(2015) 05 GAU CK 0067

In the Gauhati High Court

Case No : Writ Petition (C) No. 1735 of 2015

Manasjyoti Das and Others — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (2015) 2 GLD 730 : (2015) 2 GLT 762

Hon'ble Judges : Tinlianthang Vaiphei, J

Bench : Single Bench

Advocate : K.N. Choudhury, M. More and P.K. Sharma, for the Appellant; M.K. Choudhury, A. Sarma, A. Verma, B.D. Das, S.K. Talukdar, P.N. Goswami, S.C. Biswas and S. Borthakur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tinlianthang Vaiphei, J—In this writ petition, the petitioners are challenging the additional marks granted to the private respondents for admission into the Post Graduate Medical Entrance Examination, 2015 on the ground that the services rendered by them in boat clinic or MMU cannot be said to be services rendered by them in remote and difficult areas. The facts giving rise to this writ petition, as pleaded by the petitioners, may be briefly noticed at the outset. According to the petitioners, they are Doctors, who, after obtaining a degree of Bachelor of Medicine and Bachelor of Surgery (MBBS) and completing one year compulsory rural service, had appeared in the Entrance Examination, 2015 for admission into the post graduate courses in five medical colleges throughout Assam. All of them stood at higher positions in the merit list of the said entrance examination. The Assam Medical Colleges (Regulation of Admission to Post-Graduate courses) Rules, 2006 ("Admission Rules" for short) as amended from time to time regulates the procedure for admission into such courses. It is the contention of the petitioners that the Admission Rules read with the judgment dated 26.5.2011 passed by this Court in WP(C) No. 3280/11 clearly brings out the following

features:

(i) All candidates must serve for at least one year in rural service to be eligible for appearing in the in the Post Graduate Medical Entrance Examination.

(ii) Additional marks shall be given at the rate of 3% of the marks obtained in the Entrance Examination, against completion of each year of service in "remote and difficult area", subject to a maximum of 9%.

(iii) "Remote and difficult area" means those area which are already notified/ mentioned in the Rules.

(iv) A candidate must "continuously and satisfactorily" serve for at least one year in "remote and difficult area" in order to be entitled to get such additional marks.

2. It is the further case of the petitioners that since the remote and difficult areas are limited, the respondent authorities, in order to accommodate the aspiration of each every candidate, laid down the procedure for deciding postings in such areas: the selection is thus made by preparing a merit list on the basis of the marks secured by each of the candidates in the final MBBS examination. Accordingly, counselling is held every year for deciding postings in such areas. This year, the respondent authorities uploaded in their website a list of candidates who purportedly served in remote and difficult areas, and were allotted additional marks to the order of 3% with a maximum of 9% in the PG Entrance examination. It is the allegation of the petitioners that as per the list so published, additional marks were, therefore, allotted to those candidates who served in boat clinics/MMU, but not in remote and difficult areas and also to candidates who are not entitled to such additional marks. The respondent No. 1 vide its office correspondence dated 21.2.2014 for the first time agreed to include the services rendered by the doctors in such boat clinics as rural postings, which demonstrates that boat clinic posting were not considered to be remote and difficult prior to 21.2.2014: the question of boat clinic being treated as remote and difficult areas, therefore, does not arise.

3. It is further averred by the petitioners that as per the impugned list so published, candidates who joined boat clinics in the year 2012 and prior to 21.2.2014 were also granted additional marks illegally even though the term "remote and difficult area" as defined in Rule 5(D)(xvi) of the Admission Rules does not include boat clinic therein. Moreover, from the list of doctors to be posted for one year Compulsory Rural Service for the year 2012, 2013 and 2014, it is seen that boat clinic postings were not available for candidates appearing for counselling to decide their place of postings. However, without going through the process of counselling, some candidates joined those boat clinics and after serving there for some years were availing of the benefits of additional marks illegally. It is also the case of the petitioners that boat clinic is stationed only at District Office/Headquarters and operates only for 18-22 days in a month, but as per rule, the headquarters of any District/Sub-division can never be a remote and difficult area, and the service in remote and difficult area must also be a

continuous one.

