REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.8179-8181 of 2017
(Arising out of SLP(C) Nos.15171-15173 OF 2017)

STATE OF HARYANA AND

ANOTHER ETC. ETC. ...APPELLANT(S)

VERSUS

DR. NARENDER SONI

AND OTHERS ETC. ETC. ...RESPONDENT(S)

With

Civil Appeal Nos.8183-8185 of 2017
(Arising out of SLP(C) Nos.15495-15497 of 2017)

HIMANSHU MOUDGIL ...APPELLANT

VERSUS

THE STATE OF HARYANA ...RESPONDENT

With

Civil Appeal No.8182 of 2017
(Arising out of SLP(C) No.15494 of 2017)

DR. ANKIT ...APPELLANT

VERSUS

THE STATE OF HARYANA ...RESPONDENT

J U D G M E N T

NAVIN SINHA, J.

Leave granted.

2. The three appeals arise from a common order dated 09.05.2007 allowing the writ petitions heard analogous. The notification dated 05.05.2017, issued by the State of Haryana, notifying remote andor difficult areas in the State for grant of weightage in marks obtained in the National Eligibility-cum-Entrance Test (NEET) for admission to various postgraduate Medical/Dental courses under Regulation 9(IV) of the Postgraduate Medical Education Regulations, 2000 (hereinafter referred to as the "Regulations"), has been set aside, with directions for fresh counselling.

3. Learned Senior Counsel Shri Subramanian Prasad and Shri Mahabir Singh, and Learned Counsel Ms. Aishwarya Bhati, on behalf of the appellants, submit that the notification dated 05.05.2017 was not issued in haste. The policy decision was taken by a committee headed by the Director General Health Services. The Committee took into consideration an earlier notification of 21.09.2005 identifying difficult rural areas, then applied four specified criteria to identify remote and/or difficult areas from amongst them, based on

unwillingness of Doctors to be posted and consequent vacancies at these places which were affecting health care. These four criteria were,

> (a) Health institutions not preferred by Doctors for posting,
>
> (b) CHCs and PHCs falling in the areas beyond 10 kilometers from the municipal limits,
>
> (c) Challenging and difficult institutions/areas identified by the department in 2005 and 2006, and
>
> (d) PHCs/CHCs falling in less developed areas of Mewat and Siwalik areas.

The notification was in consonance with the directions in ***State of U.P. versus Dinesh Singh Chauhan***, (2016) 9 SCC 749, to cover up the demand for basic health care, commensurate facilities and meet the inertia amongst young Doctors to go to such areas thus serving a dual purpose.

4. Reliance was further placed on the National Rural Health Statistics, 2014-2015 regarding the large number of vacancies in the State of Haryana. No malafides had been alleged. The State was best suited to decide policy matters for identification of remote and/or difficult areas, the need for doctors in such areas and the manner in which it was to be filled up by

offering incentives. The notification is neither arbitrary or irrational. The 1st round of counselling has already been held and admissions taken. Any interference at this stage by annulling the earlier counselling also, will only create more complications and delay the process of admissions.

5. Senior Counsel Ms. Indu Malhotra and Senior Counsel Shri Vikaramjeet Banerjee, appearing for the respondents submitted that the High Court has rightly held that the notification was issued in hot haste, and only after the result of the NEET had been published. It was acted upon even before its publication in the gazette. The subsequent publication will not cure the illegality. The Committee was constituted on 04.05.2017. The issuance of the impugned notification the very next day covering 115 Community Health Centers and 498 Primary Health Centers is itself evidence of the haste with which the decision was taken. The criteria adopted for identifying remote and/or difficult areas was arbitrary, based on no relevant material, and had no co-relation to the object and purpose of Regulation 9 (IV).

Unwillingness of Doctors to join posting at specified locations not to their liking, cannot be the criterion for such identification. The notification dated 21.09.2005 sought to be relied upon, pertained to a general transfer policy. In any event, it had no relevance in the year 2017 because of developments that have taken place in the State thereafter. The High Court has rightly held that notifying places as remote and/or difficult in the vicinity of the municipal committees/councils was not sustainable. The identification of the areas could not be for the purpose of medical admission only as held in ***D.S. Chauhan*** (supra). Counselling has been held subsequently on 22.05.2017 and 23.05.2017 notified by the Directorate of Medical Education and Research, Haryana, in teeth of the interim order dated 16.05.2017.

