

Dr. Sandip Santra and Others Vs. Dr. Papiya Biswas and Others

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Court : Kolkata

Decided On : Oct-18-2012

Judge : Subhro Kamal Mukherjee & Harish Tandon

Appeal No. : M. A. T. Nos. 661 With 688, 681, 691, 686, 727, 793, 759, 761, 762, 765 to 769, 780 to 782, 798 & 797, 704, 840 of 2012 & A.S.T.A. Nos. 70, 105, 114 to 122 & 131 of 2012 with W. P. 1000(w) of 2012

Appellant : Dr. Sandip Santra and Others

Respondent : Dr. Papiya Biswas and Others

Judgement :

Subhro Kamal Mukherjee, J.

We are concerned with about sixteen (16) writ petitions challenging the provisions of Clause 9(2)(d) of the Postgraduate Medical Education Regulations, 2000, ('the said regulation' in short) and the consequential Government of West Bengal notification dated November 23, 2011, ('the said notification' in short).

In Writ Petition No. 1000(w) of 2012 and Writ Petition No. 5125(w) of 2012, the said Clause 9(2)(d) is, specifically, under challenge. However, in the other fourteen (14) writ petitions, the said government notification is under challenge.

The Hon'ble Single Judge, by the order impugned, inter alia, held that there was no illegality on part of the Medical Council of India in amending the said regulation

of 2000 by inserting Clause 9(2)(d) in the said regulation and, further, held that the said notification of the Government of West Bengal only identified the rural and difficult areas, which was within the domain of the State Government.

However, the Hon'ble Single Judge held that, in the absence of the West Bengal Government notification clearly specifying that it would have retrospective and retroactive operations, the said notification should be deemed to be prospective in nature.

Being aggrieved, the writ petitioners have filed appeals.

Simultaneously, the persons, who were supporting the regulation and the notification, also, filed appeals challenging the findings of the Hon'ble Single Judge that the government notification should be deemed to be prospective in nature.

Some applications have been filed seeking leave to file appeals against the order of the Hon'ble Single Judge. In substance, mostly the applicants challenge the findings of the Hon'ble Single Judge that the said notification should be deemed to be prospective in nature.

The Indian Medical Council Act, 1956, (hereinafter referred to as 'the said Act') was enacted to provide for the re-constitution of Medical Council of India and the maintenance of Medical Register for India and matters connected thereto.

Section 20 of the said Act provides for constitution of a Medical Education Committee for assisting the Medical Council in matters relating to Postgraduate medical education. It provides, further, that the Council may prescribe standards of Postgraduate medical education for the guidance of the Universities.

Section 33 of the said Act reserves the power of the Medical Council to make regulations. It provides that the Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of the said Act and, without prejudice to the generality of such power, such regulations may provide for the various purposes of the said Act.

For the purpose of deciding these matters, we need to consider the provisions of Subsections (j),(k),(l) and (n) of Section 33 of the said Act.

The said provisions run as under:

33. (j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;

(k) the standards of staff, equipment, accommodation, training and other facilities for medical education;

(l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(n) any matter for which under this Act provision may be made by regulations.

The Medical Council of India, in exercise of the powers conferred by Section 33 read with Section 20 of the said Act of 1956, with the previous sanction of the Central Government, issued the Postgraduate Medical Education Regulation, 2000.

Clause 9 prescribes the procedure for selection of candidate for the Postgraduate courses.

The said Clause 9 suffered amendments from time to time.

Clause 9 (2)(d) suffered an amendment on July 21, 2009. After the amendment of July 21, 2009, it took the following shape:

“9. (1) (a) students for Postgraduate medical courses shall be selected strictly on the basis of their inter se academic merit.

(b) 50% (fifty per cent) of the seats in Postgraduate diploma courses 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 Postgraduate

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 methodology:

(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 centralized 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

Provided that wherever 'Entrance Test' for Postgraduate admission is held by a state government or a University or any other authorities examining body, the minimum percentage of marks for eligibility for admission to Postgraduate medical course shall be 50 per cent for general category candidates and 40 per cent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Provided further that in Non-government institutions 50% (fifty per cent) of the total seats shall be filled by the competent authority notified by the State Government and the remaining 50% (50 per cent) by the management(s) of the institution on the basis of inter se academic merit."

The said Clause suffered another amendment on February 17, 2009 when a proviso was inserted.

