongwith reference to identified backward areas for availability of Medical and Health Care High Priority Districts - as notified by the Ministry of Health and Family Welfare, Government of India vide communication dated 28.12.2017, all in-service Doctors who have generally served in rural areas upto 30.4.2018 have also been conferred the benefit of the incentive under proviso to Regulation 9(IV) of the Regulations of 2000. It has been submitted that such extrapolation of 'rural' areas with remote and / or difficult area is wholly impermissible in terms of the judgments of the Apex Court in the case of Dr. Amit Bagra & Ors. Versus State of Rajasthan & Ors. and State of Haryana



and Another Versus Dr. Narender Soni and others (Supra). It was further submitted that the distance criteria alone adopted by the State Government in notifying the remote and / or difficult areas overlooks the fact of easy access to several of the PHCs, CHCs notified for the purposes of grant of incentive under proviso to Regulation 9(IV) of the Regulations of 2000 which are situate on National Highways, State Highways and other main roads in the State. Besides several of these are even located in towns having large populations with all modernity including that of education, medical facilities adequate water / electricity supply for an in-service doctor to sustain himself and family well. Resultantly, the impugned Notification dated 28.2.2018 albeit seeking legal pedigree in the judgment of the Apex Court in Dr. Amit Bagra (supra) is not only a colourable exercise of discretion by the State under the proviso to Regulation 9(IV) of the Regulations of 2000 but also a clear contempt of the directions of the Apex Court in the case of Dr. Amit Bagra & Ors. Versus State of Rajasthan & Ors(supra). The Notification dated 28.2.2018 is thus wholly arbitrary and also illegal and liable to be quashed and set-aside.

Reply to the petition has been filed by the respondents-State as also the private respondents no. 6 to 13 impleaded in this petition under the order of the Division



Bench passed on 13.3.2018 in D.B. Special Appeal (Writ) No. 326/2018.

Their preliminary objection is that as admittedly the petitioners are not in-service Doctors, the Notification dated 28.2.2018 dealing with incentives to in-service Doctors under the proviso to Regulation 9(IV) of the Regulations of 2000 does not concern them and hence they have no locus-standi to lay a challenge thereto in this petition. It has been submitted that the purported effect of the incentive to in-service Doctors under the impugned Notification dated 28.2.2018 on prospects of the petitioners for admissions to PG Diploma / Degree in subjects of their choice is speculative / conjectural and there is nothing on record as to how the petitioners are entitled to at this stage i.e. prior to admissions to lay a challenge thereto. In support of the contention that the petitioners lack locus-standi, reliance has been placed on the Division Bench judgment of this Court in the case of Dr. Chandra Prakash Sharma Versus State of Rajasthan (D.B. Civil Writ Petition No. 4518/2017) decided on 7.4.2017.

The respondents - State further submitted that the petition insofar as it impugns the Notification of 1003 Nos. CHCs and PHCs as remote and / or difficult areas for the purposes of proviso to Regulation 9(IV) of the Regulations of 2000 is bereft of facts. Nothing has been pleaded, as to which

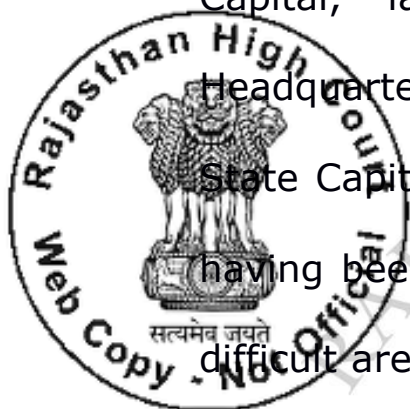


CHCs / PHCs notified on 28.2.2018 as remote and / or difficult areas are located on State Highways and National Highways or other main roads of the State with easy accessibility and in what manner and how they are not lacking in other infrastructural facilities available in the State

Capital, large Municipal Towns and Tehsil / District Headquarters. It has been submitted that CHCs/PHCs in the State Capital, District Headquarters, and Tehsil Headquarters having been excluded from the definition of remote and / or difficult areas in the impugned notification dated 28.2.2018 is

by itself indicative of the State Government's application of mind while exercising the statutory discretion vested in it under the proviso to Regulation 9(IV) of the Regulations of 2000. It has been submitted that remote and / or difficult areas have been determined under the impugned Notification dated 28.2.2018 on an objective criterion / parameter taken into consideration by a six member committee constituted as early as 26.5.2017 for the purpose by the State Government.

