(2016) 04 AHC CK 0058

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 1380, 34118 and 35050 of 2015.

Dr. Surya Kant Ojha & 6 Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:
Constitution of India, 1950 — Article 14, 15, 16
Indian Medical Council Act, 1956 — Section 20, 33
Postgraduate Medical Education Regulations, 2000 — Regulation 9

Citation : (2016) 4 ADJ 728 : (2016) 4 AllWC 3281 : (2016) 4 UPLBEC 3414

Hon'ble Judges : V.K. Shukla;Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Ratnakar Upadhyay and Radha Kant Ojha, Advocates, Krishna Kumar Singh and Indra Raj Singh, Advocates and Bijay Singh Sachan and Radha Kant Ojha, Advocates, for the Appellant

Final Decision : Disposed off

Judgement

V.K. Shukla, J.(Oral) - Civil Misc. Writ Petition No. 1380 of 2015 has been filed for quashing of the Government Orders dated 28.2.2014 and 17.4.2014 so far as it puts condition of working for three years in rural area being ultravires and also hit by Articles 14, 15 and 16 of the Constitution of India. Civil Misc. Writ Petition No. 34118 of 2015 has been filed for considering the application of petitioner dated 24.3.2015 for issuance of No Objection Certificate in favour of petitioner for giving the admission in MD/MS/Diploma in UPPGMEE-2015. Civil Misc. Writ Petition No. 35050 of 2015 has been filed for quashing of the declaration of the result dated 2.6.2015 and for permitting the petitioner to go for counselling on the basis of U.P. Post Graduate Medical Entrance Examination 2015 in PHMS Cadre. All the three writ petitions have been clubbed and have been taken up together.

2. Brief background of the case, as is emanating from the record in question, is that each and every petitioner is a member of Provincial Medical Health Services

and each one of the petitioner claims that as per the posting accorded to them they have been accorded placement and has been performing and discharging their duties. Petitioners submit that 30% quota had been fixed for undertaking the postgraduate course from amongst the incumbents belonging to Provincial Medical Health Services and in reference to the said policy decision that has been so taken Cabinet decision was taken on 16.1.2014 resulting in issuance of Government Order dated 28.2.2014. The object of the aforesaid scheme was to engage Provincial Medical Health Services Cadre members to go for higher education. The Government Order dated 28.2.2014 proceeded to make a mention that all those members of Provincial Medical Health Services Cadre would be available who have in different districts served in far remote backward areas in respective Community Health Centres/Primary Health Centres. After the said policy decision has been taken the examining university in its turn issued advertisement and therein the eligibility for admission has been provided for and as per the same only those incumbents were eligible to apply who have served for a period of three years in remote areas. Petitioners, at this juncture, are assailing that quoting condition of working of three years in remote rural areas is contrary to Articles 14, 15 and 16 of the Constitution of India as it creates class amongst class merely on the basis of placement and to redress this grievance petitioners filed Writ Petition No. 1380 of 2015 wherein this Court on 29.7.2015 has passed the following order;

"Though several opportunities have been granted by this Court to file a counter affidavit, no counter has been filed. The petition raises an important issue as to whether the reservation of 30% seats for in service candidates can be denied on the ground that they have not completed three years service in a rural area when the power to issue an appropriate posting lies with the State Government.

We are of the view that the Principal Secretary, Medical Education and Health must file his personal affidavit explaining the justification for the Government Order which is questioned and the position of the State Government. We clarify that no further adjournments would be granted and if no affidavit would be filed, the Court would be constrained to dispose of the petition on the basis of the materials as they stand on the record.

The counter affidavit shall be filed within a period of one month from today. List on 1 September 2015 in the additional cause list."

3. In the aforesaid writ petition counter affidavit has been filed and therein it has been contended that medical health system of State spreads from city to rural areas and the Government makes efforts to reach to the difficult areas also by establishing Primary Health Centre as well as Community Health Centre in rural and remote areas. It has also been mentioned that it is no secret that in the recent area on one ground or another ground a large number of doctors are preferring their posting in the urban area or in the areas covered under the Nagar Panchayat or local areas and in order to encourage the doctors, who are serving in the remote part of the district and to provide specialised medical

facilities to the rural areas of the district, the State has evolved a policy permitting those doctors for having Post Graduate Degree during their service tenure and in the said backdrop Cabinet has taken decision dated 16.1.2014 resolving to reserve 30% seats to those Provincial Medical Services doctors, who have completed three years service in the rural areas. In pursuance of Cabinet decision dated 16.1.2014 first Government Order was issued on 28.2.2014 vide which it was decided that in order to be eligible for admission on those 30% seats which are reserved for those doctors who must have completed three years service in the rural areas. By means of the aforesaid Government Order the detailed guidelines as well as terms and conditions have been provided for. It has also been mentioned that pursuant to the above Government decision a list of the PHC/CHC was issued for the year 2014 and recently in the year 2015 vide letter dated 23.4.2015 the list of the PHC/CHC was issued and the same has been uploaded on the website of the department in question and, thereafter, after uploading of the aforesaid list, some of the complaints have been received in the Government that few PHC/CHC have been wrongly shown in the rural areas whereas those are situated in the urban areas or city area, similarly, some of the eligible PHC/CHC has been erroneously left out after taking into consideration the objections received from different quarters, the matter was scrutinised and information from the Chief Medical Officers of all the districts were sought and they have been directed to verify the list of their districts so that the necessary corrections may be carried out and ultimately vide Government Order dated 26.5.2015 it was notified that all the PHC/CHC, which are not situated in the areas covered by Nagar Nigam/Nagar Panchayat/Nagar Palika etc. other rural areas PHC/CHC were notified for eligibility for the reservation of 30% postgraduate seats. It has also been mentioned that in pursuance to the above policy decision the examination was held in March 2015 and those doctors who were successful in the said examination and posted at rural areas or have completed requisite service in the rural area, they were permitted to counselling against those 30% reserved seats. It has also been asserted that State is fully competent to lay down the guidelines for admission to postgraduate medical course which is not contrary to any rules and regulations framed by the MCI and secondly the period of service required as minimum eligibility criteria are having nexus with object which the State Government wants to achieve i.e. to encourage the doctors for posting in the rural areas and to provide better medical facilities to the public of the rural areas.

4. This Court in the Writ Petition No. 35050 of 2015 on 9.10.2015 has proceeded to pass the following order;

"These three writ petitions have been filed for the same relief.

Connect with Writ Petition No. 1380 of 2015.

We prima facie find that the allotment of seats for admission in Post Graduate courses under the PMHS quota, is challenged on the ground that the fixation of the criteria for providing reservation with reference to identified Public Health

Centre and the incumbent working thereof is arbitrary.

The reservation for admission to Post Graduate courses in Medical Sciences to the extent of 30 per cent is provided under Government Order dated 28.2.2014 with the condition that all those incumbents, who have completed three years of service at distance and difficult backward areas of various districts to be identified by the State Government for over a period of three years, would be entitled to the benefit of said reservation.

