

(2017) 04 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : 581 of 2017

Dr. Aarti Dhatwalia and others

APPELLANT

Vs

State of H.P. and others

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Constitution of India, Article 14, Article 226 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts to Issue certain writs
Medical Council Act, 1956, Section 33,
Section 20 - Power to make regulations - Post-graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical education

Citation : (2017) 04 SHI CK 0064

Hon'ble Judges : Tarlok Singh Chauhan, Sandeep Sharma

Bench : Division Bench

Advocate : Sanjeev Bhushan, Satyen Vaidya, Ranjana Parmar, Rajesh Kumar, Vivek Sharma, Karan Singh Parmar, Anuj Gupta, M L Sharma, Surender Sharma, Mohit Thakur, Naresh Kaul, Shrawan Dogra, Romesh Verma, Rupinder Singh, Kush Sharma, B C Negi, Raj Negi

Judgement

1. Since common question of law and facts arise for consideration in this batch of writ petitions, the same were heard together and are disposed of by a common order.
2. All these writ petitions are directed against the notification issued by the State Government on 20.3.2017 whereby the State Government in pursuance to the judgment rendered by the Hon'ble Supreme Court in State of Uttar Pradesh and others vs. Dinesh Singh Chauhan (2016) 9 SCC 749 issued PG Policy for pursuing PG (MD/MS) Degree/Diploma Courses within the State of Himachal Pradesh under Medical Education Department w.e.f. the academic session 2017-18, more particularly, insofar as it relates to Clause 1 (ii) thereof, which declares for the purpose of incentive at the rate of 10% to the in-service GDOs of the marks

obtained in National Eligibility Entrance Test-PG (NEET-PG) for each completed year of service in any of the area declared as difficult/remote/backwards as per the notifications enclosed as Annexures A, B and C therewith.

3. However, before proceeding to deal with the issues on merit, it would be necessary to give a brief background of the case.

4. The Medical Council of India with the previous sanction of the Central Government had an exercise of power conferred by Section 33 read with Section 20 of the Indian Medical Council Act, 1956 framed Postgraduate Medical Education Regulations, 2000 (hereinafter referred to as "Regulation of 2000"), which were amended, from time to time, and we are presently concerned with Regulation 9 which was amended vide notification dated 15.2.2012 and same reads as under: "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 Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(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 Post Graduate Courses, the Central

Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate 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 candidate 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 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.

(V) No candidate who has failed to obtained the minimum eligibility marks as prescribed in subclause (II) 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 State Government or the Authority appointed by them, and the remaining 50% (Fifty Per Cent) of the seats shall be filled by the concerned medical colleges/institutions 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 Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as defined by State Government/Competent authority from time to time.

(VIII) The Universities and other authorities concerned shall organize admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super specialty 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 recognized 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."

5. The interpretation to be given to Regulation 9 including 9(IV) was subject matter before the Hon"ble Supreme Court in Dinesh Singh Chauhan's case (supra) wherein the Hon"ble Supreme Court has categorically held that it remains no longer resintegra that Regulation 2000 including Regulation 9 is self contained Code laying down the procedure to be followed for admission to the Postgraduate degree courses. Even the validity of Regulation 9 (4) was examined by the Hon"ble Supreme Court and it was held that same was proper and reasonable and also fulfilled the test of Article 14 of the Constitution being larger public interest.

6. Now, a crucial question which emerges for consideration is how far the instructions issued by the State Government for admitting the students to the Postgraduate decree courses are in conformity with the Regulation 9 (4).

7. It is vehemently argued by the petitioners that in absence of a clear decision having being taken by the State Government identifying the difficult and remote areas, the incentive cannot be extended on the basis of notification dated 20.3.2017 or on the basis of Annexures A, B & C contained in the prospectus-cum-application form.