4. It is also alleged by the petitioners that the respondent No. 6 joined rural service through counselling at Dhakuakhana MMU on 23.3.2012, and was allotted additional marks of 9% for working at a place for a period of three years, but Dhakuakhana MMU was not declared as remote and difficult area in the year 2012 and 2013 and the same was declared to be so only in the 2014. Such candidates working in such a place before the year 2014 cannot be entitled to such additional marks and the respondent No. 6 is, therefore, is not entitled to any additional mark. Similarly, the respondent No. 8 joined his place of posting on 23.3.2012 and served for only one year till 22.3.2013, but left such posting and did not work therein for the subsequent year 2013-2014. He subsequently on 10.3.2014, after a gap of one year, joined the same place of posting without going through any process of counselling. Though he is entitled to additional marks for one year, he is not entitled to additional marks for two years as he did not go through fresh counselling in 2014.

5. One of the petitioners subsequently filed an affidavit-in-reply incorporating new facts, which may also be briefly noticed. It is by now evident from this affidavit that the office letter dated 21.2.2014 only indicates that boat clinic postings henceforth should be treated as rural posting, and has nothing to do with additional marks awardable to candidates who render their services in "remote and difficult areas". However, it is the case of the petitioners that what is also required by Rule 5(D)(xvi) is that a candidate must "continuously and satisfactorily" serve for at least one year in remote and difficult area in to order avail of the additional marks; the appointment letters issued to the candidates working in boat clinic indicates that such candidate is to report to District Office, which is always located in the headquarters of that particular district on non-boat clinic days. It is submitted that the boat clinics or, for that matter, the MMU located in the headquarters of the district can never be treated as located in remote and difficult area for the purpose of availing of the benefit of additional marks. In their appointment letters also, contends the petitioners, there is no indication that their places of postings are in remote and difficult areas.

6. It is also the case of the petitioners that posting in rural area must be allotted only to the candidates who go through the process of counselling, which is held every year in accordance with the Executive Order dated 8.4.2011 which stipulates that every willing candidates are to be given an option whereafter MD, NRHM, Assam would prepare the list of names of such doctors in order of the marks (percentage wise) secured by each of them in the MBBS examination, but in such counselling, the petitioners were never asked to opt for posting in boat clinics or MMUs nor were they ever informed that health service rendered in boat clinic or MMU is equivalent to posting in a remote and difficult area; no notification to that effect was ever issued by the respondent authorities. C-NES admittedly invites application for posting in boat clinics by paper publication and there is a separate counselling being held for boat clinic posting, which is not

consistent with the said Executive Order dated 8.4.2011: these candidates cannot, therefore, be allotted additional marks. The petitioners admittedly secured more marks than the private respondents in the MBBS examination, but if this Court does not interfere with the impugned decision of the respondent authorities, they are likely to be placed below such candidates in the merit list, though they are much below them (the petitioners) in order of merit in the MMBS examination. This will be arbitrary, and negate their fundamental rights guaranteed under Articles 14 and 15 of the Constitution.

7. The writ petition is opposed by all the respondents by filing their respective affidavits-in-opposition. The stance taken by the State-respondents in their affidavit is that no additional marks are granted to any candidate who is not entitled to, and has not served in remote and difficult area and that a list of candidates who served in remote and difficult area is prepared after general scrutiny of applications made by the Selection Board at the time of counselling, and it is the Selection Board which finally decide the entitlement/eligibility of candidates serving in the remote and difficult area as per the rule. If the service of the candidate falls within remote and difficult area as defined in the Admission Rules, he will be entitled to additional marks. According to the answering respondent, the term boat clinic is not a separate entity and additional marks are not granted towards working in boat clinic alone, and only those candidates who offered their services in boat clinic in the area which falls within the places called remote and difficult area are entitled to additional marks.

8. The respondent No. 5, who is the Special Consultant of National Rural Health Mission (NRHM), Assam, in his counter-affidavit, contends that there is no ambiguity in the expression "remote and difficult areas" as defined in Rule 2(xi) of the Admission Rules: "Remote and Difficult areas" means an area which is situated in the two hill districts of Assam, namely, North Cachar Hills and Karbi Anglong District as well as remote areas, namely, Dhemaji District, Sadia Sub-Division, Majuli Sub-Division, Dhakuakhana Sub-Division and South Salmara Sub-Division other than the headquarters of the said District/Sub-Division. Rule 5(D)(xvi) has been introduced to provide additional marks of 3% subject to maximum of 9% to candidates who served in remote and difficult areas for determining his position in the merit list in the Entrance Examination for admission into Post Graduate courses subject to production of a certificate to that effect from the Director/Health Services/Director/Health Services (FW)/Joint Director, Health Services of the concerned area in the format as prescribed in Appendix-IV. It is pointed out by the answering respondent that Dhakuakhana Sub-Division is specifically included in the definition of the term "remote and difficult area". If any candidate was posted in remote and difficult area without any counselling, the petitioners ought to have challenged the same at time of their posting thereat: they are now estopped from making such a challenge at this belated stage. The words "boat clinic" itself shows that the said posting is obviously a remote and difficult posting.