According to the petitioner, it is for the State to appoint a Medical Officer at such PHC in the State as it deserves. The State has to declare such Primary Health Centre and Community Health Centre in a district as distant and difficult Health Centre. This according to the petitioner has resulted in selective benefit of reservation to be provided to few candidates by identifying particular centres by the State Government. It is further stated that at no point of time, the petitioner has made aware of such benefit of working petitioner has participated in UPPGMEE-2014. If three years of working are counted from the date of notification in 2014 then it would end in 2017 only.

We find prima facie substance in the contention raised. Time is being granted to the respondents to explain to the Court as to how the incumbent of PMS cadre could chose to work at a particular place so as to avail the benefit of reservation.

In the meantime, we issue following directions:

a) An officer of the State may appear in person for explaining the actual implementation of reservation in admission to the Post Graduate courses qua, members of PMS cadre within 30 per cent quota with due regard to the identification of the Primary Health Centre/Community Health Centre on the basis of merit of such candidates.

(b) Admissions granted under the 30 per cent to Post Graduate courses shall be subject to the orders to be passed in the present writ petition and all the candidates will be informed of this order by the State Government in writing.

(c) The vacant seats within 30 per cent quota may be filled on the basis of merit of candidates of PMS cadre if possible otherwise now.

The matter shall be listed next before appropriate Bench on 30.10.2015.

State may file counter affidavit by the next date."

5. Pursuant to the order passed by this Court on 9.10.2015 affidavit was filed on 30.10.2015 by mentioning following averments;

"It is submitted that Cabinet took an important decision on 16.1.2014 regarding reservation of 30% seats of postgraduate (MD/MS) courses in Government medical colleges for MBBS degree holders of Provincial Medical Health Services (PMHS) cadre who have completed 3 years of satisfactory service at Primary Health Centre (PHC)/Community Health Centre (CHC) situated in distant, remote

and backward areas. In pursuance of the decision of the Cabinet Government Order dated 22.1.2014 and 28.2.2014 were issued laying down certain eligibility conditions and procedure for selection etc. Above mentioned Cabinet decision was widely publicized. Decision of the Cabinet was uploaded on the website of Information Department of Government of U.P. Besides, the some was got published in various daily newspapers namely ''Hindustan'', ''Dainik Jagran'', ''Amar Ujala'', ''Times of India'', ''Indian Express'' etc. The Government Order (G.O.) dated 28.2.2014 was also uploaded on the website of Medical and Health Department. It is also relevant to mention here that the advertisement for admission in P.G.M.E.E. Courses was also published in the newspapers.

Therefore it is clear from above submissions that Medical Officers of PHMS Cadre as well aware of the fact that they will get 30% reservation in postgraduate (MD/ MS) courses if they work in PHCs/CHCs situated in distant, remote and backward areas.

It is submitted that in the G.O. Dated 28.2.2014 for admission to 30% seats of PG courses, 3 years satisfactory services in PHCs/CHCs situated in distant, remote and backward areas are mandatory. It is also mentioned in the G.O. dated 28.2.2014 that the selected medical officers will have to furnish a bond declaring there in that they will serve in the Government hospitals of the state for minimum 10 years continuously, failing which they will have to pay Rs. 1 Crore to the State Government.

That it is also submitted since the above policy of the State Government as declared by G.O. dated 22.1.2014 and 28.2.2014 came into force with immediate effect, therefore, it is imperative to give benefit of the policy to the medical officers who have already completed 3 years requisite tenure and they were given admission to 30% reserved seats of MD/MS courses. Thus there is no selective benefit of reservation to any of the candidate.

That at the time of appointment and first posting of newly selected medical officers, options for the place of posting are being obtained. On the basis of such options they are posted under Chief Medical Officers (CMO) and Chief Medical Superintendents (CMS). While under CMO posting they get an opportunity to serve at PHCs/CHCs situated in distant, remote and backward areas, if they desire to do so.

It is noteworthy to mention there that a large number of posts of Medical Officers are lying vacant and tendency to work in PHMS cadre is decreasing. Therefore, by G.O. dated 28.2.2014 an incentive is given to PMHS cadre doctors by reserving 30% seats of PG courses for them. So that they will get attracted to work in rural areas.

It is to be stated that in G.O. dated 28.2.2014 it was mentioned that Medical Officers working in PHCs/CHCs situated in distant, remote and backward areas who have completed 3 years of rural services satisfactorily will be given benefit of reservation of 30% seats of PG (MD/MS) courses. After that vide G.O. dated

17.4.2014 it was made clear that all the rural areas will be treated as distant, remote and backward areas. Further a modification has been made vide G.O. dated 26.5.2015 by which the list of all rural PHCs/CHCs (except PHCs/CHCs located in Nagar Panchayat, Nagar Nigam and Nagar Palika Parishad) was notified. Medical Officers working only in those PHCs/CHCs for continuous and satisfactory services of 3 years in rural areas are being provided the benefit of reservation of 30% seats of PG (MD/MS) courses.

It is also submitted that all the CMOs are directed vide G.O. dated 26.10.2015 to give information of the G.O. dated 28.2.2014 to the newly appointed medical officers so that they can avail the benefit of this scheme. CMOs are also directed if any medical officer who have not completed 3 years tenure, request in writing for posting in rural area, then subject to the availability of vacancy, he will be posted immediately at the required place. CMOs are also directed not to transfer such medical officers except under unavoidable circumstances, who are working in PHCs/CHCs situated in remote, distant and backward areas and who have not completed the requisite eligibility tenure of three years. In unavoidable circumstances they will have to be transferred to another PHC/CHC situated in rural areas till the completion of requisite eligibility period.

That it is further submitted that in compliance of the order of this Hon''ble Court dated 9.10.2015 necessary directions have already been issued vide G.O. dated 26.10.2015 to the Principals of the Government Medical Colleges, Kanpur, Allahabad, Agra, Meerut, Jhansi and Gorakhpur to inform Medical Officers studying in their institutions regarding directions of this Hon''ble Court.

That in compliance of the order dated 9.10.2015 passed by this Hon''ble Court, it is also relevant to state herein that the examination and counselling, the admission in postgraduate courses (MD/MS) under 30% reservation quota has already been completed. Therefore, it appears that at present there is no possibility of giving admission to any of the candidate on the vacant seat. It is also relevant to mention here that the process of selection, counselling and conduction of examination etc. is being done by Medical Education Department/ Directorate of Medical Education. As for the admission to diploma courses process is under way but admission to PG Diploma courses is governed by a different policy and G.O. dated 23.5.2011.

That G.O. dated 23.5.2011 was also issued by the State Government fixing eligibility conditions for admission to PG (Diploma) courses in various Government medical colleges and for admission to Diploma in Public Health (DPH) in Chhatrapati Sahu Ji Maharaj Medical University, Lucknow and All India Hygiene Institute, Calcutta for MBBS degree holder Medical Officers of PMHS cadre. 5 years period of service is mandatory for the admission to the above course. If services are rendered in rural area (PHC/CHC) then the weightage of service of that period is doubled and priority is also provided to such candidates in selection. It is also provided in the said G.O. that after completing the PG diploma if concerned Medical Officer leaves the Government service within 5

years, then Rs. 10 lacs and the money equal to the salaries, which have been received during PG course, will have to be reimbursed. Apart from it, after completion of the Training, minimum 3 years services in concerned speciality are also mandatory."