8. At the same time, it is urged that the State Government in terms of the judgment in Dinesh Singh Chauhan's case (supra) was required to make a declaration on the basis of the decision taken at the highest level; and the same was to be applicable for all the beneficial schemes of the State for such area and not limited to the matter of admission to the Post Graduation Medical Courses, whereas, the respondents have blindly adopted the earlier notifications and appended the same with the prospectus as Annexures A, B and C. It is further averred that though the petitioners have no quarrel with the areas identified in Annexure A to be remote and/or difficult areas, but insofar as the Annexures B and C are concerned, not only are the areas mentioned therein are overlapping, but that apart even many of the areas as mentioned therein are neither backward and difficult areas and in many cases these areas cannot even be termed to be rural.

9. An additional argument is raised that the manner in which the percentage of marks to be awarded under Regulation 9 (IV) of the Regulations has not at all been specified by the respondents. Therefore, the regulations deserve to be quashed and set aside. In addition thereto, it is also averred that the mechanism as provided for in Dinesh Singh Chauhan's case (supra) was to apply prospectively and not from the Academic Sessions 2016-17. Lastly, in two of the

petitions, a grievance has been made that the experience being rendered in the remote/difficult areas by the petitioners is not being counted on the pro-rata basis.

10. The respondents have filed their reply in CWP No.581 of 2017 and the same stands adopted in all other cases. It is averred in the reply that the prospectus-cumapplication form for counseling has been issued strictly as per the policy of the State Government as notified vide notification dated 20.03.2017 and the same in turn has been notified as per the judgment of the Hon''ble Supreme Court in Dinesh Singh Chauhan's case (supra). It is further averred that in terms of the judgment of the Hon''ble Supreme Court, the State had been posited with the discretion to notify the areas in the given State to be remote, tribal or difficult areas, which declaration was made on the basis of the decision taken at the highest level and is applicable to all beneficial schemes of the State for such areas and not limited to the matter of admissions to Post Graduate Medical Courses. It is also averred that insofar as the overlapping of the area declared as difficult/remote/tribal/backward of the State Government is concerned, the notified policy itself contains a specific note that the areas mentioned in the three categories of the last notifications i.e. Annexures A, B and C are not mutually exclusive and there may be overlaps and further that though a particular General Duty Officer may be eligible under more than one category, but his eligibility would be covered only under one of the categories. We have heard the learned counsel for the parties and gone through the material placed on record.

11. In order appreciate the controversy in issue, it would be apt to refer to the relevant observations of the Hon''ble Supreme Court in Dinesh Singh Chauhan's case (supra) which read thus:- "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 muchless by executive instructions that may undermine the procedure for admission to Post Graduate Medical Courses enunciated by the Central Legislation and Regulations framed thereunder, being a subject falling within the Entry 66 of List I to the Seventh Schedule of the Constitution (See: Preeti Srivastava v.. State of M.P.(1999) 7 SCC 120. The procedure for selection of candidates for the Post Graduate 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 Post Graduate "Degree" Courses. Regulation 9 is a composite provision prescribing procedure for selection of candidates - both for Post Graduate "Degree" as well as Post Graduate "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 Post Graduate 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 Scheduled Caste, Scheduled Tribe or 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 the NEET and the admission to Post Graduate Courses in the concerned 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 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. 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 inservice candidates (who have served in notified remote and difficult areas in the State).

26 to 32... XXX XXX XXX

33. As aforesaid, the real effect of Regulation 9 is to assign specified marks commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State linked to the marks obtained in NEET. That is a procedure prescribed in the Regulation for determining merit of the candidates for admission to the Post Graduate "Degree" Courses for a single State. This serves a dual purpose. Firstly, the fresh qualified Doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to Post Graduate "Degree" Courses of their choice. Secondly, the Rural Health Care Units run by the Public Authority would be benefitted by Doctors willing to work in notified rural or difficult areas in the State. In our view, a Regulation such as this subserves larger public interest. Our view is reinforced from the dictum in *Dr. Snehelata Patnaik v. State of Orissa* (1992) 2 SCC 26. The three Judges' Bench by a speaking order opined that giving incentive marks to inservice candidates is inexorable. It is apposite to refer to the dictum in the said decision which reads thus: (SCC pp.26-27, paras1-2)