9. In the affidavit-in-opposition filed by the respondent No. 8 (Dr. Arun Kumar Phukan), he points out that he rendered his service as one year compulsory rural posting through counselling at Sissimukh MPHC under Bengenagarah BPHC (Dhemaji District) from 23.3.2012 to 22.3.2013 and at Chimenmukh SD under Sissibargaon BHPC (Dhemaji District) from 10.3.2014 to 9.3.2015 and that for rendering two years of service in Dhemaji District other than at the District Headquarters which service amounts to working in a remote and difficult area, he was awarded an additional mark of 6% by the respondent authorities. The validity of the certificates to that effect issued by the competent authorities annexed at Annexure-3 are not questioned by the petitioners. It is the case of the answering respondent that counselling is a mandatory requirement every year in which every meritorious candidate must be given an opportunity to apply for posting in remote and difficult area: all the petitioners took in such counselling. According to the petitioners, no meritorious candidates ever come forward for such posting. These are the principal contentions of the respondent No. 8. Separate affidavit-in-opposition was also filed by the respondent No. 9, 13 and 14 wherein they assert that the respondent No. 13 used serve in boat clinic located in the South Salamara BPHC, South Salmara Sub-Division, Dhubri District from 3.10.2012 to 3.10.2013 as Medical Officer, while the respondent No. 14 used to serve in a boat clinic in South Salmara BPHC from 23.12.2013 to 22.12.2014, Dhubri District, which indisputably fall within Dhubri District in the same capacity. According to the answering respondents, though they were posted in South Salmara BPHC, their services were utilized in delivering rural health care via boat clinic: as they completed one year of rural posting in a remote and difficult area, they are entitled to a weightage of 3% by way of additional marks. Moreover, the petitioners have failed to implead Dr. Mizanur Hussain, Dr. Firoz Pegu, Dr. Kankan Deka, Samrat Roy, Dr. Anand Kr. Gupta, Dr. Himangshu Sekhar, Prasenjit Sahu and Dr. Yuvraj Mazumdar, who used to be posted in remote and difficult area prior to 2014, as party-respondents in the writ petition, who are most likely to be affected if the writ petition is allowed. The writ petition is, therefore, liable to be dismissed for want of necessary parties.

10. The respondent No. 11 in his counter-affidavit states that he opted for compulsory rural posting in Dhemaji District under boat clinic programme managed by the Centre for North East Studies and Policy Research (C-NES) on behalf of the National Rural Health Mission (NHRM) by executing a Memorandum of Understanding. He was given contractual appointment as Medical Officer for the boat clinic under PPP mode with NRHM, Assam after undergoing recruitment process on the basis of the advertisement dated 3.6.2012 published in the Assam Tribune: the boat clinic is situate at Silapathar which is around 40 kms from Dhemaji town. He served in the said boat cline for two years from 2012 to 2014. The object of granting additional marks against completion of each year of service in remote and difficult area is to encourage and attract doctors to work in those remote and difficult area, which compared to other rural areas are in much more disadvantageous position. According to the answering respondent, there is

no cut-throat competition amongst doctors for working in remote and difficult area so as to reap the benefit of incentives in the form of weightage of marks and all the petitioners except the petitioner No. 5 did not opt for rural posting in remote and difficult area. The answering respondent denies that any provision of Admission Rules has been violated by the respondent authorities in allotting additional marks to candidates who served in boat clinics. It is the contention of the answering respondent that by virtue of the definition in the Admission Rules, the boat clinic will come within the meaning of "remote and difficult area" if these clinics function within the area notified as remote and difficult area: boat clinics are, therefore, not required to be separately declared as remote and difficult area for the purpose of granting additional marks. The petitioner used to work in the sar and sarporis for 18 to 22 days and served the remaining day in the headquarters at Silpathar, which is about 40 kilometres away from he District Headquarters of Dhemaji District. The answering respondent flatly denies that he did not continuously work in a particular place. He submits that the petitioners are deliberately giving misinterpretation to Rule 5(D)(xiv) of the Admission Rules to deny the benefit of additional marks to the respondent who by virtue of the services rendered by him in remote and difficult area when they did not even opt to work therein. No case is made out by the petitioner for the interference of this Court in this writ petition, which is liable to be dismissed.