6. Thereafter, another order has been passed by this Court on 25.1.2016 in following terms;

"On 09.10.2015, this Court has proceeded to pass the following order:-

"These three writ petitions have been filed for the same relief.

Connect with Writ Petition No. 1380 of 2015.

We prima facie find that the allotment of seats for admission in Post Graduate courses under the PMHS quota, is challenged on the ground that the fixation of the criteria for providing reservation with reference to identified Public Health Centre and the incumbent working thereof is arbitrary.

The reservation for admission to Post Graduate courses in Medical Sciences to the extent of 30 per cent is provided under Government Order dated 28.2.2014 with the condition that all those incumbents, who have completed three years of service at distance and difficult backward areas of various districts to be identified by the State Government for over a period of three years, would be entitled to the benefit of said reservation.

According to the petitioner, it is for the State to appoint a Medical Officer at such PHC in the State as it deserves. The State has to declare such Primary Health Centre and Community Health Centre in a district as distant and difficult Health Centre. This according to the petitioner has resulted in selective benefit of reservation to be provided to few candidates by identifying particular centres by the State Government. It is further stated that at no point of time, the petitioner has made aware of such benefit of working petitioner has participated in UPPGMEE-2014. If three years of working are counted from the date of notification in 2014 then it would end in 2017 only.

We find prima facie substance in the contention raised. Time is being granted to the respondents to explain to the Court as to how the incumbent of PMS cadre could chose to work at a particular place so as to avail the benefit of reservation. In the meantime, we issue following directions:

(a) An officer of the State may appear in person for explaining the actual implementation of reservation in admission to the Post Graduate courses qua, members of PMS cadre within 30 per cent quota with due regard to the identification of the Primary Health Centre/Community Health Centre on the basis of merit of such candidates.

(b) Admissions granted under the 30 per cent to Post Graduate courses shall be subject to the orders to be passed in the present writ petition and all the candidates will be informed of this order by the State Government in writing.

(c) The vacant seats within 30 per cent quota may be filled on the basis of merit of candidates of PMS cadre if possible otherwise now.

The matter shall be listed next before appropriate Bench on 30.10.2015.

State may file counter affidavit by the next date."

Pursuant to the aforesaid order passed by this Court, Shri Manvendra Singh posted as Special Secretary, Medical Health and Family Welfare Department, Government of U.P., Lucknow has proceeded to file an affidavit but the core issue that has been raised, qua the same, there is no appropriate reply coming forward. Coupled with this, in Writ Petition No.1380 of 2015 another Division Bench has proceeded to pose question explaining the justification for the Government Order clarifying therein that when the power to issue an appropriate posting lies with the State Government, then whether candidates serving in urban area can be denied said benefit.

A response has been filed in the said writ petition in question and in paragraph 10 of the counter affidavit it has been mentioned that the guidelines for admission to PG Medical Course is not contrary to any Rules and Regulations framed by MCI and secondly the period of service required as minimum eligibility criteria are having nexus with object which the State Government wants to achieve i.e. to encourage the doctors for posting in the rural areas and to provide better medical facilities to the public of rural areas.

In this counter affidavit also the situation that the incumbents have no option nor do they have any say to stay either in the rural station or urban areas has not at all been adequately dealt with and that at the time, when the incumbents enter into service as to whether any such option is given to him to be posted either in rural areas or in urban areas and as to whether the benefit of being posted in rural areas is being informed to the aforesaid incumbents or not? This Court at Lucknow also in Misc. Bench No.11859 of 2015 on 4th January, 2016 has posed the question to the similar effect.

Once such is the factual situation that till date the State Government is not at all coming with clear and categorical stand in reference of posting and service of doctors either at rural stations or in urban areas and as to whether they have been informed of the benefit, if posted at rural stations, in view of this, we proceed to ask the Principal Secretary, Medical Education and Health, U.P. Shashan, Lucknow to file a precise reply on this aspect of the matter instead of filing vague and evasive reply on this facet of the matter.

The matter be taken up on 09.02.2016 in computer list."

7. Pursuant to the same affidavit dated 9.2.2016 has been filed on the following terms;

"That at the time of first posting of the newly selected medical officers regarding the place of their posting, they submit 3 options and on the basis of the options

submitted by them the newly selected Medical Officers holding MBBS degree are posted under the Chief Medical Officers and the Chief Medical Officers further post them at the CHC/PHC situated in the district. Newly selected Medical Officers having PG degree are posted on priority at the District Hospitals, on the basis of the availability of the posts, by the Government.

That it is pertinent to mention here that the large number of posts of Medical Officers are lying vacant in the PMHS care. In order to attract doctors to PMHS cadre, to incentivise them and to provide better medical services to the public of rural areas, the Medical Officers are posted in rural areas which are notified in the Government Order dated 26.5.2015, and the reservation of 30% seats is provided to them for admission in P.G. Courses.

That in pursuance of the different orders passed by this Hon''ble Court a Government Order dated 26.10.2015 was issued by the Government directing all the Chief Medical Officers of Uttar Pradesh to provide information as well as the copy of the Government Order regarding the benefit of 30% reservation for postgraduate courses to all Medical Officers of PMHS cadre holding MBBS degree so they may know the benefits admissible under the scheme.

That by the Government Order dated 26.10.2015 a direction has been given to all Chief Medical Officers that if any Medical Officer has not completed 3 years service in PHC/CHC situated in notified remote, distant and backward areas (except Nagar Panchayat, Nagar Palika Parishad and Nagar Nigam), submits a request in writing for posting in PHC/CHC situated in rural areas, he should posted immediately if the vacancy is available in rural areas, so that they may complete their prescribed eligibility for admission in P.G. Courses under 30% quota. It is also mentioned in the said G.O. that if they are transferred to another PHC/CHC in any unavoidable circumstance, they may be transferred to the PHC/CHC situated in rural areas itself until they complete the requisite eligibility period.

That in compliance of the order dated 9.10.2015 passed by this Hon''ble Court a Government Order dated 26.10.2015 has been issued by the Government directing the Principals of the Medical Colleges, Kanpur, Allahabad, Agra, Meerut, Jhansi and Gorakhpur to inform all the Medical Officers of PMHS cadre holding MBBS degree studying in P.G. Courses under 30% quota.

That the list of PHC/CHC situated in remote, distant and backward areas (except Nagar Panchayat, Nagar Palika Parishad and Nagar Nigam) has already been uploaded on the official website of the Department of Medical Health and Family Welfare. It is further stated that the scheme laid down by the Government Order dated 22.1.2014 and 28.2.2014 were widely published in various newspapers namely Hindustan, Dainik Jagran, Amar Ujala, Times of India and Indian Express etc. and Government Order dated 28.2.2014 was also uploaded on the website of Medical and Health Department.

That "no objection certificate" for the counselling in U.P. PGMEE 2014 was issued

to Dr. Vivek Kumar Sachan, Medical Officer, Community Health Center Madhogarh District Jalaun, he appeared in the counselling but as the clinical seat was not available hence he did not opt for admission in P.G. Course in that year. Now in view of the Government Order dated 26.05.2015, the Community Health Center Madhogarh District Jalaun has not been notified as situated in the remote, distant and backward area hence ''no objection certificate'' to appear in the counselling in U.P. PGMEE 2015 could not be issued in his favour.