"1. We have already dismissed the writ petition and special leave petitions by our order dated December 5, 1991. We would however, like to make a suggestion to the authorities for their consideration that some preference might be given to in-service candidates who have done five years of rural service. In the first place, it is possible that the facilities for keeping up with the latest medical literature might not be available to such in- service candidates and the nature of their work makes it difficult for them to acquire knowledge about very recent medical research which the candidates who have come after freshly passing their graduation examination might have. Moreover, it might act as an incentive to doctors who had done their graduation to do rural service for some time. Keeping in mind the fact that the rural areas had suffered grievously for nonavailability of qualified doctors giving such incentive would be quite in order. Learned counsel for the respondents has, however, drawn our attention to the decision of a Division Bench of two learned Judges of this Court in *Dr. Dinesh Kumar v. Motilal Nehru Medical College*, (1986) 3 SCC 727. It has been observed there that merely by offering a weightage of 15 per cent to a doctor for three years" rural service would not bring about a migration of doctors from the urban to rural areas. They observed that if you want to produce doctors who are MD or MS, particularly surgeons, who are going to operate upon human beings, it is of utmost importance that the selection should be based on merit. Learned Judges have gone on to observe that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-graduate courses are concerned (see *Dinesh Kumar case*, SCC para 12 at page 741).

2. In our opinion, this observation certainly does not constitute the ratio of the decision. The decision is in no way dependent upon these observations. Moreover, those observations are in connection with all India Selection and do not have equal force when applied to selection from a single State. These observations, however, suggest that the weightage to be given must be the bare minimum required to meet the situation. In these circumstances, we are of the view that the authorities might well consider giving weightage up to a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities. We also clarify that these suggestions do not in any way confer any legal right on in-service students who have done rural service nor do the suggestions have any application to the selection of the students up to the end of this year."

(emphasis supplied)

34. 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 *State of M.P. v. Gopal D.Tirthani* (2003) 7 SCC 83 . 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.

43. Presumably, realizing this position writ petition has been filed to challenge the validity of 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 post-graduate 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. There is neither 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 un-canalized power and disregards the settled position that for consideration after the graduate level, merit should be the sole criteria. Further, there is 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 health care facilities in remote and difficult areas in the State for want of Doctors. In fact there is a proposal to make one year service for MBBS students to apply for admission to Post Graduate Courses, in remote and difficult areas as compulsory. That is kept on hold, as was stated before the Rajya Sabha. The provision in the form of granting weightage of marks, therefore, was to give incentive to the in-service candidates and to attract more graduates to join as Medical Officers in the State Health Care Sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in the NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing health care facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to Post Graduate Medical Courses. Not even one instance has been brought to our notice to show that some areas which are not remote or difficult areas have been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to Clause (IV) is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to Clause (IV) in particular is just, proper and reasonable and also fulfill the test of Article 14 of

the Constitution, being in larger public interest."

12. It would be evidently clear from a perusal of the aforesaid extracted portion that regulation 9 of the regulations has been held to be a self-contained code and the admissions to the Medical Courses have to be made strictly in accordance with the procedure prescribed therein. Indisputably, the present scheme of regulations do not provide for reservation to the in-service candidates in Post Graduate Degree Courses and the same only postulates giving weightage of marks to the "specified in-service candidates" who have worked in notified remote and/or difficult areas in the State, both for the Post Graduate Degree Courses as also Post Graduate Diploma Courses. It is also evidently clear that the proviso added to the Clause 4 of Regulation 9 further envisages that while determining merit of the candidates, who are in-service of government/public authority, weightage in marks has to be given as incentive @ 10% of the marks obtained for each year of the service in remote and/or difficult areas upto 30% of the marks obtained in NEET Examination. As regards question as to which is the difficult areas, the same has been left open for the State Government/competent authority to define from time to time with a rider that the declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to Post Graduate Medical Courses.