"3. The following proviso shall be added after Clause 9(2)(d) of the Postgraduate Medical Education (Amendment) Regulations, 2000 as amended by Postgraduate Medical Education (Amendment) Regulations, 2009 (Part II):

Further provided that in determining the merit and the entrance test for Postgraduate admission weightage in the marks may be given as an incentive at

the rate of 10% (10 per cent) of the marks obtained for each year in service in remote and difficult areas up to the maximum of 30% (30 per cent) of the marks obtained.”

Again, in April 16, 2010, the Clause suffered an amendment when after the words ‘remote and/or difficult areas’ the following words were inserted:

“As decided by the competent state authorities from time to time.”

Again in December 21, 2010, the Clause was amended:

The idea of providing reservation of 50% (fifty per cent) of seats in Postgraduate diploma courses for the medical officers in the Government service, who have served for at least three years in remote and difficult areas, was done away.

However, in February 27, 2012, the Clause 9 suffered another amendment. The said amendment runs as under:

“5. Clause 9 under the heading ‘Selection of Postgraduate students’, as amended vide notification No. MCI.18(1)/2010-Med/49070 dated December 21, 2010, following shall be added after Sub-clause IV ,which is as under:

Provided that in determining the merit of candidates, who are in service of Government/public authority, weightage in the marks may be given by the Government/competent authority as an incentive at the rate of 10% (ten per cent) of the marks obtained for each year of service in remote and/or difficult areas up to the maximum of 30% (thirty per cent) 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.

6. Clause 9 under the heading ‘Selection of Postgraduate students’, as amended vide notification No. MCI.18(1)/2010-Med/49070 dated December 21, 2010, following shall be added after Sub-clause VI which is as under:

50% (Fifty per cent) of the seats in Postgraduate 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 Postgraduate

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.”

Mr. Saptangshu Basu, learned senior advocate appearing for the appellants, argues that the regulation providing 10% (ten per cent) of weightage for in-service candidate is not lawful under the said Act. In substance, he submits that the Postgraduate Medical Education Regulation, 2000 is ultra vires as neither Section 20 nor Section 33 of the said Act gives power to the Medical Council of India to frame such regulation. He draws our attention to the provisions of Clause 9, which provides that selection must be held strictly on the basis of academic merits. He submits that, by providing reservations, the Medical Council of India compromised with the merits and constituted a class amongst the medical officers.

He, further, argues that the Government of West Bengal had no authority to issue the notification dated November 23, 2011 as in the said regulation, the power was extended to the competent authorities and not to the State Government. He submits that the expressions ‘State Government’ and ‘State authority’ are not synonymous. He submits that the legislature has, consciously, used the expression ‘State authority’. If the Medical Council decided to impose the power on the State Government, they would have easily used the expression ‘State Government’ inasmuch as in various provisions of the said Act the expression ‘State Government’ was used. He submits that had the authorities intended to vest the power on the State Government, the authorities could have exercised the expression ‘State Government’ instead of using the expression ‘State authority’.

Mr. Basu, further, submits that the notification dated November 23, 2011 did not indicate as to under what authority the Department of Health and Family Welfare of the Government of West Bengal issued such notification. However, he submits that, in the affidavit-in-opposition by the State, the State claims that it was issued in exercise of the power under Article 162 of the Constitution of India. He submits that Article 162 does not provide for issuing executive notification, particularly, declaring remote and difficult areas. He draws our attention to the report of the West Bengal Human Development Report, 2004, prepared by the Development

and Planning Department, Government of West Bengal, where human development indicators for the districts of West Bengal are mentioned. He submits that the human development indicator rank for the district of Birbhum is 14 (fourteen) whereas for the district of Nadia, it is 9 (nine). He submits the district of Birbhum was included in the zone of remote and difficult area but, for reasons not known, the district of Nadia was not included. He submits on the basis of a brochure issued by the State Bureau of Health Intelligence, Directorate of Health Services, Government of West Bengal, that the Scheduled Castes population in the district of Medinipore is 16.4%, in the district of Malda it is 16.8%, in the district of Burdwan it is 27% and in the district of Nadia it is 29%. He submits that the districts of Burdwan and Nadia are not included whereas districts of Medinipore and Malda are included in the zone of remote and difficult areas. He submits that there was no application of mind by the State Government in issuing the said notification and it was issued with great deal of arbitrariness.

Mr. Basu, lastly, draws our attention that Ms. Nazem Siddique stood 2nd (second) in the merit list, but after the weightage as provided in the said regulation and in the notification, her position comes down to 312(three hundred and twelve). She, therefore, although academically excellent, but loses her chance for getting admission in any Postgraduate medical course.