That in the Government Order dated 28.02.2014, it has been specifically mentioned that all MBBS degree holder medical officers posted in PHC/CHC situated in remote, distant and backward areas, who have completed in P.G. Courses earmarked quota of 30% seats for the PMHS cadre on specified terms and conditions.

That in view of the observations of Hon''ble Court a decision has also been taken at the Government level to inform new appointees about the said benefits of working/posting in rural areas by adding a clause in their appointment letter itself so that they become fully aware of the terms and conditions of availing the earmarked quota at the time of joining itself. The direction given to Chief Medical Officers vide G.O. dated 26.10.2015 will also be brought to their notice mentioning that if despite their wishes, CMOs do not post them in a rural PHC/ CHC they can make a representation to the Government for seeking redressal.

That it is expedient in the interest of justice that this Court may graciously be pleased to take the present II-Supplementary Counter Affidavit on record, in compliance of the order dated 25.01.2016 passed by this Court in the above noted writ petition."

8. On these materials, that have been before us, the matter has been taken up for final hearing and disposal with the consent of the parties concerned and on 9.2.2016 after hearing learned counsel for the parties judgment has been reserved and 29.2.2016 was the date, fixed for delivery of the judgment but during the course of preparation of judgment it was felt that it would be much more appropriate that Medical Council of India (hereinafter referred as to the ''MCI'') should also be heard in the present case and, accordingly, this Court on 29.2.2016 proceeded to pass the following order;

"The judgment was reserved to be delivered today but during the course of preparation of the judgment the Court felt that it would be much appropriate that Medical Council of India should also be heard in the matter.

We accordingly proceed to ask Sri R.K. Ojha, Senior Advocate to supply a copy of the writ petition upon Sri Avnish Mishra, Advocate who represents Medical Council of India contends that he will study the matter and obtain requisite instruction in the matter and then address the Court.

Put up this matter in computer list on 02-03-2016 at 2:00 PM for further hearing.

Counsel for the Medical Council of India as well as learned Standing Counsel

should obtain instructions with regard to documents that are being supplied by Sri R.K.Ojha, Senior Advocate so that the matter can be further argued and considered."

Thereafter, on receipt of copy of writ petition MCI under letter dated 2.3.2016 ha proceeded to forward the following instructions in the matter and relevant extract of the said instructions are as follows:

"No. MCI-7(10)/2015-LEGAL/(11878)/171899 Dated:02/03/2016

BY EMAIL

Mr. Avanish Mishra

Advocate

41, H.I.G.,3

Circular Road, Allahabad,

Uttar Pradesh-211001

Contact: +91 9838337548

Subject: Dr. Vivek Kumar Sachan v. The State of U.P. and Ors. Civil Misc. Writ Petition No.35050 of Year 2015 in the Hon''ble Allahabad High Court at Allahabad-Reg.

Sir,

This is with reference to your email dated 01.03.16 whereby you had forwarded the aforesaid Petition. Further, you had informed that the Hon''ble High Court had vide its order dated 02.03.16 had directed you to obtain instructions in the matter.

2. You had sought specific comments on the order dated 22.01.2014 issued by the State Government wherein the State Government has sought to reserve 30% seats in all postgraduate courses in Government Medical Colleges for medical officers who have served in CHC/PHC in remote, difficult and backward areas for a minimum period of three years. You had also referred to the information brochure issued by the King George Medical University, U.P., Lucknow for U.P. Postgraduate Medical Entrance Examination, 2015 wherein provisions has been made inter alia for admission of in service candidates also.

3. In this regard it may be respectfully submitted to the Hon''ble High Court that admissions to all postgraduate courses in modern medicine is required to be made in accordance with the provisions of Postgraduate Medical Education Regulations, 2000 in all medical colleges/medical institution falling within the purview of the Indian Medical Council Act, 1956. The Hon''ble Supreme Court in its judgement dated 12.01.2015 in the matter of Sudhir N. and Ors v. State of Kerala and ors. - Civil Appeal No.297-298 of Year 2015 in SLP (Civil)

No.13121-13122 of 2011 has observed as under:

"12. Regulation 9 of the Regulations framed under the MCI Act, inter alia, provides that admission to post-graduate medical courses shall be made strictly on the basis of inter se academic merit of the candidates. The Regulation further stipulates the methodology for determining the academic merit of the candidate. It reads:

"Selection of Postgraduate Students (1) (a) Students for Postgraduate medical courses shall be selected strictly on the basis of their inter-se Academic Merit.

(b) 50% of seats in Post Graduate Diploma Course shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas.

(2) For determining the "Academic Merit", the University/Institution may adopt the following methodologies:

(a) On the basis of merit as determined by a ?Competitive Test? conducted by the state Government or by the competent authority appointed by the state Government or by the university/group of universities in the same state; or

(b) On the basis of merit as determined by a centralised competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise; or

(d) Combination of (a) and (c). Provided that wherever ?Entrance Test? for postgraduates admission is held by a state Government or a university or any other authorised examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Provided further that in Non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority notified by the State Government and the remaining fifty percent by the management(s) of the institution on the basis of inter-se Academic Merit.

Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks be given as an incentive at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto the maximum of 30% of the marks obtained.?"

4. Further, the Hon''ble Supreme Court in the same case has held that:

"14. Regulation 9 is, in our opinion, a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only

basis for such admissions. To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9. Suffice it to say that but for the impugned legislation making an attempt to change the basis on which admissions can be made, such admissions must, in all categories, be made only on the basis of merit as determined in terms of the provision extracted above. That method, however, is give a go-bye by the impugned legislation when it provides that in-service doctors shall be granted such admission not on the basis of one of the methodologies sanctioned by Rule 9(2) of the Rules but on the basis of inter se seniority of such candidates. The question is whether the State was contempt to enact such a law. Our answer to that question is in the negative....."

5. Therefore, on behalf of the Council it may be respectfully submitted to the Hon''ble High Court that:-

Firstly, it is permissible in accordance with the P.G. Regulations, 2000 to reserve 50% of the seats in Postgraduate Diploma curse for Medical officers in the Government Service, who have served for atleast 3 years in remote and difficult areas. Further, after acquiring the P.G. Diploma the medical officers are required to serve for two more areas in remote and/or difficult areas.

Secondly, it is for the State Government to notify, which are are remote and/or difficult areas.

Thirdly, the medical officers who has served for a period of three years in remote and difficult area are entitled for 10% of marks as an incentive for each year of service in remote and difficult area upto the maximum of 30% of marks obtained. These marks are in competitive entrance examinations and are added once such candidates are eligible to be drawn in the inter se merit after obtaining the minimum percentage of marks required to be eligible in their respective categories.

Fourthly, the medical officers in the Government service have been provided for a benefit under the Post Graduate Medical Education Regulation, 2000 of reserving 50% of the seats in Post Graduate Diploma Courses and that such a benefit cannot be extended to them under the postgraduate degree courses.