That Committee has given due regard to the judgment of the Apex Court in the case of Dr. Amit Bagra & Ors. Versus State of Rajasthan & Ors. (supra); State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) as also State of Uttar Pradesh & Ors. Versus Dinesh Singh Chauhan (supra). The Committee deliberated the issue of identifying remote and / or difficult areas in the State keeping in mind the geography



of the State of Rajasthan and the resultant distances from the State Capital and from District Headquarters, infrastructural facilities available in such outlying areas as also inadequacy of transportation in such areas aside of focusing on 10 Districts in the State of Rajasthan which have been identified by the Ministry of Health and Family Welfare to be extremely backward in respect of medical facilities and have been designated by it as High Priority Districts following identification made by the NITI Ayog based on a composite index of four sectors namely health, nutrition, education infrastructure and deprivation. It has been submitted that thus, it cannot be asserted in any plausible manner whatsoever that 1003 Nos. CHCs and PHCs notified as remote and / or difficult areas under the Notification dated 28.2.2018 are without application of mind, de-hors objective criterion and thus in contravention of the judgments of the Apex Court in the case of Dr. Amit Bagra & Ors. Versus State of Rajasthan & Ors. (supra); State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) as also State of Uttar Pradesh & Ors. Versus Dinesh Singh Chauhan (supra). It has further been submitted that the Notification of 'remote and / or difficult areas' lies in the discretion of the State Government and the discretion having been exercised with reference to the objective identifiable facts disclosed, no ground obtains for this Court to interfere therewith in the exercise of its

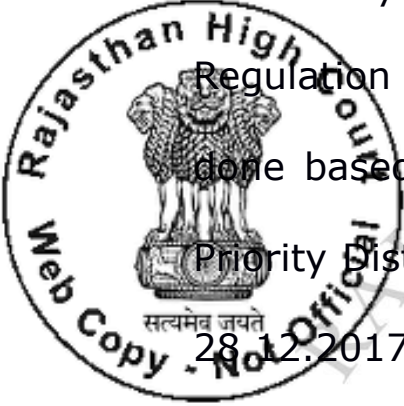


equitable or extraordinary jurisdiction under Article 226 of the Constitution of India. It has further been submitted that there is no existing scheme in the State of Rajasthan to which the targeted beneficiaries are entitled to on the ground of remote and / or difficult areas in the State. In this regard reference has been made to the NREGA scheme, where employment is, irrespective of the region in the State, provided when the unemployed seek it. Similarly in the major flagship schemes of the State like Mid Day Meal scheme, Janani Suraksha Yojna (JSY) scholarship is provided to the deprived without regard to geography. Other schemes are area based, such as the Border Area Development Programme which is as per its description confined to the border areas. So is the position in respect of the Mewat Area and Dang Area Development Schemes. As such a general Notification as to remote and / or difficult areas applicable to other beneficial schemes of the State aside of also being an incentive for in-service Doctors of the State for admission to Post Graduate Medical Diploma / Degree courses could not be issued. No contravention of the judgment of the Apex Court on this count can thus be attributed to the respondents. Further even otherwise the directions of the Apex Court in the judgments referred to above by the petitioners were in the nature of cues, merely by way of illustration and are not to be construed as mandatory without reference to the peculiarities of the



conditions obtaining in different States. No fit all has been designed by the Apex Court on the criterion / parameter to be adopted by the State for identifying remote and / or difficult areas. In these circumstances it was for each State to delineate the remote and / or difficult areas in its discretion reasonably exercised for the purpose of the proviso to Regulation 9(IV) of the Regulations of 2000. This has been done based on defined distance parameters as well as High Priority Districts as per the Central Government's letter dated 28.12.2017 which itself was based on socio-economic and infrastructural parameters. Therefore, the criteria used by the State Government for notifying remote and / or difficult areas under the impugned notification dated 28.2.2018 is well defined and intelligible. It is reiterated that the fact that Urban Areas, District Headquarters, Tehsil Headquarters and Municipal Towns have not been considered as remote and / or difficult areas shows due application of mind by the Committee as also the State Government in issuing Notification dated 28.2.2018.