Mr. Basu submits large number of decisions in support of his contention that all through the Supreme Court of India insisted upon that the merit should be the criteria for admission to any Postgraduate medical course.

We feel that we should refer to some of the decisions cited by him, that is, Dr. Jagdish Saran and others -versus- Union of India and others reported in AIR 1980 SC 820, Dr. Dinesh Kumar and others -versus- Motilal Nehru Medical College, Allahabad and others reported in AIR 1986 SC 1877, Dr. Snehelata Patnaik and others -versus- State of Orissa and others reported in (1992) 2 SCC 26, Dr. Narayan Sharma and another -versus- Dr. Pankaj Kr. Lekhar and others reported in (2000) 1 SCC 44, State of Madhya Pradesh and others -versus- Gopal D. Tirthani and others reported in AIR 2003 SC 2952, Saurabh Chaudri and others -versus- Union of India and others reported in (2003) 11 SCC 146.

Mr. Amal Baran Chatterjee, learned advocate appearing in some of the appeals, submits that the booklet published by the University was issued on the basis of the regulation as of April 16, 2000. At that point of time, there was no scope to provide for reservation of 50% (fifty per cent) of seats and giving weightage of 10% (ten per cent) per year. Therefore, there was no scope for special treatment of such in-service candidates. He submits that the booklet issued by the University, particularly, the provisions providing reservations for the in-service candidates is illegal.

Mr. Pradip Tarafdar, learned advocate, who appeared in support of two applications filed under C.A.N. No. 5769 of 2012 and 5770 of 2012 seeking leave to prefer appeal with prayers for condonation of delay in filing such appeals, argues that the basis on which the notification dated November 23, 2011 was issued, had no nexus to the objects sought to be achieved. He submits that the areas, which have been declared as backward areas for the purpose of some other schemes, cannot be utilised for the purpose of identifying backward and remote zone for the purpose of providing special treatment to the in-service medical officers. He submits that there was no intelligible ground in dividing in-service doctors. He submits that the policies of the Medical Council of India and that of the Government of West Bengal are unreasonable and, therefore, the Court should strike down the Clause 9(2)(d) of the said regulation and the consequential notification dated November 23, 2011.

Mr. Farook M. Razack, learned advocate appears for the learned Attorney General of India, and submits that within the constitutional framework it was within the domain of the Medical Council, with the previous sanction of the Central Government, to issue the said regulation and the State Government was rightly authorised to issue the notification, which was lawfully issued. He submits that under Section 33(n) of the Medical Council Act, 1956, the regulation was rightly framed by the Medical Council of India and the regulation is, therefore, not ultra vires. He submits that the expression 'State authority' used in the regulation is synonymous to the State Government and, therefore, this notification dated November 23, 2011 was issued by the competent authority, that is, the State Government.

He relies upon the decisions in the cases of Kumari Chitra Ghosh and another -versus- Union of India and others reported in AIR 1970 SC 35, State of Kerala -versus- Kumari T.P. Roshana and another reported in (1979) 1 SCC 572, and Dr. Preeti Srivastava and another -versus- State of Madhya Pradesh and others reported in (1999) 7 SCC 120 and submits that different qualifying marks for different candidates is not unknown in law and, therefore, permissible.

Mr. Anindya Kumar Mitra, learned Advocate General with Mr. Subrata Talukdar, learned advocate, appear for the State of West Bengal and submit that identification of the remote and difficult area was justifiable. District-wise identification is possible. He submits that the scheme was framed with proper materials on record and, therefore, for working out the scheme, if some desirable candidate is eliminated, the entire scheme cannot be held to be bad. As no better scheme could be suggested, the State Government, upon taking all possible measures, framed the scheme identifying the difficult and remote zones. Therefore, the notification is legal. The State Government was within its authority in issuing the notification on the basis of the authorization vested in it by the said regulation.

Mr. Saugata Bhattacharya, learned advocate appears for the Medical Council of India and, as is expected, supports the said regulation and the notification. He cites two decisions, that is, Saurabh Chaudri and others -versus- Union of India and others reported in (2003) 11 SCC 146, Government of Andhra Pradesh and another -versus- Medwin Educational Society and others reported in (2004) 1 SCC 86.