13. Adverting to the facts of the case, learned counsel for the petitioners would vehemently argue that once the Hon"ble Supreme Court has categorically held the regulation 9 to be a self-contained code, then the expression therein has to be strictly construed. It is vehemently argued that the expressions used in regulation 9(IV) are limited or rather are confined to "difficult, and/or remote areas" and not to any other areas like hard, difficult etc.

14. We are afraid that keeping in view the avowed and laudable object of the regulations, such a hyper construction is not permissible. What is the object of having such a provision has clearly been underlined by the Hon"ble Supreme Court in its judgment in Dinesh Singh Chauhan's case in paras 30 to 33 (supra) wherein it has been categorically held that the imperative of giving some incentive marks to doctors working in the State in the notified areas cannot be under-scored for the concentration of doctors is in urban areas, whereas, the rural areas are neglected.

15. Now, further question as to whether the expression "remote and difficult areas" are to be literally construed, the answer as observed would be in the negative for the simple reason that while construing these provisions in Dinesh Singh Chauhan's case (supra), the Hon"ble Supreme Court itself has used varied expressions like remote, difficult, rural, tribal etc.

16. Now, adverting to the notification dated 20.03.2017 and the Annexures B and C appended with the prospectus, it would be noticed that these notifications have been issued at the highest level by different departments of the

Government and are applicable to all beneficial schemes of the State Government for such area and are not at all limited to the matter of admissions to the Post Graduate Medical Courses. Though, an attempt has been made to vehemently canvass that the notification B which is in continuation of the already existing notification dated 18.11.2015 was infact issued with regard to admission. However, a perusal of the earlier notifications dated 09.12.2011, 02.04.2013, 30.09.2013 in continuation whereof this notification dated 18.11.2015 has been issued completely belies and contradicts the stand of the petitioners and these notifications were infact not issued for the purpose of admission alone.

17. As regards the other contention of the petitioners that these notifications, i.e. Annexures "B" and "C include areas, which are overlapping, we really find no merit in the same, as the overlapping is inconsequential. Even otherwise it stands clarified in the prospectus itself that there could be overlapping and the eligibility would only be considered under one category, as is evidently clear from the notification dated 20.3.2017 wherein note appended to Clause 1 (C) reads thus: "The areas mentioned in the above three categories of letters/notifications are not mutually exclusive and there may be overlaps.

Though a particular General Duty Officer (GDO) may be eligible under more than one category mentioned supra but it is sufficient if his/his eligibility is covered in any one of the category".

18. That apart, there is bound to be overlapping of areas since the notifications (Annexures "B" and "C") have been issued by different Departments of the Government for different purposes and are applicable for beneficial schemes of the State for such areas and not limited to the matter of admissions to Post-Graduate courses.

19. In addition to the above, we really do not find that there can by any literally/dictionary meaning of "remote and difficult", which can be borrowed and it is always open for the State Government to take its decision in identifying such areas where the doctors are not temperamentally inclined to go and render their services.

20. Above all, it is for the State Government to take its decision in identifying the remote and difficult areas irrespective of the nomenclature and such decisions are not open to judicial review or scrutiny unless there is impeachable evidence on record in rebuttal to revisit the decision of the State Government.

21. Notably, the petitioners have not placed on record any such material whereby this Court can be persuaded to have a re-look or revisit the decision of the State Government.

22. It is more than settled that so long as the decision of the Government is not actuated with any malice or is not an outcome of arbitrary and whimsical act, the same should not be interfered by the Court of law under Article 226 of the

Constitution of India.

23. It cannot be disputed that when the Government forms a policy, it is based upon number of circumstances on facts, law including constraints based on its resources. It is also based upon expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavit. The Court would dissuade itself from entering into this realm which belongs to the executive (Refer: State of Punjab and others versus Ram Lubhaya Bagga etc. etc. AIR 1998 SC 1703).