11. Before proceeding further, it will be useful to understand the meaning of the expression, namely, "service in rural areas" ("rural posting" in common parlance) provided for in the Admission Rules of 2006 and the concept of service in "remote and difficult area". To understand what is meant by service in rural areas, we may refer to Rule 4(4) and (iii) of the Admission Rule, 2006, which are reproduced below:

"(4) State Health Services Quota Seats:

(i) 16 (sixteen) seats (six in Degree and 10 Diploma) shall be reserved in each session for the doctors appointed in the State Health Services on the ground on the regular basis on the recommendation of the Commission and who have completed five years or more service in rural areas. The allotment of seats have been shown in Appendix-I.

* * * *

(iii) The doctors applying for seats under this quota shall have to submit the application form through their respective controlling officer i.e. DHS/DHS(FW)/Jt. DHS with a certificate issued by the Controlling Officer. The terms rural area shall denote an area which is not a notified urban/town area and shall be situated at a minimum distance of 5 Km from such notified urban area and town area and five kn beyond the nearest point of national highway. "

(Underlined for emphasis)

12. It may further be noted that the concept of boat clinic has been introduced in

2004 through different NGOs, and has been operated in collaboration with NRHM in 2008 to offer quality health service to the people residing in remote and inaccessible area; such people were for long deprived of quality medical care and service. Therefore, doctors serving boat clinics are as much as important as their counterparts working in other difficult areas. To borrow from the booklet called "Evaluation of Boat Clinics in Assam", produced by Regional Resources Centre for NE States, Ministry of Health & Family Welfare, Government of India, the boat clinic was taken over by the National Health Mission and the State Government vide the letter dated 21.2.2014; the service rendered by the doctors in boat clinic is considered to be compulsory rural posting. The boat clinic and Mobile Medical Clinic keep on moving to remote and difficult area to offer health services to people living in inaccessible area and they thereafter returned to their respective District and Sub-Divisional headquarters: their stationing at their respective District and sub-Divisional headquarters does not mean that the services are not rendered by them in remote and difficult areas. It is not mandatory to complete one year of compulsory rural service, but after completion of one year, the candidates may opt for service in remote and difficult areas for a period of one year, which is renewable after completion of each year. However, in order to earn additional marks, the candidate must have rendered continuous service at least for one year in remote and difficult area. These are the sum and substance of the case of the respondent No. 5.

13. It may also be noted that the Admission Rules of 2006 underwent substantial amendment in 2010. Under this amendment, the concept of service in "remote and difficult" was introduced for the first time in Rule 5(D)(xvi) for purpose of granting additional mark to service in remote and difficult area. Rule 5(D)(xvi) reads thus:

(xvi) in determining the merit in the Entrance Examination for Post Graduate admission, additional mark shall be given at the rate of 10% of the marks obtained in the Entrance Examination, against completion of each year of service in "remote and difficult areas" subject to maximum of 30% of total marks obtained, provided the candidate produces certificate/certificates to that effect issued by the Director, Health Services/Director, Health Services (FW)/Joint Director, Health Services of the concerned area, in the format as prescribed at Appendix-IV.

Provided that such marks obtained after the inclusion of additional marks shall not exceed the total marks of the Entrance Examination.

Provided, however, that the period of service in remote and difficult areas shall be counted from 01.01.2010 onwards only and services offered prior to this date shall not be counted for awarding the additional marks.

Provided also that Doctors serving in rural areas in establishment other than establishment of the Government of Assam or Society/Agency created for implementation of National Programmes of disease control or National Rural

health Mission shall not be eligible to be awarded additional marks as mentioned above.

14. The term "remote and difficult Areas" is defined in Rule 2(xi) of the same amended Admission Rules in the following manner

"(xxi) "Remote and Difficult Areas" means an area which is situated in the two Hill Districts of Assam i.e. North Cachar Hills and Karbi Anglong District as well as remote areas, namely, Dhemaji District, Sadia Sub-Division, Majuli Sub-Division, Dhakuakhana Sub-Division and South Salamara Sub-Division other than the headquarters of the said Districts/Sub-Divisions."