As to the inclusion of in-service doctors serving in rural areas upto 30.4.2018 treating such rural areas as remote and / or difficult for the purposes of incentives under the proviso to Regulation 9(IV) of the Regulations of 2000, it has been submitted that these Doctors are amongst those who have been serving in rural / hilly / desert or tribal areas



for several years and if they were to be overnight denied any incentive at all for admission in PG Degree / Diploma in Medicine, it would be put into question and negate several years of their rural areas service entailing unjustness and unfairness. In the circumstances in the interest of justice, the notification dated 28.2.2018 aside of identifying 1003 Nos.

CHCs and PHCs as falling in remote and / or difficult areas also provides for in-service Doctors who have worked in rural / hilly / desert or tribal areas till the cut off date

30.4.2018 to be entitled to 30% additional marks over marks secured at NEET, 2018 for reckoning of their merit for admission into PG Diploma / Degree courses in the State quota. However, experience subsequent to 30.4.2018 on such posts will not be counted for the purpose of incentivization of in-service doctors under the proviso to Regulation 9(IV) of the Regulations of 2000. On the above defence, the State has submitted that the petition be dismissed as it is without merit.

The private respondents 6-13 have reiterated the submission of State. In their reply to petition it has been submitted that the petitioners lack in locus-standi to lay a challenge to the Notification dated 28.2.2018 as none of the petitioner's fundamental or legal rights have been even remotely infringed thereby. On merits, it has been submitted that a large population of the State of Rajasthan as per the



latest available census of India i.e. 2011, is rural. Against the urban population of 1,07,04,885 the rural population is 5,15,00,352. Rural health care in the present scenario is faced with a crisis unmatched to any other social sector and the qualitative and quantitative availability of primary health care facilities is far less than the defined norms by the World Health Organization. Hence the proviso to Regulation 9(IV) of the Regulations of 2000 seeks to incentivize rural service by providing for benefit for admission of in-service Doctors into Post Graduate Degree and Diploma Courses in medicine as a *quid pro quo* for giving up valuable years of their life in providing medical facilities to the rural sections of the population of the State. It has been submitted that the Notification dated 28.2.2108 has been issued by the State Government identifying remote and / or difficult areas on the basis of evaluation of a duly constituted committee broadly following the criterion set out in the judgment of the Apex Court in the case of State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra). The Committee took into consideration the essential foundational facts as to distances from the State capital and District Headquarters for recommending the exercise of discretion by the State Government in notifying remote and / or difficult areas. High Priority Districts backward in provision of medical facilities in the State of Rajasthan as notified by the Member of Health



and Family Welfare were also reckoned for this. The Notification dated 28.2.2018 is thus reflective of the State Government's discretion based on objectively definable criterion, does not suffer from the vice of arbitrariness and cannot be impugned before this Court. Yet it has been so done on speculative and vague grounds, reading the judgments of the Apex Court literally without context and overlooking that the factors adverted to by the Apex Court in its own say were only a "cue". The petition be therefore dismissed. It has been submitted that this petition also be dismissed for reason of it lacking in pleading of specific facts to make out a case of non application of mind, arbitrariness as would be warranted in petitions under Article 226 of the Constitution of India which besides assertion of fact have also to be supported by documentary evidence in support thereof. Contrary to the aforesaid essential pre-condition for laying a challenge in a writ petition, the averments in the petition are vague, speculative and hypothetical and do not make out any case. Nothing has been stated which of 1003 CHCs, PHCs are not remote and / or difficult areas and why not. The petition impugning the Notification dated 28.2.2018, therefore be dismissed.

It has further been submitted by the respondents 6-13 that the discretion under proviso to Regulation 9(IV) of the Regulations of 2000 has to be exercised by the respective



States with reference to the special situations obtaining in each in regard to providing health care to its citizens. No doubt therefor cue from the parameters / criterion as set out by the Apex Court in its judgments in Dr. Narender Soni (supra), Dr. Amit Bagra (supra) and Dinesh Singh Chauhan (supra) has to be taken. The observations and guidance of the Court in the said judgment is however not to read as if a statute. The need emphasized by the Apex Court in its judgments, referred to above was about laying down of intelligible / well defined criterion for declaring areas remote and / or difficult for purposes of the proviso to Regulation 9(IV) of the Regulations of 2000. That need has to be understood and has been fulfilled by the State Government as per its reply to the petition. The parameters and conditionalities for identifying remote and / or difficult areas can differ from State to State and the criterion in developed States like Haryana and Kerala is not relevant to States with a different geography and related problems of public health service as in the State of Rajasthan. Unified and universal criteria for definition of remote and / or difficult areas, therefore, cannot be read into the judgments of the Apex Court referred to by the petitioners. It has been submitted that as per a study of 2016, Surgeons at CHCs required in Rajasthan are 571, yet only 505 posts have been sanctioned and more importantly only 127 Surgeons are posted against