Fifthly, there are limited number of seats available in postgraduate degree courses and in case the reservation provided for medical officers in the Government service is extended to various postgraduate degree courses ,there would be hardly any seat left for open category students who seek admission to various postgraduate degree courses.

Sixthly, that the Regulations of the Council have been framed under Section 33 of the Indian Medical Council Act, 1956 and being Central legislation shall prevail over other regulations as held in the case of MCI v. State of Karnataka (1998) 6 SCC 131, the Hon''ble Apex Court while holding that the regulations of the MCI

are binding and mandatory, further held that all State enactments, rules and regulations framed by universities etc. in relation to the conduct of medicine courses, to the extent they are inconsistent with the Act and the regulations made thereunder by the MCI are repugnant by virtue of Article 254 of the Constitution of India inasmuch as the Act is relatable to Entry 66 List 1 Schedule VII of the Constitution of India. The aforesaid ratio has been reaffirmed by the Constitution Bench of the Hon''ble Supreme Court in Dr. Preeti Srivastava v. State of M.P. and Ors. - (1999) 7 SCC 120.

Seventhly, it is not permissible for the State Government to reserve seats in Postgraduate Degree Courses (MD/MS/DM/M.Ch.) for medical officers in the Government Services.

6. Therefore, the provisions of the State Government notification cannot hold the field when it is in clear breach of Medical Council of India Postgraduate Medical Education Regulations."

9. On instructions being received copy of the same has been supplied to learned counsel for the petitioners as well as learned Standing Counsel, inasmuch as, in the instructions, that have been so received, MCI has not at all subscribed to the issuance of the Government order wherein provision has been introduced to reserve 30% seats in all postgraduate courses for Medical Officers in Government service, who have served at least for three years in remote and difficult areas.

10. As entire complex of the case has been sought to be changed on account of the instructions furnished by the MCI each and every respective parties have changed their stand and have argued the case in extenso on altogether different parameters.

11. Sri Avanish Mishra, Advocate, representing MCI before this Court, submitted that Regulation 9 of the Regulations framed under the MCI Act provides that admission to postgraduate medical courses shall be made strictly on the basis of inter se academic merit of the candidates and Regulation 9 also proceeds to prescribe the basis for determining the eligibility of candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions, then by no stretch of imagination any seat can be reserved for postgraduate courses as reservation of seats for admission in postgraduate degree courses are not at all prescribed by the Postgraduate Medical Education Regulations 2000 and seats can be reserved upto the 50% of seats only in Postgraduate Diploma Courses for the Medical Officers in the Government Service, who have served for atleast 3 years in remote and difficult areas and further after acquiring the Postgraduate Diploma the Medical Officers are required to serve for two years in remote and/or difficult areas, in view of this, the issuance of Government Order by the State is in breach of Regulation 9 of the Regulations framed under the MCI Act and, accordingly, the entire Government Order under challenge is liable to be struck down.

12. Sri R.K. Ojha, Senior Advocate, on the other hand, contended that State has

unfettered power to reserve 30% of seats for postgraduate courses and State Government has the right to give incentive to the incumbents, who have rendered services in rural, remote and difficult areas in lieu of rendering service and, in view of this, the State Government, at the point of time, when it has proceeded to fix the eligibility of 3 years of mandatory service in rural, remote and difficult areas, same is not at all subscribed by Regulation 9 and, as such, the writ petition in question deserves to be allowed.

13. Stand to the similar effect has been taken by other respective counsel appearing for the petitioners.

14. Sri Pankaj Rai, learned counsel for the State, submitted that State has every authority to provide a channel for according admissions in postgraduate courses and in service candidates constitute a class in themselves and, accordingly, rightful procedure has been adhered to and the State Government has rightly chosen not to accord any incentives for being placed in rural, remote and difficult areas rather three years service in rural, remote and difficult area has been fixed as one of the terms and conditions of eligibility.

15. In order to appreciate the respective arguments, Regulation 9 of the Postgraduate Medical Education Regulations, 2000, as amended from time to time, framed in exercise of powers conferred by Section 33 read with Section 20 of the Indian Medical Council Act 1956, the Medical Council of India with the previous sanction of the Central Government is being extracted below;

"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 and 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.

Provided 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 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 post-graduate 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 candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate 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 obtain the minimum eligibility marks as prescribed in Sub Clause (II) above shall be admitted to any Postgraduate courses in the said academic year.

VI. In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) 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 organise admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super speciality courses each year. For this purpose, they shall follow the time schedule indicated in Appendix-III

IX. There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super speciality courses under any circumstances. They Universities shall not register any student admitted beyond the said date.

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

16. At this juncture, we also proceed to take note of the Cabinet decision dated 16.1.2014 as well as the relevant extract of the Government Order dated 28.2.2014 wherein 30% seats in Government Medical Colleges for Postgraduate Courses have been reserved for in service candidates, who have rendered their services in remote distance areas of the State of U.P. for a period of three years. The relevant extract is quoted below;

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3- ijh{kk esa lfEefyr gksus okys bPNqd fpfdRlkf/kdkjh vius vkosnu i= lEiw.kZ vfHkys[kksa lfgr egkfuns''kd] fpfdRlk ,oa LokLF; lsok;sa] m0iz0 y[kum dks izsf"kr djsxsaA

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7- ih0,e0,p0,l0 laoxZ gsrq vkjf{kr lhVksa esa izos''k ysus okys fpfdRlkf/kdkfj;ksa ij lEcfU/kr dkyst ds iz/kkukpk;Z dk lEiw.kZ iz''kklfud ''kS{kf.kd ,oa vuq''kklfud fu;U=.k jgsxkA v/;;u dh vof/k ds nkSjku mDr esfMdy dkystksa esa vkokl rFkk vU; lqfo/kk;sa fo''ks"k :i ls izkIr ugha gksxhA v/;;u vof/k ds vk/kkj ij mDr esfMdy dkyst esa rSukrh@fu;qfDr dk dksbZ vf/kdkj l`ftr ugha gksxkA

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17. On the basis of the provisions and the Government Order, that has been quoted above, the issues, that have been argued before us, are being adverted to and what we find from the same is that in reference to the Postgraduate Medical Education Regulations, 2000, Regulation 9.1 proceeds to make a mention that 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 has been conferred with National Board of Examination under overall supervision of the Ministry of Health and Family Welfare, Government of India. Regulation 9.3 proceeds to make a mention that 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 50% in ?National Eligibility-cum-Entrance Test for Postgraduate courses held for the said academic year. However, in reference of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes category the minimum marks has been framed as 40%. In respect of candidates

as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks has been provided as 45%. The percentage has to 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. In the eventuality when sufficient number of candidates in the respective categories failed 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 MCI may at its discretion lower the minimum marks required for admission to Post Graduate Course. Regulation 9 (IV) provides for the reservation of seats in medical colleges/ institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates has to be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and in the said merit list only in determining the merit of candidates, who are in service of Government/public authority, weightage in the marks may be given by the Government or Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and difficult areas shall be as defined by the State Government/Competent Authority from time to time. Regulation 9 (V) provides that no candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub-clause (II) they shall be admitted to any postgraduate courses in the said academic year. Regulation 9 (VI) provides for that in non-governmental medical colleges/ institutions 50% of the total seats shall be filled by the State Government or the authority appointed by them and the remaining 50% 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. Regulation 9 (VII) provides for 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 and after acquiring the postgraduate diploma the said Medical Officers shall serve for two more years in remote and/or difficult areas as defined by the State Government/ Competent Authority from time to time. Regulation 9 (VIII) provides that Universities and other authorities concerned who shall organise admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super speciality courses each year. Regulation 9 (IX) provides for time schedule that 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 would be permitted. Regulation 9 (X) provides that the MCI may direct that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study or any medical qualification granted to such a student shall not be a recognised qualification for the purpose of the Indian Medical Council Act, 1956. Action has been provided for against the

institutions which grants the admission to any student after the last date specified for the same.