A combined reading of all the provisions extracted in the foregoing unmistakably makes it clear that the term rural posting necessarily covers the expression "remote and difficult areas", but the expression "remote and difficult areas" does not necessarily compress within it the term rural posting: in other words, rural posting covers a broader area than the expression remote and difficult areas but not vice versa. In this writ petition, we are concerned with the expression "remote and difficult areas": they should not be confused with each other. As already noted, on the intervention of this Court in WP(C) No. 3280 of 2010, the additional marks which could be allotted for service in remote and difficult areas have been reduced to 3% per year with a maximum of 9%. Indeed, the term "boat clinic", or, for that matter, "Mobile Medical Unit (MMU)" are not expressly included in the definition of the expression "remote and difficult areas". The question to be determined now is whether the concept of boat clinic or MMU can be said to be covered by the expression "remote and difficult areas" under Rule 5(D)(xvi) of the Admission Rules.

15. Mr. K.N. Choudhury, the learned senior counsel appearing for the petitioners, contends that the service rendered in a boat clinic cannot, by a process of interpretation, be included within the expression "remote and difficult areas"; this would amount to enlarging the scope of, or re-writing, Rule 5(D)(xvi) of the Admission Rules, which exercise can be undertaken only by the rule-making authority. He submits that the interpretation given by the respondent authorities to Rule 5(D)(xvi), if accepted, would not only be perverse but would also be doing violence to such provision. In other words, his contention is that the award of additional marks on account of boat clinics and Mobile Medical Unit (MMU) to the private respondents is never envisaged by Rule 5(D)(xvi) of the Admission Rules. Even assuming but not admitting that services rendered in boat clinics falls within the expression "remote and difficult areas", posting in boat clinics can be done only by counselling wherein all the eligible candidates should be given an opportunity to participate in such counselling. As no counselling was ever done in the instant case, the petitioners have been denied of level playing field and the private respondents have been allowed to steal a march over them by awarding them additional marks. He, therefore, strenuously urges this Court to quash the list of candidates who served in the remote and difficult areas and were awarded additional marks or direct the respondent authorities not to allot

additional marks to the private respondents in the Entrance Examination for the services allegedly rendered by them in boat clinics.

16. Mr. S.K. Talukdar, the learned standing counsel for the Health and Family Welfare Department, Assam, however, supports the impugned decision of the State-respondents and submits that no interference is called for. According to the learned counsel, posting of candidates in remote and difficult areas is done only after scrutiny of eligible candidates, who applied for such postings, for placing them before the Selection Board who undertake the counselling process. It is the contention of the learned standing counsel that boat clinic is not a separate entity and additional marks are never granted for posting in boat clinic alone, but awarded to those candidates who rendered their services in remote and difficult areas by means of boat clinic or, for that matter, MMU; the fact that service in boat clinic is not included within the expression "remote and difficult areas" is, therefore, immaterial. He clarifies that the term "rural posting" used in the communication dated 21.2.2014 issued by the respondent No. 1 including one year compulsory rural postings under the NRHM cannot be confused with the concept of postings in "remote and difficult areas": rural areas cannot, by any stretch of imagination, be equated with remote and difficult areas. He, therefore, submits that there is no merit in the writ petition, which is liable to be dismissed.

17. Mr. P.N. Goswami, the learned counsel for the respondent No. 5 (NHRM), supports the impugned decision and denies that the private respondents were given postings in remote and difficult area without going through the process of counselling. If the private respondents were given postings in remote and difficult areas without undergoing the counselling, what prevented the petitioners from challenging their posting at the time of making the selections? As a matter of fact, contends the learned counsel for the respondent No. 5, the petitioners are city boys and, unlike the private respondents, have no willingness to serve in remote and difficult areas and wish to service perpetually in urban areas. Under the circumstances, they have no legitimate grievance to make against the additional marks rightfully given to them for who volunteer to serve in remote and difficult areas. Mr. M.K. Choudhury, the learned senior counsel for the respondent No. 6, 8, 9, and 14 also supports the impugned decision and submits that the answering respondents were posted in the South Salmara BPHC and not in the District Headquarters. He submits that the petitioner No. 1 and 2 actually took part in the counselling session for the year 2013, but clearly expressed their reluctance to serve in such remote and difficult area. He further points that the petitioner No. 3, 4, 6 and 7 participated in the counselling session in the year 2012 in which the petitioner No. 4 was placed at serial No. 167 of the merit list, but even after he had taken rural posting, there were at least 13 out of 33 remote and difficult areas postings remained vacant. This indicates that meritorious candidates never chose posting in remote and difficult areas even when it was offered to them at the time counselling. The challenge now made by the petitioners is an after-thought and amounts to an attempt to have both the cake and eat it. According to the learned senior counsel, the petitioners have no