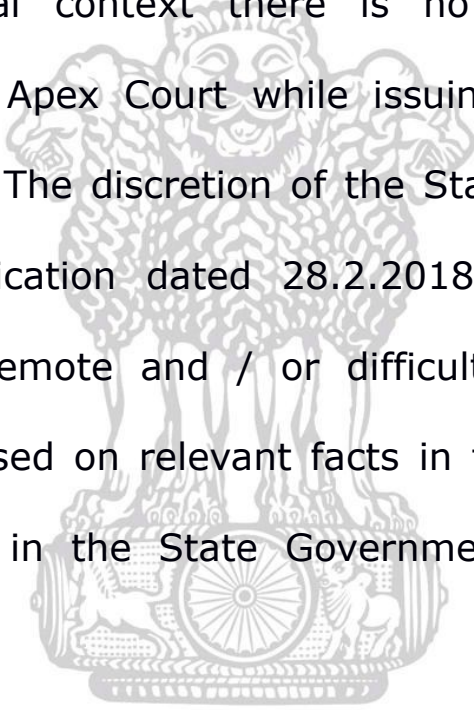
these 505 posts leading to a situation of 378 vacant posts and a shortfall of 444. Likewise, Obstetricians and Gynecologists at CHCs required are 571 whereas only 271 posts have been sanctioned against which only 87 working, resulting in 184 vacant posts and shortfall of 484 posts.

Likewise Physicians at CHCs required are 571 and 665 posts have been sanctioned, against which only 189 were working leading to vacant posts of 476 and a total shortfall of 382.

This situation is applicable across the posts of Pediatricians and other specialists at CHCs. It has been submitted that in

the above factual context there is no violation of the directions of the Apex Court while issuing the Notification dated 28.2.2018. The discretion of the State Government in issuing the Notification dated 28.2.2018 identifying 1003 CHCs, PHCs in remote and / or difficult areas has been reasonably exercised on relevant facts in the context of the criteria disclosed in the State Government's reply to this petition.

It has further been submitted that prior to issuance of the Notification dated 28.2.2018, in-service Doctors working in rural areas as generally defined with reference to rural allowance, were so doing in public interest, and had played an important role in growth of public health care in the State of Rajasthan. In this context, a decision has been taken under the Notification dated 28.2.2018 that aside of these



1003 Nos. CHCs / PHCs identified as falling in remote and / or difficult areas, in-service doctors working in rural areas generally upto 30.4.2018 would also be entitled to the benefit / incentive of the proviso to Regulation 9(IV) of the Regulations of 2000. That decision is in the interest of justice of recognizing several years past service by in-service Doctors and nothing illegal or arbitrary or for that matter de-hors the proviso to Regulation 9(IV) of the Regulations of 2000 or contemptuous of the judgment of the Apex Court in the case of Dr. Amit Bagra (supra) can be made out therefrom as alleged.

Heard. Considered.

With regard to the objection to the maintainability of the writ petition in view of the observations of the Division Bench of this Court in para 36 in the case of Dr. Chandra Prakash Sharma Versus State of Rajasthan (supra), I am of the considered view that there is nothing in the said paragraph which at all can be said to constitute a ratio-decidenti binding on this court. The Division Bench has merely stated that a challenge at the instance of those not in-service to the Notification of the State Government as to what constituted service in remote and / or difficult areas "may not be open". That tentative view does not bind this court. Aside of the aforesaid, the judgment in the case of Dr. Chandra Prakash Sharma versus State of Rajasthan was