24. It is well settled that the Court cannot strike down a policy on decision taken by the Government merely because it feels that another decision would have been fairer and more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provision or arbitrary or irrational or an abuse of power. (See: Ram Singh Vijay Pal Singh and others versus State of U.P. and others (2007) 6 SCC 44, Villianur Iyarkkai Padukappu Maiyam versus Union of India and others (2009) 7 SCC 561, State of Kerala and another versus Peoples Union for Civil Liberties, Kerala State Unit and others (2009) 8 SCC 46.

25. The scope of judicial review and its exclusion was a subject matter of a recent decision by three Judges of the Hon'ble Supreme Court in Census Commissioner and others vs. R. Krishnamurthy (2015) 2 SCC 796 and it was held that it is not within the domain of Courts to embark upon enquiry as to whether particular public policy is wise and acceptable or whether better policy could be evolved, Court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded on ipse dixit offending Article 14. It was held as under: "23. The centripodal question that emanates for consideration is whether the High Court could have issued such a mandamus commanding the appellant to carry out a census in a particular manner.

24. The High Court has tried to inject the concept of social justice to fructify its direction. It is evincible that the said direction has been issued without any deliberation and being oblivious of the principle that the courts on very rare occasion, in exercise of powers of judicial review, would interfere with a policy decision.

25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue Notification regarding the manner in which the census has to be carried out and the Central Government has issued Notifications, and the competent authority has issued directions. It is not within the domain of the Court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of

constitutional silence or abeyance. But, the courts are not to plunge into policy making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the Executive. If a policy decision or a Notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the Notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner. 26. In this context, we may refer to a three-Judge Bench decision in *Suresh Seth V. Commr., Indore Municipal Corporation*, (2005) 13 SCC 287 wherein a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a Member of the Legislative Assembly and also of a Mayor of a Municipal Corporation. Repelling the said submission, the Court held: (SCC pp. 288-89, para 5)

"5.....In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Assn. v. Union of India* (1989) 4 SCC 187 (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of J & K v A.R. Zakki*, 1992 Supp (1) SCC 548. In *A.K. Roy v. Union of India*, (1982) 1 SCC 271, it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature."

27. At this juncture, we may refer to certain authorities about the justification in interference with the policy framed by the Government. It needs no special emphasis to state that interference with the policy, though is permissible in law, yet the policy has to be scrutinized with ample circumspection.

28. In *N.D. Jayal and Anr. V. Union of India & Ors.* (2004) 9 SCC 362, the Court has observed that in the matters of policy, when the Government takes a decision bearing in mind several aspects, the Court should not interfere with the same. In *Narmada Bachao Andolan V. Union of India* (2000) 10 SCC 664, it has been held thus: (SCC p. 762, para 229) "

229. "It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an

infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution."

29. In this context, it is fruitful to refer to the authority in *Rusom Cavasiee Cooper V. Union of India*, (1970) 1 SCC 248, wherein it has been expressed thus: (SCC p. 294, para 63)

"63....It is again not for this Court to consider the relative merits of the different political theories or economic policies... This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law".

30. In *Premium Granites V. State of Tamil Nadu*, (1994) 2 SCC 691 while dealing with the power of the courts in interfering with the policy decision, the Court has ruled that: (SCC p.715, para 54)

"54. it is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy could be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right."

31. In *M.P. Oil Extraction and Anr. V. State of M.P. & Ors.*(1997) 7 SCC 592, a two-Judge Bench opined that: (SCC p. 611, para 41)

"41..... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State."

32. In *State of M.P. V. Narmada Bachao Andolan & Anr.*(2011) 7 SCC 639, after referring to the *State of Punjab V. Ram Lubhaya Bagga* (1998) 4 SCC 117, the Court ruled thus: (SCC pp. 670-71, para 36)

"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies [pic]are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of

power. (See Ram Singh Vijay Pal Singh v. State of U.P., (2007) 6 SCC 44, Villianur Iyarkkai Padukappu Maiyam v. Union of India, (2009) 7 SCC 561 and State of Kerala v. Peoples Union for Civil Liberties, (2009) 8 SCC 46.)"

33. from the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the Court is not expected to sit as an appellate authority on an opinion."