possible grievance against the additional marks awarded to the private respondents, who really deserve such award as they chose to serve in remote and difficult areas. There is no merit in the writ petition, which should be dismissed. Both Mr. D. Das, the learned senior counsel for the respondent No. 10 and 12 and Mr. S. Borthakur, the learned counsel for the respondent No. 11 adopted the submissions of the learned senior counsel for the respondent No. 6 and others while defending the impugned decision.

18. As already noticed, the expression "remote and difficult areas" used in Rule 5(D)(xvi) does not expressly cover the concept of boat clinic or MMU. In Assam, for the river-dependents particularly on the islands of Brahmaputra and other major rivers as well as those living close to the river on its banks, the presence of government planning and development interventions is limited or, at times, altogether missing. The misery is compounded by floods which pose a major challenge and devastate livestocks and property, including standing crops. Although the number of those who were killed by high water has decreased, lakhs are affected by water borne diseases. More than five lakhs are rendered homeless and take shelter in temporary relief camps where families huddle together for weeks without proper facilities for sanitation. Many fall ill during this period and a major problem is the transportation for storage and distribution of food and medicines. About three million people live in over 2,500 islands of Brahmaputra, of which the largest river island is Majuli in Jorhat district. There are some 2,300 villages at last count on the islands - at times, these may comprise of a few huts, at times of several settlements dispersed over a large area where connectivity is on foot or by country boat (usually dug outs, pulled by oars and not engine-propelled). Most of these islands lack all basic infrastructures and services from health to schools, from power to, not surprisingly, roads and water supply not to speak of sanitation. One of the conclusions that was arrived at by Regional Resource Centre for NE States was the river itself could be used to respond to and answer some of the very problems and challenges caused by the river. Thus, more boats and ships could improve connectivity. Indeed, rural transport has the potential to eliminate poverty and reduce isolation. This led to the concept of Boat Clinics in Assam. Thus, the concept of boat is nothing more than an initiative to deliver health services to the people living on the islands and people living in unreached and river banks where connectivity only on foot and country boat or people rendered homeless and take shelter in temporary relief camps resulting from flood. Similarly, Mobile Medical Unit (MMU) has been introduced to make health services available to villages where dispensary or BPHC are not available.

19. The question to be determined is whether the omission of the health service rendered in a boat clinic or MMU in Section 5(D)(xvi) of the Admission Rules in the definition of the term "remote and difficult areas" per se will result in denying additional marks to the doctors who render services in a boat clinic or MMU when they actually operate in remote and difficult areas. If we give a narrow or literal interpretation to the definition of the terms "remote and difficult areas", services

rendered by a doctor in a boat clinic MMU even when they are operated in remote and difficult areas will not enable him to gain such additional marks. However, it is a notorious fact that doctors seldom opt for rural postings, much less, posting in remote and difficult areas. Even when incentives are given for rural postings, such rural postings are always confined to rural areas adjacent to urban areas or places easily accessible by road transport communication. In the process, in the case of rural posting also, those portions of the rural areas lying in remote and difficult areas remained unattended. It is with the object of luring doctors to choose for posting in remote and difficult areas of Assam that additional incentive in the form of additional marks was introduced in the Admission Rules as amended in 2010. It is a cardinal principle of interpretation of statute that if a choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of legislation should be avoided or a construction which would reduce the legislation to difficult futility must be eschewed, and we should rather accept the bolder construction, based on the view that the legislature would legislate only for the purpose of bringing about an effective result. "It is not an adequate discharge of duty", said Holmes, J, in his inimitable words, "for courts to say: we see what you are driving at, but you have not said it, therefore we shall go on as before." A classic solution is given by Lord Denning to meet a situation of this nature in his "Discipline of Law". This is what he said at page 12:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give ''force and life'' to the intention of the legislature. This was clearly laid down by the resolution of the judges in Heydon''s case, and it is safest guide today. Good practical advice on the subject was given about the same time by Plowden.... Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must do then as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out

the creases."