18. Once a full fledged mechanism has been provided for wherein 3% seats of the annual sanctioned intake capacity has been provided to be filled up by candidates with locomotory disability of lower-limbs between 50% to 70% and provision has also been provided for that in nongovernmental medical colleges/ institutions 50% of the total seats shall be filled by the State Government or the authority appointed by them and the remaining 50% 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. The regulation in question directs 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 and after acquiring the postgraduate diploma the said Medical Officers shall serve for two more years in remote and/or difficult areas as defined by the State Government/Competent Authority from time to time.

19. Once such are the statutory provisions, that are holding the field, and before us MCI is coming up with the specific stand that Regulation 9 is a complete code in itself and it prescribes the basis for determining the eligibility of candidates including the method to be adopted for determining the inter se merit that remains the only basis for such admissions, then when the admission in question is to be accorded in postgraduate courses, same has to be strictly on the basis of merit and, accordingly, State Government has no authority to accord any admission in postgraduate courses to inter service candidates, as same is not at all prescribed nor subscribed by the Regulations 2000.

20. At this juncture we proceed to examine the various issues, that have been dealt with on the earlier occasion keeping in view the provisions that were contained under under the Postgraduate Medical Education Regulations, 2000 as well as relevant entrance examination rules that have been formulated by the Government from time to time. To start with the same, we proceed to taken note of the judgment of the Apex Court in the case of Preeti Srivastava (Dr.) v. State of M.P. (1999) 7 SCC 120.

21. In the case of Dr. Preeti Srivastava (supra) one of the questions that fell for consideration was whether the standard of education and admission criteria could be laid under Entry 25 of List III by a Central Legislation. A Constitution Bench of the Apex Court held that standard of education and admission criteria could be laid down under Entry 66 of List I and under Entry 25 of List III. It was held that both the Union as well as the State have the power to legislate on education including medical education and the State has the right to control education so far as the field is not occupied by any union legislation. When the maximum marks to be obtained in the entrance test for admission to the institutions for higher education including higher medical education is fixed, the State cannot adversely affect the standards laid down by the union government. It was held

that it is for the MCI to determine reservation to be made for SC/ST and OBC candidates and lowering the qualifying marks in their favour on the pretext or pretence of public interest. The legal position was summed up as under:

"The legislative competence of Parliament and the legislatures of the States to make laws Under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III.

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

''25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.''

Entry 25 is subject, inter alia, to Entry 66 of List I.

Entry 66 of List I is as follows:

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.''

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State

may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) the calibre of the teaching staff;

(2) a proper syllabus designed to achieve a high level of education in the given span of time;

(3) the student-teacher ratio;

(4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution;

(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and

(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

22. Apex Court in Dr. Preeti Srivastava case (supra) further held that MCI had framed Regulations in exercise of the power conferred Under Section 20 read with Section 33 of the Medical Council of India Act which covered post-graduate medical education. These Regulations are binding and the States cannot, in exercise of their power under Entry 25 of List III, make any rule which are in conflict with or adversely impinge upon the Regulations made by the MCI. Since the standards laid down are in exercise of power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the union government. The State''s power to frame rules pertaining to education was in any case subject to any provision made in that connection by the union government. Apex Court observed as follows:

"Mr. Salve, learned Counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers Under Section 20 read with Section 33 the Indian Medical Council has framed Regulations which govern postgraduate medical education. These Regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and Regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the

power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.

Secondly, it is not the exclusive power of the State to frame rules and Regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254."

23. Apex Court in the case of State of M.P. and Others v. Gopal D. Tirthani and Others (2003) 7 SCC 83, keeping in view the provisions of Postgraduate Medical Education Regulations, 2000, while considering the allocation of 20% seats for in-service candidates and for awarding of weightage, took the view that nature of 20% seats allotted for in-service candidates is not a reservation rather it is a channel of entry or source of admission and further weightage for service rendered in rural or triable areas can be provided for. The relevant extract of the said judgment is quoted below;

"Nature of 20% seats allocated for in-service candidates - reservation or channel of entry?

19. The controversy in the present litigation does not concern the open category candidates; it is confined to in-service candidates. We, therefore, propose to preface our discussion by determining the nature of 20% seats allocated to in-service candidates - whether it is by way of reservation or quota or is a channel of entry. Our task stands simplified by the law laid down by a three-Judge Bench decision of this Court recently in K. Duraiswamy and Anr. v. State of Tamil Nadu and Ors. [2001] 1 SCR 489. The question arose for decision in almost a similar factual background. The seats were at the State level and not all-India quota seats. The State Government had allocated 50% of the seats exclusively for in service candidates and left the remaining 50% seats as open quota, i.e., to be filled in from out of such candidates as were not in State Government service. The classification was made as ''service quota'' and ''open quota'', for in-service candidates and other candidates respectively, confining the respective class/ cadre candidates to the respective percentages earmarked for the two of them exclusively. The Court held:-

(i) the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion;

(ii) that such allocation of seats in the form of fixation of quota is not to be equated with the usual form of communal reservation and, therefore, the constitutional and legal considerations relevant to communal reservations are out of place while deciding the case based on such allocation of seats;

(iii) that such exclusive allocation and stipulation of a definite quota or number of

seats between in-service and non-service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit. Inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota;

(iv) that the mere use of the word ''reservation'' per set is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would be determinative of the meaning, content and purport of the expression. Where the scheme envisages not a mere reservation but is one of the classification of the sources from which admissions are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simplicitor.

20. K. Doraiswamy''s case (supra) was considered and explained by another three-Judge Bench of this Court in AIIMS Students'' Union v. AIIMS and Ors., AIR 2001 SC 3262. The following observation is appropriate and apposite for the purpose of the case at hand and is, therefore, extracted and reproduced hereunder. The Court was considering the question of allocation of seats between in-service and open category candidates, the candidates in both the categories being medical graduates, and not a reservation in favour of weaker section of the society or those who deserve or need to be affirmatively discriminated. The Court then said--

"Some of them had done graduation sometime in the past and were either picked up in the Government service or had sought for joining Government service because, maybe, they could not get a seat in post graduation and thereby continue their studies because of shortage of seats in higher level of studies. On account of their having remained occupied with their service obligations, they became detached or distanced from theoretical studies and therefore could not have done so well as to effectively compete with fresh medical graduates at the PG entrance examination. Permitting in-service candidates to do post graduation by opening a separate channel for admittance would enable their continuance in Government service after post graduation which would enrich health services of the nation. Candidates in open category having qualified in post graduation may not necessarily feel attracted to public services. Providing two sources of entry at the post graduation level in a certain proportion between in-service candidates and otherwise candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. The object sought to be achieved is to benefit two segments of the same society by enriching both at the end and not so much as to provide protection and encouragement to one at the entry level."