challenged by one Amit Bagra before the Supreme Court in SLP No. 11692/2017. The appeal was entertained and the Apex Court vide its judgment dated 15.12.2017 inter-alia issued directions that remote and / or difficult areas for the purposes of proviso to Regulation 9(IV) of the Regulations of 2000 be re-notified by the State in the context of the judgments of the Apex Court in State of Haryana Versus Dr. Narender Soni & Dr. Chandra Prakash Sharma Versus State of Rajasthan (supra). The appeal of one not an in-service candidate being entertained on the issue of notification under the proviso to Regulation 9(IV) of the Regulations of 2000 is reflective of his locus-standi being recognized. Besides, the above I am also of the considered view that where the petitioners allege that the Notification dated 28.2.2018 issued by the State defining "remote and / or difficult areas" is indicative of colourable exercise of its power to their detriment as non service candidates, affects as it does, the drawing of merit list for the purposes of admissions to PG Diploma/ Degree Courses in Medicine on the basis of NEET Examination, 2018, they definitely have a right in laying the petition. The case of the petitioners is that the arbitrary exercise of power by the State Government in notifying the remote and / or difficult areas adversely affects their right to the admissions in issue. This writ petition is therefore



maintainable and objections to its maintainability are dismissed.

The proviso to Regulation 9(IV) of the Regulations of 2000 which is the issue in this petition reads as under:-

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

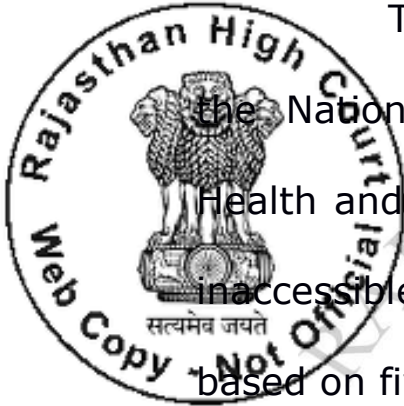


What constitutes remote and / or difficult areas, based on which the in-service Doctors can be incentivized and given admission to post graduate Diploma / Degree courses in medicine has earlier also been an issue for the consideration of the Apex Court.

In the case of State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra), in para 10 the Apex Court held as under:-

“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 hindrance in providing adequate medical care requiring incentivization."



The Court then referred to the criteria evolved by the National Health System Resource Centre, Ministry of Health and Family Welfare (hereafter 'NHSRC') for describing inaccessible, most difficult and difficult areas. The criteria was based on five principles:

(i) 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 programme are faring or how difficult it is to provide services in these areas.

(ii) 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 database to be prepared would be stored in such a manner that it could be regularly updated.



(iii) 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.

(iv) 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 as 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.



(v) 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.

The Court also referred to Annexure-1 to the draft note of NHSRC related to 'the measurement of inaccessibility and difficulty of health facilities' and for that purpose categorized the areas as **accessible, inaccessible, difficult and most difficult** inter-alia with reference to distance and manner of access and then rated the areas on that count. Then after evaluating how difficult it was for the service provider to go to work in such areas, it provided for the evaluation of the difficulties of environment, housing and vacancy situation on the medical posts in such areas. The

Court held that in determining remote and / or difficult areas under proviso to Regulation 9(IV) of the Regulations of 2000 analogous objective identifiable criteria, be taken into account and knee jerk, hypothetical determination of remote and / or difficult areas was not permissible on the arbitrary discretion of the State Government as the matter related to incentivization for the good cause of drawing an appropriate merit list for admission to the post graduate diploma / degree courses in medicine in the State quota.



The issue of determination / definition of remote and / or difficult areas under the proviso to Regulation 9(IV) of the Regulations of 2000 then also came up for consideration before the Apex Court in the case of Dr. Amit Bagra & Ors. Versus State of Rajasthan & Ors. (SLP No. 11692/2017) decided on 15.12.2017. That SLP arose from the final judgment dated 7.4.2017 passed in D.B. Civil Writ Petition No. 4518/2017 titled Dr. Chandra Prakash Sharma Versus State of Rajasthan by this Court. The Apex Court copiously relied upon its earlier judgments in the case of State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) as also on the judgment in the case of State of Uttar Pradesh & Ors. Versus Dinesh Singh Chauhan (supra) and disposed of the SLP before it as under:

“Without commenting on merits of the case, in the circumstances, we dispose of these

special leave petitions and hold that the admissions made by 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 Regulation 9(IV) may also be specified as may be considered appropriate.”