(Underlined for emphasis)

20. In my opinion, it is in consonance with the rules of interpretation of statutes given by Lord Denning that the expression "remote and difficult areas" shall have to be interpreted. More so, when the purposive construction of statute is gaining momentum: Courts these days are very reluctant to hold that legislature has achieved nothing by the language it used when it is tolerably plain what it wished to achieve. So construed, in the instant case, rendering service by a doctor in a boat clinic or MMU per se will not enable him to earn additional marks under Rule 5(D)(xvi) of the Admission Rules; what is rather necessary to earn additional marks is the rendering of health service by him in a boat clinic or MMU, that too, in a remote and difficult areas which alone will enable him to gain additional marks. As already noticed, what are remote and difficult areas are sufficiently identified in the definition provided for in Rule 2(xi) of the amended Admission Rules. For example, for going to health centre located in remote and difficult areas, a doctor shall have to use some transport such boat clinic or MMU to reach there. It is only when he reaches and serve there by boat clinic or MMU that the service rendered by him can be considered to be a service rendered in remote and difficult areas. Similarly, a doctor rendering service in a boat clinic in remote and difficult areas can claim and earn additional marks. In my judgment, it is not the mode of transportation which is decisive: it is the areas in which the health service is so rendered by boat clinic or MMU, which is decisive for earning the additional marks. It is a notorious fact that there are still many places in remote and difficult areas where hospitals, dispensaries and primary health centres are not available. Likewise, many villages located on river banks in remote and difficult areas are not accessible and connectivity is only by foot or boat. As the people inhabiting these villages can be reached only through boat that the concept of boat clinic has been evolved Consequently, I hold that rendering health services in a boat clinic or in a MMU in those areas which are situated in the two hill districts of Assam i.e. North Cachar Hills and Karbi Anglong District as well as remote areas, namely, Dhemaji District, Sadia Sub-division, Majuli Sub-division, Dhakuakhana Sub-division and South Salmara Sub-division other than the headquarters of the said Districts/Sub-divisions, should be considered to be health services rendered in "remote and difficult areas". Therefore, the doctors who rendered health services in those areas are certainly entitled to earn additional marks in accordance with the formula provided therein. No amendment of Rule 2(xi) of the Admission Rules is necessary to include the health services rendered by a doctor in a boat clinic operating in the area which situated in the two hill Districts of Assam, namely, North Cachar Hills and Karbi Anglong District as well as remote services, namely, Dhemaji District, Sadia Sub-division, Majuli Sub-division, Dhakuakhana Sub-division and South Salmara Sub-division other than the headquarters of the said Dhemaji/Sub-division.

21. At this stage, it may be noted that a clue to the kind of services rendered in

a boat clinic is found in the Memorandum of Understanding executed between the C-NES and the National Rural Health Mission (Annexure-D1 to the counter-affidavit filed by respondent No. 9, 13 and 14). In Article 2, it is provided that health services are to be provided to communities residing in remote river islands (Char/Saporis) of the Bramaputra in ten districts of Assam, namely, Dhubri, Barpeta, Nalbari, Morigaon, Sonitpur, Lakhimpur, Dhemaji, Dibrugarh, Tinsukia and Jorhat. In terms of Article 2.2, the health services to be provided consist of taking doctors, specialists, nursing staff and allied health staffs as well as medicines and medical equipments by vessels/boats to the saporis, char/ island areas of he selected districts which are highly vulnerable and lack medical facilities. Thus, practically all kinds of health services are being rendered in a boat clinic even in remote and difficult areas. A self-serving declaration that a doctor has served in a boat in a remote and difficult areas is not enough, but his declaration must be supported by a certificate issued by the Director of Health Services or Joint Director of Health Services of the concerned area in accordance with Appendix-IV prepared under Rule 5(xvi) of the Admission Rules. It may further be noted that the 3rd proviso to Rule 5(xvi) of the Admission Rules clarifies that even doctors serving in rural areas in the establishment of Government of Assam or Society/Agency created for implementation of the National Programmes of disease control or National Rural Health Mission shall be eligible for award of additional marks. C-NES is one of such societies. Therefore, a doctor serving in a boat clinic operated by the C-NES in remote and difficult areas, subject to fulfilment of other conditions, can earn additional marks under policy. Even C-NES has been inviting, by open advertisement, interested doctors for contractual appointment for serving in a boat clinic vide Assam Tribune in its issue dated 3.6.2012 (Annexure-D series of counter-affidavit of respondent 10 and 12. It is not the case of the petitioners that they were unaware of such advertisement and could not, therefore, respondent to the invitation. Even if no counselling was ever done or was improperly done by the State-respondents, it was open to the petitioners to apply for appointment in boat clinic in response to the advertisement made from time to time by the C-NES. In my opinion, what stands out from all these is that the petitioners never wanted rural postings, much less, posting in remote and difficult areas. The petitioners are confusing rural posting and posting in remote and difficult areas as evident from their pleadings in para 15 of the writ petition.