Mr. Joydeep Kar, learned advocate appears and submits in support of 30% (thirty per cent) of weightage, but urged that the Hon'ble Single Judge was not right in holding that the weightage should be deemed to be prospective in nature. Mr. Kar disputes the submissions that the classification was arbitrary and he submits that the classification was based on certain acceptable parameters as suggested by the Committee constituted by the State Government for the purpose of identifying the remote and difficult areas. Mr. Kar, finally, submits that the regulations of the Medical Council of India have statutory force and are mandatory. He, therefore,

submits that the authorities including the State Government are bound to implement such regulation. He relies upon a passage from the well-known text book of Statutory Interpretation by G.P. Singh (7th edition) that the rule against retrospective construction is not applicable to a statute merely because a part of the requisites for its action is drawn from a time antecedent to its passing. He, also, relies upon the decision in the cases of State of Jammu and Kashmir -versus- Shri Triloki Nath Khosa and others reported in (1974) 1 SCC 19, Darshan Singh -versus- Ram Pal Singh and another reported in 1992 Supp.(1) SCC 191, Kusumam Hotels Private Limited - versus- Kerala State Electricity Board and others reported in (2008) 13 SCC 213, National Campaign Committee for Central Legislation on Construction Labour - versus- Union of India and others reported in (2011) 4 SCC 653, and Master Ladies Tailors Organisations and another -versus- Minister of Labour and National Services reported in (1950) 2 All England Law Reports 525.

Mr. Kishore Dutta, learned advocate appearing for the appellants in M.A.T. 661 of 2012, cites the following decisions in support of his contention, that is, Punjab University -versus- Subash Chander and another reported in (1984) 3 SCC 603, Bishun Narain Misra -versus- State of Uttar Pradesh and others reported in AIR 1965 SC 1567, Sanchit Bansal and another -versus- Joint Admission Board and others reported in (2012) 1 SCC 157, Ajay Kumar Singh and others -versus- State of Bihar and others reported in (1994) 4 SCC 401.

Mr. Surajit Samanta, learned advocate appearing for the appellants in M.A.T. 688 of 2012, supporting the reservation, advanced his arguments against the findings of the Hon'ble Single Judge that the notification should be deemed to be prospective in nature.

Litigations regarding admission to Postgraduate courses, particularly, Postgraduate medical courses, reached the Supreme Court of India on various occasions.

In Kumari T.P. Roshana (supra) the Supreme Court of India observes that the Indian Medical Council Act has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to

regulate their observance. Obviously, this high-powered council has power to prescribe minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standards entrance qualification for medical courses. However, The Supreme Court of India upheld the reservation based on geographical classification of backward region.

In *Dr. Jagdish Saran (supra)* the Supreme Court of India observes the first caution is that reservation must be kept in check by the demands of competence. The shelter of reservation cannot be extended where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation. Students for Postgraduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for Postgraduate studies should be conducted by the University. Merit must be the test when choosing the best. The people of India should not be denied the best the nation's talent.

In *Dr. Dinesh Kumar (supra)* the Supreme Court of India observes the Government of India has suggested in the scheme of examination of admission to Postgraduate courses that a weightage equivalent to 15% (fifteen per cent) of the total marks obtained by a student at the All India Entrance Examination should be given if he has put in a minimum of three years of rural service. It is, of course, eminently desirable that some incentive should be given to our doctors to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected. But, such incentive should not go to the length of giving a weightage of 15% (fifteen per cent) of the total marks obtained by a candidate. It is of the utmost importance that the selection should be based on merit.

In *State of Rajasthan and another -versus- Dr. Ashok Kumar Gupta and others* reported in AIR 1989 SC 177, the Supreme Court of India lays down that in medical courses where there is intense competition and candidates run neck to neck so often with a difference of a mark or two, a difference of 137.5 marks by

way of colleges-wise institutional preference would virtually make a mockery of the merit criteria.

In *Dr. Snehelata Patnaik (supra)* the Supreme Court takes into consideration that the authorities might well consider giving weightage up to a maximum of 5% (five per cent) of marks in favour of in-service candidates, who have done rural service for five years or more.

In *Dr. Narayan Sharma (supra)* the Supreme Court of India lays down the following principles:

- (a) A provision for reservation must be within reasonable limits.
- (b) There can be a reasonable classification based on intelligible differentia for the purpose of Articles 15(1), 15(4) and 29(2).
- (c) There can be reservation for persons belonging to areas which are socially and educationally backward.
- (d) A rural area is not a class by itself and cannot be considered to be socially and educationally backward merely because it is a rural area.
- (e) Admission to Postgraduate courses should be strictly based on merit.
- (f) The merits of the candidates seeking admission to higher educational courses shall be judged by a uniform standard and for that purpose holding an entrance examination is the best method.
- (g) There shall be no dilution of standards in higher educational courses and in particular, Postgraduate courses.