6. We have also heard Sri Gaurav Sharma. learned counsel on behalf of the Medical Council of India.

7. The respective submissions have been considered. On 16.03.2017, the admission procedure for 2017-2018 was notified. There had been no identification of remote and/or

difficult areas by the State government at this stage. It was only after the order of the High Court dated 21.04.2017 that the authorities woke up from stupor and constituted a Committee on 04.05.2017, days before the first counselling to be held on 07.05.2017. The notification dated 21.09.2005, which is stated to be the basis for the notification dated 05.05.2017, pertained to a general transfer policy. The criteria for transfer/postings and for grant of weightage to incentivise working in remote and/or difficult areas to serve a dual purpose cannot be the same. The submission that the impugned notification is not a reproduction but the outcome of a truncated version of the former by application of mind does not appeal. To identify an area as remote and/or difficult on the basis of unwillingness of Doctors to join at those places, which can be for myriad reasons, cannot be held to be a valid and relevant criteria. Similarly vacancies at any particular place can again be for various reasons and cannot be directly and conclusively related to unwillingness of Doctors to join at such places. The State is first required to identify remote and/or difficult areas, and then analyse the lack of

availability of Doctors at these locations. To first identify locations where Doctors are reluctant to be posted and then classify them as remote or difficult areas is reversing the entire decision making process, akin to placing the cart before the horse. The High Court has noticed that several of them were located where municipal committee/council exists, 10 places are such which are sub-divisions in the Districts concerned and many of the Community Health Centres and Primary Health Centres were located on National Highways or State Highways including in cities with large population which could not be said to be remote and/or difficult areas, observing that Haryana was a developed State with good road communications. Additionally, the impugned notification was implemented and acted upon in the 1st counselling even before its publication in the Gazette, only after which it could have come into force as mentioned in the same.

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 purposes of admission in postgraduate courses, contrary to the guidelines in D.S. Chauhan (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 Systems Resource 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 Himalayan districts or in some NE districts). In terms of scoring, these facilities within the 60km zone are scored A0. This cut-off of 60km is chosen as in most circumstances 60km 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 facility- 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. A 5 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 area/ 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

A1. To this we add another score of 0.5 for being more than 30km form block HQ and another 0.5 for being more than 10 km off the national highway. This makes any facility conforming to paragraph “3 a” above get a score of A2.

If the facility had a score of A1 or A 1.5 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 A 1.5 would become a net A2 and get categorised as difficult.

If the facility had a score of A 2 or A 2.5 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 A 1.5 it would become a net A3 and get categorised as Most difficult.

Lack of public transport including lack of a taxi service could also make an A2 into an A3.

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. Or if the tribal areas has a high malaria problem (Falciparum and above API 5) in addition to it being hilly and forested one could put it as 2. 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

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 9(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.

16. Appropriately, the present is a fit case for initiation of contempt proceedings by notifying counselling on 22.05.2017 and 23.05.2017 in the face of the interim order dated 16.05.2017. The conduct of the officials of the Directorate of Medical Education and Research, Haryana is deprecated. Such adventurism in future, must be desisted, except at their

own peril. Any counselling done contrary to the interim order is, therefore, a nullity and invalid from its nativity.

17. In the peculiar facts and circumstances of the case, the State of Haryana, if it wishes to give weightage for admission in postgraduate courses under the proviso to Regulation 9 (IV), it must come out with a fresh notification identifying remote and/or difficult areas as discussed in the present order, within one week from today and to facilitate the same, the last date for admission is extended to 10th of June, 2017.

18. The appeals are dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[NAVIN SINHA]

NEW DELHI;
MAY 25, 2017.

ITEM NO.1 COURT NO.5 SECTION IV-B
(For Judgment By Notice)

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) Nos.15171-15173/2017

(Arising out of impugned final judgment and order dated 9.5.2017 in CWP Nos.8649/2017, 9192/2017 and 9356/2017, passed by the High Court Of Punjab and Haryana at Chandigarh)

The State of Haryana and Another Etc. Etc. ...Petitioner(s)

VERSUS

Dr. Narender Soni and Others Etc. Etc. .....Respondent(s)

(For exemption from filing c/c of the impugned judgment on IA 40523 of 2017 and for appropriate orders/directions on IA 42500/2017 and for stay application on IA 42609/2017)

With SLP(C) Nos.15495-15497/2017 (For exemption from filing c/c of the impugned judgment on IA 40732/2017)

With SLP(C) Nos.15494/2017 (For exemption from filing c/c of the impugned judgment on IA 40697/2017 and for permission to file lengthy list of dates on IA 40699/2017)

Date : 25/05/2017 These matters were called on for pronouncement of judgment today.

(VACATION BENCH)

For Petitioner(s) Dr. Monika Gusain, Adv.

Mr. B. Ramana Murthy, Adv.

Ms. Aishwarya Bhati, Adv.
Mr. Jaideep Singh, Adv.
Mr. Amit Verma, Adv.

Ms. Heena Khan, Adv.

For Respondent(s) **Mr. Kush Chaturvedi, Adv.**

Hon'ble Mr. Justice Navin Sinha pronounced the reportable Judgment of the Bench comprising Hon'ble Mr. Justice L. Nageswara Rao and His Lordship.

Leave granted.

The appeals are dismissed in terms of the signed reportable judgment.

As a sequel to the above, pending interlocutory applications, if any, stand disposed of.

(Neetu Khajuria) **(Madhu Narula)**
Court Master **Court Master**
(Signed Reportable Judgment is placed on the file)