The judgment of the Apex Court in the case of Dr. Amit Bagra (supra) makes it evident that the judgment of this Court in D.B. Civil writ Petition No. 4518/2017 decided on 7.4.2017 was impliedly over-ruled for the reason that while the Court saved PG degree / Diploma admissions for that given year – 2017- yet it directed that the State Government would be under an obligation to define remote and / or difficult areas under proviso to Regulation 9(IV) of the Regulations of 2000 with reference to the Apex Court judgments in the case of State of Uttar Pradesh and others Versus Dinesh Singh Chauhan (supra) and State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra). The obtaining legal position to my mind thus is that remote and / or difficult

areas under proviso to Regulation 9(IV) of the Regulations of 2000 were to be defined by the State Government and albeit in its discretion, yet with due application of mind to the objective criteria / parameters delineated in the case of State of Haryana & Anr. Versus Dr Narender Soni & Ors. (supra) also dealing with the very same issue. And in State of Haryana & Anr. Versus Dr Narender Soni & Ors. (supra) Apex Court had categorically held that as remote and / or difficult areas was not defined under the Regulation 9(IV) of the Regulations of 2000 or for that matter elsewhere, it would entail their identification founded upon consideration of several factors; primarily inaccessibility and only thereafter of difficulty of natural and environmental factors, difficulty as to infrastructural facilities relating to education, medical facilities, water / electricity supply, housing etc. as also readiness of in-service medical employees to work in such areas and lack of which hindered in providing adequate medical care to the local population and hence required incentivization. For undertaking the requisite exercise of discretion under the proviso to Regulation 9(IV) of the Regulations of 2000, a cue was to be taken by the State Government from the aforesaid parameters / criterion.



Resultantly, it is apparent that though the criteria evolved by the NHSRC as referred to by the Apex court in the case of State of Haryana & Anr. Versus Dr. Narender Soni (supra) and cited with approval in Dr. Amit Bagra Versus State of Rajasthan & Ors. (supra) is not iron-clad, it is of substantial relevance and has to be duly considered and respected by each State when notifying the remote and / or difficult areas albeit also countenancing for variations and deviations warranted with reference to the geography of the State and the stage of development of its various regions. A complete jettisoning of the aforesaid criteria referred to by the Apex Court in its two judgments referred above however cannot be sustainable and variations / deviations from the criteria of NHSRC broadly endorsed by the Apex Court in the description of remote and / or difficult areas as provided for in the proviso to Regulation 9(IV) of the Regulations of 2000 have to be justifiable on objective grounds by the State on a challenge being made thereto before the Court.

In the backdrop of the aforesaid legal position emanating from decided cases – State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) and Dr. Amit Bagra Versus State of Rajasthan & Ors. (supra), I am of the considered view that the impugned notification dated 28.2.2018 insofar as it identifies 1003 CHCs and PHCs in the State of Rajasthan as 'remote and / or difficult areas' for the



purposes of incentives provided to in-service candidates under the proviso to Regulation 9(IV) of the Regulations of 2000 for the purposes of admissions into Post Graduate Diploma and Degree Courses (Medicine) is beyond reproach. The said list of 1003 CHCs and PHCs is based on an objectively determinable criteria of distance/s from the State Capitals as also the District Headquarters while also reckoning for ten High Priority Districts identified by the Central Government under its letter dated 28.12.2017 which were found lacking in health services as per identification made by the NITI Ayog based on a composite index of four parameters namely health, nutrition, education infrastructure and deprivation. **I am of the considered view that to the aforesaid extent the challenge to the Notification dated 28.2.2018 notifying 1003 CHCs and PHCs is thus quite baseless, without merit and is deserving of dismissal. It is so held.**

However, I am equally of the considered view that the challenge in the petition to the inclusion of service in rural areas as defined by the State Government on the payment of rural allowance without anything more and having no relation whatsoever with the criteria for ascertainment of difficult and / or remote areas as laid down by the Apex Court in the case of State of Haryana & Anr. Versus State Dr. Narender Soni & Ors. (supra) and endorsed by the Apex Court in the subsequent case of Dr. Amit Bagra & Ors. Versus State of