In *Gopal D. Thirthani (supra)* the Supreme Court of India takes into consideration the Madhya Pradesh Medical and Dental Postgraduate Admission (In-Service) Rules, 2002, and holds that the 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 such a situation, the Supreme Court of India held that weightage assigned was reasonable and was worked out on a rational basis.

In *Saurabh Chaudri (supra)* the Supreme Court of India although held that the institutional reservation could not be held to be unconstitutional, but noted the recommendation of the Indian Medical Council that all admissions to the Postgraduate courses in any institution should be strictly on merit judged on the basis of academic record in the undergraduate course.

However, in course of argument, our attention was drawn to an unreported judgment of the Supreme Court of India, which, in our view, clinches the issue. In Civil Appeal No. 5705 - 5706 of 2012 *Satyaprata Sahoo and others -versus- State of Orissa*, the Supreme Court of India held that weightage could be given for doctors, who have rendered service in rural/tribal areas, but that weightage was available only in-service category, to which 50% (fifty per cent.) seats for Postgraduate admission has, already, been earmarked. The purpose and object for giving weightage to in-service candidates, who have rendered rural/tribal service, was laudable and their interests have been taken care of by the Medical Council of India, but they have to come through the proper channel, that is, the channel exclusively earmarked for in-service candidates and not through the channel earmarked for candidates in the open category.

In view of such clear pronouncement of the Supreme Court of India upholding the provisions of the said Clause 9(2)(d) of the said regulation, there is no scope to entertain the challenge that awarding the weightage as an incentive at the rate of 10% (10 per cent.) of the marks obtained for each year in-service in remote and difficult areas up to the marks 30% (thirty per cent.) of the marks obtained, is illegal.

Therefore, we are in agreement with the Hon'ble Single Judge that the provisions of the Clause 9(2)(d) of the said regulation is *intra vires*.

Now, the question crops up whether the State Government was within its power to issue the notification dated November 23, 2011. By amending the said regulation

by notification dated April 16, 2010 authorities were imposed upon the competent State authorities to identify the remote and difficult areas.

It is submitted that in the said Act, in various provisions, the expression 'State Government' was used. Therefore, 'competent State authorities' cannot be the State Government. We must interpret the provisions logically. The Court should determine the pith and substance of the matter. When the Medical Council of India used the expression competent State authorities, the Council was not certainly referring to West Bengal Medical Council constituted under the Bengal Medical Act, 1914. The West Bengal Medical Council controls the professional conducts of the practising doctors. It has got nothing to do with the Postgraduate education. It would have been better if the expression 'State Government' was used as that would have avoided all unnecessary controversies.

The regulations of the Medical Council of India have statutory force and, therefore, they are mandatory. The State Government was bound to implement the regulations.

We, therefore, are in agreement with the Hon'ble Single Judge that, by using the expression 'competent State authority', the Medical Council of India intended to vest the power on the State Government.

We, thus, hold that the State Government had competence to issue the notification dated November 23, 2011.

The Hon'ble Single Judge held that the said notification dated November 23, 2011 should be deemed to be prospective in nature.

Before we dwell upon this finding we feel inclined to decide as to whether the identification of the remote and difficult areas by the State Government is reasonable. The Hon'ble Single Judge held that there was an active decision-making process.

It is argued before us that there was no error in the decision-making process and, therefore, such identification was not vulnerable. It is submitted that when the identification of the areas was made on the basis of an expert committee report, it

is not open to the writ court to find fault as to whether such identifications were proper or not.

In the affidavit-in-opposition, it was stated that “The State Government with assistance of and upon consultation with its various liens devolved the said parameters” for identifying the remote and difficult areas. The National Committee recommended six fundamental parameters and the parameters were followed in identifying the remote and difficult areas.

We have, already, noticed the West Bengal Human Development Report, 2004, prepared by the Development and Planning Department, Government of West Bengal, indicated the development indicators for the districts of West Bengal. The rank of district of Birbhum is 14 (fourteen), the rank of district of Nadia is 9(nine). The district of Birbhum was included in the zone of remote and difficult areas, but the district of Nadia was not included.