21. To withstand the test of reasonable classification within the meaning of

Article 14 of the Constitution, it is well settled that the classification must satisfy the twin tests: (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differentia must have a rational relation with the object sought to be achieved. It is permissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. We have, in the earlier part of the judgment, noted the relevant statistics as made available to us by the learned Advocate General under instructions from Dr. Ashok Sharma, Director (Medical Services), Madhya Pradesh, present in the Court. The rural health services (if it is an appropriate expression) need to be strengthened. 229 community health centers (CHCs) and 169 first referral units (FRUs) need to be manned by specialists and block medical officers who must be post graduates. There is nothing wrong in the State Government setting apart a definite percentage of educational seats at post graduation level consisting of degree and diploma courses exclusively for the in-service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In-service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. In-service candidates, on attaining higher academic achievements, would be available to be posted in rural areas by the State Government. It is not that an in-service candidate would leave the service merely on account of having secured a post graduate decree or diploma though by virtue of being in the service of the State Government. If there is any misapprehension the same is allayed by the State Government obtaining a bond from such candidates as a condition precedent to their taking admission that after completing PG Degree/Diploma course they would serve the State Government for another five years. Additionally a bank guarantee of rupees three lakhs is required to be submitted alongwith the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved.

31. The abovesaid observations came up for the consideration of a three-Judge Bench of this Court in Dr. Snehelata Patnaik and Ors. v. State of Orissa and Ors. [1992] 1 SCR 335. It was held (i) that the said observation does not constitute the ratio of the decision as the decision is not in any way dependent on those observations; (ii) that those observations are in connection with the All-India selection and do not have equal force when applied to selection for a single State, and (iii) that the observations have the effect of only making a suggestion that the weightage to be given must be the bare minimum required to meet the situation. Their Lordships then placed on record their overview by way of suggestion to the authorities who "might well consider giving weightage upto a maximum of 5 per cent of marks in favour of in service candidates who have done dural service for five years or more. The actual percentage would certainly

have to be left to the authorities."

32. Recently a three-Judge Bench in Dr. Narayan Sharma and Anr. v. Dr. Pankaj Kr. Lehkar and Ors., AIR 2000 SC 72, considered a rule which provided for reservation of 20 seats for doctors appointed in the State Health Services on a regular basis and who have worked at least five years on a regular basis in any health center/institution which is not situated in the municipal area. This rule couched in negative terms and not in positive terms replaced the preceding rule which provided for "10 seats being reserved for those doctors who have completed five years or more in rural/hills/char areas". The Court found no justification for making a departure from the earlier rule and converting the reservation into negative in place of positive and increasing reservation from 10 to 20. The Court held, "any place just outside a municipal town is one which is not situated in a municipal area and which will fall within the scope of the sub-rule. The doctor working in an institution situated in a place immediately adjacent to but outside a municipal town will get the benefit of the rule, while in practice, he will also get all the benefits available in the urban areas situated within the municipal limits. The rule does not require the doctor to serve in a remote rural area for getting the benefit of the rule." The Court then went on to add - "Even if the rule had provided for service in a rural area, it has been held that the classification is not a valid one." This latter part is not a ratio of the decision. Moreover, the Court cited in support the observations in Dinesh Kumar''s case which were adversely commented upon in Dr. Snehelata Patnaik''s case, as already noticed. The Court also referred to the judgment of this Court in State of Uttar Pradesh and Ors. v. Pradip Tandon and Ors. [1975] 2 SCR 761 .

33. In Pradip Tandon''s case reservation in favour of people in ''hill areas'' and Uttrakhand was held to be constitutionally valid as they were socially and educationally backward classes of citizens. Reservation in favour of ''rural areas'' was found difficult to accept as it was sought to be justified on the test of poverty as the determining factor of social backwardness. The court observed that rural element does not make a class by itself because it could not be accepted that the rural people are necessarily poor or socially and educationally backward just as the urban people are not necessarily rich. We may hasten to observe that what was being dealt with in Pradip Tandon''s case was a reservation and not a weightage. The case at hand presents an entirely different scenario. Firstly, it is a case of post-graduation within the State and not an All India quota. Secondly, it is not a case of reservation, but one of only assigning weightage for service rendered in rural/tribal areas. Thirdly, on the view of the law we have taken herein above, the assigning of weightage for service rendered in rural/tribal area does not at all affect in any manner the candidates in open category. The weightage would have the effect of altering the order of merit only as amongst the candidates entering through the exclusive channel of admissions meant for in-service candidates, the statistics set out in the earlier part of the judgment provide ample justification for such weightage being assigned. We find merit and much substance in the submission of the learned Advocate General for

the State of Madhya Pradesh that Assistant Surgeons (i.e. Medical graduates entering the State services) are not temperamentally inclined to go to and live in villages so as to make available their services to the rural population; they have a temptation for staying in cities on account of better conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite schools which are to be found only in cities. In-service doctors being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of earning higher professional qualifications, and consequently eligibility for promotion, acts as motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. In the setup of health services in the State of Madhya Pradesh and the geographical distribution of population no fault can be found with the principle of assigning weightage for the service rendered in rural/tribal areas while finalising the merit list of successful in-service candidates for admission to PG courses of studies. Had it been a reservation, considerations would have differed. There is no specific challenge to the quantum of weightage and in the absence of any material being available on record we cannot find fault with the rule of weightage as framed. We hasten to add that while recasting and reframing the rules, the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis."

24. Apex Court in the case of Satyabrat Sahoo and Others v. State of Orissa and Others (2011) 8 SCC 203 has proceeded to take a view that Clause 9(2) (d) of MCI Regulations is in reference of in-service candidates and for open-category candidates such a weightage cannot be accorded. Relevant extract of the said judgment is quoted below;

"24. We have referred to the above mentioned judgments only to indicate the fact that this Court in various judgments has acknowledged the fact that weightage could be given for doctors who have rendered service in rural/tribal areas but that weightage is available only in in service category, to which 50% seats for PG admission has already been earmarked. The question is whether, on the strength of that weightage, can they encroach upon the open category, i.e. direct admission category. We are of the view that such encroachment or inroad or appropriation of seats earmarked for open category candidates (direct admission category) would definitely affect the candidates who compete strictly on the basis of the merit.

27. We notice that the seats earmarked for the open category by way of merit are few in number and encroachment by the in-service candidates into that open category would violate Clause 9(1)(a) of the MCI Regulations, which says students for PG medical courses shall be selected strictly on the basis of the inter se academic merit i.e. on the basis of the merit determined by the competent test. Direct category or open category is a homogeneous class which consists of all categories of candidates who are fresh from college, who have rendered

service after MBBS in Government or private hospitals in remote and difficult areas like hilly areas, tribal and rural areas and so on. All of them have to complete on merit being in the direct candidate category, subject to rules of reservation and eligibility. But there can be no encroachment from one category to another. Candidates of in-service category cannot encroach upon the open category, so also vice-versa.