26. Notably, scope of judicial review was yet again subject matter of a very recent decision rendered by the Hon'ble Supreme Court in Center for Public Interest Litigation Vs. Union of India W.P.(C) No. 382 of 2014, decided on 8.4.2016, wherein the spectrum usage charges granted to various telecom companies by the Government of India was questioned and it was held that unless a policy decision was found to be arbitrary, based on irrelevant considerations or malafide or against statutory provisions, the same does not call for any interference by the Court in exercise of powers of judicial review. It is apt to reproduce the following observations:- "19. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the Courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In Jal Mahal Resorts (P) Ltd. v. K.P. Sharma, 2014 8 SCC 804, the Court underlined the principle in the following manner:

116. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of

governance ingrained in the theory of separation of powers. In fact, this Court in *M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592 at p. 611 has unequivocally observed that:

"41. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

117. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial *laxman rekha* while examining the correctness of an administrative decision taken by the State or a central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalization wherein global players are also involved as per policy decision."

20. Minimal interference is called for by the Courts, in exercise of judicial review of a Government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as Courts are not well-equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664 and reiterated in *Federation of Railway Officers Assn. v. Union of India* (2003) 4 SCC 289 in the following words:

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."

21. Limits of the judicial review were again reiterated, pointing out the same position by the Courts in England, in the case of *G. Sundarrajan v. Union of India*[6] in the following manner: 15.1. Lord MacNaughten in *Vacher & Sons Ltd. v. London Society of Compositors* (1913 AC 107: (1911-13) All ER Rep 241 (HL) has stated:

"... Some people may think the policy of the Act unwise and even dangerous to the community. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction."

15.2. In *Council of Civil Service Unions v. Minister for the Civil Service* (1985 AC 374), it was held that it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy are fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as "procedural impropriety."

15.3 This Court in *M.P. Oil Extraction v. State of M.P.* (1997) 7 SCC 592 held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.

15.4 Reference may also be made of the judgments of this Court in *Ugar Sugar Works Ltd. v. Delhi Admn.* (2001) 3 SCC 635, *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal* (2007) 8 SCC 418 and *Delhi Bar Assn. v. Union of India* (2008) 13 SCC 628.

15.5. We are, therefore, firmly of the opinion that we cannot sit in judgment over the decision taken by the Government of India, NPCIL, etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russian Agreement."

22. When it comes to the judicial review of economic policy, the Courts are more conservative as such economic policies are generally formulated by experts. Way back in the year 1978, a Bench of seven Judges of this Court in *Prag Ice & Oil Mills v. Union of India* and *Nav Bharat Oil Mills v. Union of India*, (1978) 3 SCC 459 carved out this principle in the following terms:

"We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts.

23. Taking aid from the aforesaid observations of the Constitution Bench, the Court reiterated the words of caution in *Peerless General Finance and Investment Co. Limited v. Reserve Bank of India*, (1992) 2 SCC 343 with the following

utterance:

"31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.

24. It cannot be doubted that the primary and central purpose of judicial review of the administrative action is to promote good administration. It is to ensure that administrative bodies act efficiently and honestly to promote the public good. They should operate in a fair, transparent, and unbiased fashion, keeping in forefront the public interest. To ensure that aforesaid dominant objectives are achieved, this Court has added new dimension to the contours of judicial review and it has undergone tremendous change in recent years. The scope of judicial review has expanded radically and it now extends well beyond the sphere of statutory powers to include diverse forms of "public" power in response to the changing architecture of the Government. (See : Administrative Law: Text and Materials (4th Edition) by Beatson, Matthews, and Elliott) Thus, not only has judicial review grown wider in scope; its intensity has also increased. Notwithstanding the same,

"it is, however, central to received perceptions of judicial review that courts may not interfere with exercise of discretion merely because they disagree with the decision or action in question; instead, courts intervene only if some specific fault can be established for example, if the decision was reached procedurally unfair.