The Scheduled Castes population in the district of Medinipore is 16.4%, in the district of Malda it is 16.8 %, in the district of Burdwan it is 27% and in the district of Nadia it is 29%. The districts of Burdwan and Nadia are not included whereas the districts of Medinipore and Malda are included in the zone of remote and difficult areas.

The net result is that a medical officer posted in M.R. Bangur Hospital in the heart of the city of Kolkata will be entitled to get the benefit of the weightage as the said hospital is under the control of South 24 Parganas district administration, but the medical officers posted in remote health centres in the districts of Burdwan and Nadia will not get the advantage.

These remote and difficult areas were identified by the State without consulting the in-service medical officers, who are affected by such notification.

The expert committee noticed that while identifying the remote and difficult areas, they found paucity of relevant informations regarding departmental efforts. They felt that a detailed effort should have been made in collaboration with other State Government departments to develop the parameters based on which the issue of

remoteness and difficulty could be assessed, pre-tested after assigning relative weightage against each parameter. It was noticed that the State Government could not afford to indulge in such detailed process due to urgency. The report was prepared fraught with the time constraints. Although the expert committee was not happy in adopting any existing definition, policy, guideline made by any State Ministry or any Ministry in the Central Government, they had to adopt such definition, policy and guideline as they were fraught with the time constraints. Although nearly 75% (seventy five per cent) of the total geographical areas of the State have been identified for benefits under the said regulation by declaring them as remote and difficult areas, it would have been better to adopt a more 'nuanced approach' in order to cover all the aspects of intra-district backwardness. They have not claimed that the list that was prepared was sacrosanct.

Mr. Joydeep Kar, learned advocate, submits that the Hon'ble Single Judge was wrong in holding that the notification was deemed to be prospective in nature. He, again, submits that as in the government notification for extending the benefits to the in-service medical officers, their antecedent services were taken into consideration, the notification cannot be termed as retrospective.

Relying upon the decision in *Master Ladies Tailors Organisations* (supra), he submits that in extending prospective benefit in certain cases, if antecedent facts are considered, it does not make the provision retrospective. He, again, relying upon the decision in *Shri Triloki Nath Khosa* (supra), says that the scope of judicial scrutiny in this case is very limited.

Our concern is whether the identification of the remote and difficult areas by the authorities is reasonable and whether it could achieve the object for which it is identified. It is not possible to substitute our own judgment. The expert committee, which was appointed for identifying the remote and difficult areas, were faced with time constraints and expressed their unhappiness as they were asked to identify those areas within a time frame, which was not sufficient. They expressed their opinion that such identification could lead to great deal of arbitrariness. They noticed that, theoretically, it would have taken long time and required the services of experts. They noticed that such categorisation will, inevitably, create a matching

deprivation somewhere or the other.

Where the decision involves matters, which are open for judicial scrutiny, the Court must examine the internal logic of the decision, the reasonableness on which the decision is based and the reasonableness of the decision-makers' evaluation of the matter as a whole in reaching the conclusion. The reasons must satisfy a minimum standard of clarity and explanatory force.

In such a situation, we are of the opinion that the State Government's notification identifying the remote and difficult areas is illegal. The decision-making process was defective. The notification is unfair and oppressive.

It is true that antecedents or past services of medical officers could be taken into consideration, but in-service doctors were never told in advance that by rendering services in rural/tribal areas, they could get better prospects of earning higher professional qualifications and consequential eligibility for promotion.

In fact, our attention was drawn to the Madhya Pradesh Medical and Dental Postgraduate Admission (In-Service) Rules, 2002, where such provisions were incorporated. In such a situation, in *Gopal D. Tirthani (supra)*, the Supreme Court of India held that the weightage assigned was reasonable and worked out on a rational basis.

In the facts and circumstances, we are inclined to accept the findings of the Hon'ble Single Judge that such notification should be deemed to be prospective in nature.

We, therefore, hold that:

(a) Clause 9(2)(d) of the said regulation is *intra vires*.

(b) The State Government was competent to issue the notification dated November 23, 2011.

(c) (i) The identification of the State Government of the remote and difficult areas is arbitrary.

(ii) The notification dated November 23, 2011 is, therefore, set aside.

(iii) This order, however, shall not prevent the State Government to issue a notification after identifying the remote and difficult areas.

The order impugned, in these appeals, stands modified.

The appeal and all connected applications are, therefore, disposed of.

We make no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the learned advocates for the parties subject to compliance with all requisite formalities.

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