35. We are, therefore, inclined to allow this appeal and set aside the judgment of the Division Bench as well as learned Single Judge by quashing the proviso to Clause 9(2)(d) of the MCI Regulations to the extend indicated above as well as Clause 11.2 of the prospectus issued for admission to the Post Graduate Medical Examination 2012 in the State of Odisha. The State of Odisha, the Medical Council of India and Respondents 1 to 4 are directed to take urgent steps to re-arrange the merit list and to fill up the seats of the direct category, excluding in service candidates who got admission in the open category on the strength of weightage, within a period of one week from today and give admission to the open category candidates strictly on the basis of merit."

25. Apex Court once again in the case of Sudhir N. and Others v. State of Kerala and Others (2015) 6 SCC 685 has taken the view that Regulation 9 of MCI Regulations, 2000 is self contained and it is complete code in itself as it prescribes the basis for determining the eligibility of candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions and but for merit there can be no other criteria for according admissions and any other criteria would ultimately proceed to make enshroud with the merit and would tantamount to compromise with the merit. Relevant paragraphs of the said judgment are quoted below;

"15. Regulation 9 is, in our opinion, a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions. To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9. Suffice it to say that but for the impugned legislation making an attempt to change the basis on which admissions can be made, such admissions must, in all categories, be made only on the basis of merit as determined in terms of the provision extracted above. That method, however, is given a go-bye by the impugned legislation when it provides that in-service candidates seeking admission in the quota reserved for in-service doctors shall be granted such admission not on the basis of one of the methodologies sanctioned by Rule 9(2) of the Rules but on the basis of inter se seniority of such candidates. The question is whether the State was competent to enact such a law. Our answer to that question is in the negative. The reasons are not far to seek.

24. It is in the light of the above pronouncements futile to argue that the impugned legislation can hold the field even when it is in clear breach of the

Medical Council of India''s Regulations. The High Court was, in our opinion, right in holding that inasmuch as the provisions of Section 5(4) of the impugned enactment provides a basis for selection of candidates different from the one stipulated by the MCI Regulations it was beyond the legislative competence of the State Legislature. Having said that the High Court adopted a reconciliatory approach when it directed that seniority of the in service candidates will continue to play a role provided the candidates concerned have appeared in the common entrance test and secured the minimum percentage of marks stipulated by the Regulations. The High Court was, in our opinion, not correct in making that declaration. That is because, even when in Gopal D. Tirthani''s case (supra) this Court has allowed in-service candidates to be treated as a separate channel for admission to post-graduate course within that category also admission can be granted only on the basis of merit. A meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. It is now fairly well settled that merit and merit alone can be the basis of admission among candidates belonging to any given category. In service candidates belong to one category. Their inter-se merit cannot be overlooked only to promote seniority which has no place in the scheme of MCI Regulations. That does not mean that merit based admissions to in service candidates cannot take into account the service rendered by such candidates in rural areas. Weightage for such service is permissible while determining the merit of the candidates in terms of the third proviso to Regulation 9 (supra). Suffice it to say that Regulation 9 remains as the only effective and permissible basis for granting admission to in-service candidates provisions of Section 5(4) of the impugned enactment notwithstanding. That being so, admissions can and ought to be made only on the basis of inter se merit of the candidates determined in terms of the said principle which gives no weightage to seniority simplicitor."

26. On the parameters of the statutory provisions, that hold the field and above-mentioned decisions of the Apex Court we have to see as to whether in the facts of the case the State Government has acted well within its competence in reserving 30% seats for in-service candidates for pursuing postgraduate courses. The law on the subject has been clarified by the Apex Court that as far as procedure for selection of the candidates for postgraduate courses are concerned, the last word in the said direction would be of the MCI and MCI from time to time has proceeded to make amendments in Postgraduate Medical Education Regulations, 2000, inasmuch as, Regulation 9, that has been quoted above, has been substituted by Notification dated 27.12.2010 and Regulation 9 (I) has been substituted by Notification dated 8.10.2012 w.e.f. 23.10.2012 and Regulation 9 (IV) has been substituted by Notification dated 15.2.2012 w.e.f. 27.2.2012.

27. Under the entire scheme of things provided for the MCI, at no place, has proceeded to authorise the State Government to reserve seats in postgraduate courses for Medical Officers, who are in the Government service and who have served for atleast three years in remote and/or difficult areas. The only enabling

provision that is there, the same is in reference of Postgraduate Diploma Courses to be reserved for Medical Officers in the Government service, who have served three years in remote and/or difficult areas. Regulation 9 (IV) does talk of reservation of seats in medical colleges/institutions for respective categories as per applicable laws prevailing in States/Union Territories and such reservation obviously is referable to horizontal/vertical reservation and not at all in reference of reservation in favour of incumbents, who have been serving as Medical Officers in the Government service. Once the MCI by means of Regulations 2000 has made it clear that 50% of seats would be reserved in Postgraduate Diploma Courses for the Medical Officers in the Government Service, who have served for at least 3 years in remote and difficult areas and no other provision is there in the said Regulations enabling the State Government to reserve any seats for Medical Officers in the postgraduate degree courses, who have served for at least three years in remote and difficult areas, then it may be true that in-service candidates constitute a different class in themselves and permitting in-service candidates to do post-graduate by opening separate channel for admission would enable their continuance in Government service after post-graduation would enrich health services of the State but the larger issue is that State Government is competent to make such an arrangement as before us MCI is very very clear and very very categorical that seats in postgraduate degree courses cannot be reserved for in-service candidates, inasmuch as, same would clearly tantamount to compromising with the merit, inasmuch as, the admissions in postgraduate degree courses has to be made strictly on the basis of merit and once 30% of the seats are meant for in service candidates then they would be a class in themselves and merit would be compromised in according them admissions in postgraduate degree courses. Categorical stand has also been undertaken that only in reference of Postgraduate Diploma Courses reservation is feasible and after acquiring the Postgraduate Diploma the Medical Officers are required to serve for two years in remote and/or difficult areas and the incentive that is provided for is only in reference to in-service Government Medical Officers by awarding them 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.

28. Consequently, in the facts of the case, once the law on the subject is clear that it is the MCI that will have the last word in the matter and before us a categorical stand has been taken by the MCI that there is no such enabling provisions that enables the State Government to reserve 30% seats for in-service candidates for pursuing post-graduate degree courses, then in our considered opinion once the Government Order in question is going beyond the purview and scope of the MCI Regulations, though the Government Order in question has not at all been challenged before us and a part of the same has been challenged before us, on the premises that Postgraduate Medical Education Regulations 2000 do not permit the State Government to reserve any seat for pursuing postgraduate degree courses for in-service candidates, accordingly, as

full opportunity has been provided for to the State as well as to the petitioners, we proceed to quash the entire Government Order 28.2.2014 with a direction that admissions in postgraduate degree courses be made strictly on merit amongst the candidates, who have obtained requisite minimum marks in the examination in question, so prescribed by the MCI.

29. With these observations/directions, writ petition is disposed of.