25. The *raison d'être* of discretionary power is that it promotes decision maker to respond appropriately to the demands of particular situation. When the decision making is policy based judicial approach to interfere with such decision making becomes narrower. In such cases, in the first instance, it is to be examined as to whether policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy."

27. It would be noticed that though there may be certain sections of Medical Officers which may not subscribe and approve the decision of the Government, but the same cannot be nullified on this ground alone and this Court would only interfere with such decision if the petitioners can carve out a case falling within the well settled parameters of law relating to judicial review.

28. The petitioners have failed to point out as to how and in what manner the impugned decision of the Government is either arbitrary, irrational, much less, capricious or whimsical. They have further failed to point out that the decision is either arbitrary or based on irrelevant consideration or is malafide or against any statutory provisions, thus calling for no interference.

29. As regards one of the contentions raised by the petitioners that there is no mechanism as to how the percentage of marks under Regulation 9 (IV) is to be worked out, we find the said contention to be meritless as the mechanism for the same is already provided in Regulation 9 itself.

30. As regards the other contention of the petitioners that the procedure prescribed in Regulation 9 was to apply prospectively and could not be made applicable to this academic session. Suffice it to say that the Hon"ble Supreme Court has specifically directed the admission process as laid down in the case to be followed from the academic year 2016- 17 and onwards, as would be evident from para 46 of the judgment, relevant observation whereof read thus: "46.....In the peculiar facts on hand, we may instead mould the relief in the appeals before us by directing all concerned to follow the admission process for Academic Year 2016-17 and onwards strictly in conformity with the Regulations in force, governing the procedure for selection of candidates for Post Graduate Medical Degree Courses and including determination of relative merit of the candidates who had appeared in NEET by giving weightage of incentive marks to eligible in-service candidates."

31. Lastly, adverting to the contention raised by the petitioners in CWP No. 625 of 2017 and 667 of 2017 that the weightage as provided under Regulation 9 (IV) should be considered on pro rata basis commensurate with the actual length of service rendered in the remote/difficult areas, we feel inclined to accept the said submission.

32. The Hon"ble Supreme Court in Dinesh Singh Chauhan's case (supra) has in paragraph 35, (as extracted above), clearly observed that the proviso appended to the Regulation prescribes the measure in giving incentive marks to the in-service candidates, who have worked in notified remote and difficult areas in the State. Once that be the position, we really see no reason why the experience gained by the in-service candidate should only be calculated and rounded off in years and the services rendered in days and months should be totally written off. We really see no nexus and are even otherwise of the considered opinion that such interpretation would not only be harsh and oppressive but would be contrary to the provisions, more particularly, when it cannot be denied that the in-service candidate has no say in the matters of his postings and transfers and is bound to abide by the same or else face disciplinary proceedings or any other coercive or punitive action.

33. On the pointed query of the Court, it was informed by the learned Advocate General that the allocation of marks for weightage, as per the proviso, would

only be either 10%, 20% or would be 30% and in no case can a candidate be awarded any marks between the said range. We really find this to be illogical and contrary to the spirit of the Regulation, which clearly provides for the proviso, as being a measure to giving incentive marks to the in-service candidates, who have worked in the notified remote and difficult areas of the State. For example, in Dr. Sohil Sharma's case, the petitioner has worked in the remote/difficult area for 2 years and 357 days and according to the respondents, he would be only entitled to 2 years weightage ignoring his service of 357 days in the 3rd year, which is short only by a week. Such interpretation would not only be absurd but would be harsh and oppressive defeating the very avowed object of the Regulation.

34. Having said so, we find no merit in these petitions, except CWP Nos. 625 of 2017 and 667 of 2017, and the same are accordingly dismissed. In so far as CWP Nos. 625 of 2017 and 667 of 2017 are concerned, the same are partly allowed by directing the respondents to count the entire services rendered by these petitioners in remote/difficult areas on pro rata basis for the purpose of availing benefit of Regulation 9 (IV).

35. All the petitions are disposed of in the aforesaid terms, leaving the parties to bear their own costs.