22. Specific allegations are made by the petitioners against the respondent No. 6, who joined rural posting through counselling at Dhakuakhana MMU (Lakhimpur District) and against the respondent No. 7, who was serving in Dhakuakhana MMU from 2013 by contending that MMU, Dhakuakhana Subdivision was not declared/notified as "remote and difficult areas" in the year 2012 and 2013. In the case of the respondent No. 8, the petitioners state that he joined rural posting through counselling at Sissiborgaon BPHC, Dhemaji, which is a notified remote and difficult area on 23.3.2012, served there for one year till 22.3.2013, left the posting and returned to resume his duty there without any

counselling. According to the petitioners, the respondent No. 8 could be allowed to join such posting only after undergoing fresh counselling, and this entry through backdoor has deprived many more meritorious candidates their right to opt for difficult area posting. It is, therefore, contended by the petitioners that none of these respondents are entitled to additional marks. In my opinion, the contentions of the petitioners on these counts do not stand closure scrutiny. In the first place, Dhakuakhana Sub-division expressly falls within remote and difficult area, and, as already noticed, so long as the health services were rendered by boat clinic or MMU, such services can, nevertheless, be said to be service rendered in a remote and difficult. Moreover, a certificate to that effect as per Appendix-IV of the Admission Rules was also issued by the competent authority, which is a presumed to be correct until and unless proved to be otherwise. So is the respondent No. 6, who rendered services by MMU within Dhakuakhans Sub-division, which is undoubtedly a difficult area for almost three years. A certificate to that effect has been issued by the competent authority (Annexure-4 to his affidavit). In the case of the respondent No. 7 also, he used to serve in Dhakuakhana MMU for one year as evident from Sl. No. 57 of the List of Candidates vide Annexure-XIV to the writ petition.

23. As already discussed, it is not the mode of transportation, be it boat clinic or MMU, which is decisive; it is rather the place where the health service, whether by means of boat clinic or by MMU, is rendered. Once it is shown that service was rendered in remote and difficult area, irrespective of whether it was through boat clinic or MMU or BPHC, a candidate is entitled to earn the additional mark(s). It is not the case of the petitioners that they had applied for contractual appointment for service in boat clinic or MMU launched by the C-NES and were never given the appointment. Had they really wanted to render service in remote and difficult areas through boat clinic in response to the advertisement issued by the C-NES through Assam Tribunes, they could have applied without waiting for counselling conducted by the Directorate of Health and Family Welfare, Assam. In my opinion, this reinforces the submission of Mr. P.N. Goswami, the learned counsel for the respondent No. 5, that city boys like the petitioners never wanted to serve in rural areas, much less, remote and difficult areas. In so far as the respondent No. 9, 10, 11, 12, 13, 14 and 15 are concerned, no specific plea of illegality was raised against them for awarding additional mark(s) to them even though they have been made party-respondents by subsequently under Order 1, Rule 10(2) CPC and Court cannot decide cases in vacuum: this Court cannot be left to imagine by itself the nature of dispute to be decided. I agree. No case is, therefore, made out against the respondent No. 9 to 15. As for the letter dated 8.4.2011 of the respondent No. 1, as already noticed earlier, the learned counsels appearing for the rival parties have agreed that this has nothing to do with postings in remote and difficult areas. Consequently, the issue raised by the learned senior counsel for the petitioner in this behalf does not survive for consideration. For what has been stated in the foregoing, there is no merit in this writ petition, which is, therefore, dismissed. The parties are, however, directed to

bear their respective costs. The interim order stands vacated.