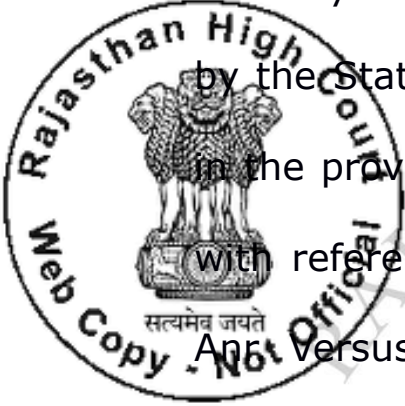
Rajasthan & Ors. is liable to succeed. This, as I find no force in the contention of the Mr. N.M. Lodha, the learned Advocate General, Mr. Rajendra Prasad, AAG for the State and Mr. A.K. Sharma, Sr. Counsel appearing for the private respondents that the inclusion of service as medical officers (doctors) in rural areas (even without regard to inaccessibility of the area, without natural and / or environmental difficulty therein, without lack of physical - social infrastructure relating to education, water and electricity supply, housing etc. all together acting as a drag on the willingness of the governmental doctors working there) in the Notification dated 28.2.2018 is justifiable only for the broad brush reason of interest of justice as the incumbents on the rural posts not covered by the 1003 PHCs / CHCs otherwise notified, have rendered medical services to the rural population in the State of Rajasthan for several years and denying them incentives at this stage would be unjust/unfair. It is well settled that incentives are in the nature of concession. To avail the incentives, the pre-conditions statutorily provided therefor must be strictly satisfied. Admittedly the Regulations of 2000 are a complete code in themselves for admissions into Post Graduate Degree and Diploma Courses in Medicine. The proviso to Regulation 9(IV) of the Regulations of 2000 incorporates the criterion for the incentives. There can be no incentive beyond the stated statutory criterion. Grant of



incentive beyond the statutory criterion would be a fraud on the statute. The fundamental first principle for PG admissions is that they are to be made on the basis of merit list prepared following a NEET examination each year and courses are to be allotted to the successful students on the basis of their merit and choice of college / subject. Indeed the merit list following the NEET examination for admissions into Post Graduate courses is to be drawn allowing for benefit of service in remote and / or difficult areas as notified by the State Government to in-service Doctors. Until the in-service Doctors seeking benefit of the proviso to Regulation 9(IV) of the Regulations of 2000 have worked on the posts identified as in remote and / or difficult areas with reference to disclosed objective criterion relatable to the judgments of the Apex Court in State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) and State of Rajasthan Versus Dr. Amit Bagra & Ors. (supra), they cannot be entitled to the incentive. Mere service in rural areas cannot be equated with service in remote and / or difficult area and this fact has been recognized by the State Government itself as will be shown hereafter. It is noteworthy that in Dr. Amit Bagra (supra) the Apex Court was seized of a situation in which in-service Doctors were granted the benefit of incentive under the proviso to Regulation 9(IV) of the Regulations of 2000 only by virtue of rural service (payment of rural allowance) being



equated by a notification as service in remote and / or difficult areas. The Apex Court only saved such admission for that year i.e. 2017 – apparently as the session was under way and much into the academic year when the decision was rendered on 15.12.2017. The Apex Court however for the future year admissions specifically directed definition afresh by the State Government of “remote and / or difficult areas” in the proviso to Regulation 9(IV) of the Regulations of 2000 with reference to its earlier judgment in State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) and State of Uttar Pradesh and Others Versus Dinesh Singh Chauhan (supra). If the Apex Court in Dr. Amit Bagra (supra) had found incentive under proviso to Regulation 9(IV) of the Regulations of 2000 to those who merely rendered rural service in area not objectively defined as remote and / or difficult as legal, there would have been no occasion for it to direct that the “remote and / or difficult areas” be defined afresh for future PG admissions with reference to State of Harayana & Anr. Versus Dr. Narender Soni & Ors. (supra). Besides grant of incentive to in-service Doctors only on basis of rural service would be in the cross-hair of the judgment of the Apex Court in State of Haryana & Anr. Versus Dr. Narender Soni & Ors. (supra) wherein in similar situation of rural areas being defined as remote and / or difficult without anything more, the Apex Court had set-aside admissions on



that basis to PG diploma / degree courses. The State Government has in recognition of the obtaining legal position recorded above provided in the impugned notification dated 28.2.2018 itself that the incentive of service in rural areas, without the said area being notified as remote and / or difficult area for admission to PG Degree and Diploma Courses in Medicine will not be available after 30.4.2018.

In the circumstances, I cannot find any plausible and legal justification in allowing incentive under the proviso to Regulation 9(IV) of the Regulations of 2000 to in-service Doctors in rural areas simplicitor without such rural areas being remote and / or difficult even upto 30.4.2018 as is sought to be done under the impugned Notification dated 28.2.2018. **To that extent, the Notification dated 28.2.2018 is quashed and set-aside.**

Petition stands partly allowed accordingly.

(ALOK SHARMA) J.
सत्यमेव जयते