IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.01.2022	19.01.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.22937 & 25749 OF 2021
AND
W.M.P. NOS.24142, 24149, 24150, 27199 & 27200 OF 2021

1. Dr.Parkaviyan R. .. 1st petitioner in WP 22937/2021
   .. Petitioner in WP25749/2021

2. Dr.Sellakannu
3. Dr.Jawahar S.R.
4. Dr.Karthck Raja S.
5. Dr.S.Sooraj Azarudeen
6. Dr.Arun Saravana
7. Dr. P.R.Jenifer Paul
8. Dr.Dhanvarshraaju C.
9. Dr. Fazil Arif M.
10. Dr.Baranidaran
11. Dr.Souther V.C.
12. Dr.Sathish Kumar G.

.. Petitioners 2 to 12 in WP 22937/2021

- Vs -

1. The State of Tamil Nadu
   rep. By its Prl. Secretary to Government
   Health & Family (MCA-1) Department
   Fort St. George, Chennai 600 009.

2. The Director of Medical Education
   Directorate of Medical Education
   Kilpauk, Chennai 600 010.

3. The Selection Committee
rep. By its Secretary
Directorate of Medical Education
162, Periyar E.V.R. High Road
Kilpauk, Chennai 600 010.

4. National Medical Commission
rep. By its Secretary
Pocket-14, Sector-8
Dwarka Phase-I, New Delhi 110 077.

5. Dr. S.Muhamed Mujamil
6. Dr.Maharajan
7. Dr.Vaishnavi
8. Dr. J.Ragav

9. Tamil Nadu Medical Officers Association
25, MRJ Complex, Thirukkanurpatti
Nalroad, Vallam Main Road
Thanjavur 613 303.

10.Dr.K.Kaushik .. Respondents in both petitions

(R-5 impleaded vide order dated 25.11.2021
made in WMP No.26483/2021)
(RR-6 & 7 impleaded vide order dated
09.12.2021 made in WMP No.27657/2021)
(RR-8 & 9 impleaded vide order dated
23.12.2021 made in WMP No.27569/2021)
(R-10 impleaded vide order dated
23.12.2021 made in WMP No.29441/2021)

W.P. No.22937 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 3rd

respondent contained in its prospectus for admission to Post Graduate Degree/Diploma courses in Tamil Nadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges affiliated to the Tamil Nadu Dr. M.G.R. Medical University for 2021-2022 session dated 6.10.2021 and to quash Serial No.29 (c) therein as arbitrary, unjust, illegal and *ultra vires* the Constitution of India and Post-graduate Medical Education Regulations, 2000.

W.P. No.25749 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent contained in G.O. (D) No.1108 dated 4.10.2021 and to quash the same as arbitrary, unjust illegal and *ultra vires* the Constitution of India and Post-graduate Medical Education Regulations, 2000.

For Petitioners : Mr.Suhrith Parthasarathy

For Respondents : Mr. J.Ravindran, AAG for RR-1 to 3
(In WP 22697/21) Mr. P.Wilson, SC, for
M/s.Wilson Associates RR-5, 8 & 9
Mr. Issac Mohanlal, SC, for
M/s.Issac Chambers, for RR-6 & 7
Mr. E.Manoharan for R-10

(In WP 25749/21) Mr. J.Ravindran, AAG for RR-1 to 4
Ms. Subharanjani Ananth for R-5
M/s.Wilson Associates RR-6 to 8
Mr. Issac Mohanlal, SC, for
M/s.Issac Chambers, for RR-9 & 10

COMMON ORDER

Assailing S. No.29 (c) of the impugned prospectus issued for filling up the seats in the post-graduate degree courses in medicine, under the 50% State quota, in and by which in-service candidates, who had put in service in difficult terrains in the State, were permitted to carry on their weightage marks not only for the reserved seats, but also permitted to compete for the seats under the open category by carrying with them the weightage marks, which is in violation of Article 14 of the Constitution and also the decisions of the Hon'ble Supreme Court, the present petitions have been filed.

2. It is the case of the petitioners that they have completed the bachelors degree in medicine and registered themselves with the Tamil Nadu Medical Council and are aspiring to pursue their post-graduation for which they appeared in the National Eligibility-cum-Entrance Test (NEET) for the year 2021-2022 by securing marks and also securing all India ranks.

3. It is the further case of the petitioners that Regulation 9 (4) of the Post-Graduate Medical Education Regulations, 2000 (for short 'Regulations, 2000) issued by the 4h respondent provides that a merit list for admission to the post-

graduate course will be prepared at All India level and at State level based on the marks obtained by the candidates in NEET. In the State of Tamil Nadu, presently 50% of the seats to post-graduate degree courses are allocated towards the all India quota and the remaining 50% seats are allocated to the Tamil Nadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges. Further, admission for 2021-2022 are governed by the prospectus for admission to post-graduate degree/diploma courses in Tamil Nadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges. The grievance of the petitioners herein is to S. No.29 (c) of the impugned prospectus wherein a stipulation has been made that *"out of the 50% seats in State Government quota, 50% of the seats will be exclusively allocated to in-service candidates serving in Government health institutions in the State of Tamil Nadu and remaining 50% of seats will be allocated to Open category which will be open to both service and non-service candidates. The seats in above categories will be filled up based on the marks already defined or such criteria to be defined by the Government from time to time ....."*.

4. It is the further case of the petitioners that the provision at S. No.29 (c) is manifestly arbitrary, disproportionate and ex-facie illegal and the respondents

have acted beyond the power granted to them as the Regulations, 2000 have not only assigned weightage to in-service doctors from remote/difficult/hilly/rural areas within the 50% seats allotted exclusively to in-service doctors, but also permitted in-service doctors to apply in the open category and have granted the same weightage to in-service doctors from remote/difficult/hilly/rural areas in open category. The said provision, according to the petitioners, dilutes any conception of merit in admissions and as such, unjust, unfair, arbitrary and discriminatory and *ultra vires* the Constitution.

5. Learned counsel appearing for the petitioners submit that the petitioners have no grievance insofar as reservation of 50% for in-service candidates is concerned and also the weightage granted to the in-service candidates for rendering service in remote/difficult/hilly/rural areas and adding the said weightage to their NEET score to arrive at the overall merit within the in-service quota, however, the said weightage cannot be carried over by the in-service candidates through to the open category seats to the tune of 50%, as that will be giving the said in-service an undue advantage over the open category candidates.

6. It is the further submission of the learned counsel for the petitioners that the weightage is given to the in-service candidates serving in remote/difficult/hilly/rural areas over their counterparts in the service of the Government, who render service in urban and corporation areas. The said weightage cannot be carried over by the in-service candidates to the open category, as within the open category are persons, who render service in private hospitals and are coming from such remote/difficult/hilly/rural areas and giving weightage to the in-service candidates rendering service in remote/difficult/hilly/rural areas will be in discrimination to persons rendering service in other hospitals or are residents of such remote/difficult/hilly/rural areas. Grant of such weightage outside the in-service quota is wholly arbitrary, discriminatory and in violation of Article 14 of the Constitution.

7. It is the further submission of the learned counsel for the petitioners that proviso to 9 (4) of Regulations, 2000, though provides for grant of weightage marks as incentive by certain percentage for persons rendering service in remote and/or difficult areas or rural areas as a percentage of their NEET score to be added to their NEET score for determining the merit of candidates, who are in-service, but the said score cannot be added to the NEET score of the individual for

arriving at the merit insofar as open category candidates are concerned, as the in-service candidates and the open category candidates, are two different modes of selection of candidates to the post-graduate degree and the merit list of the open category candidates along with the communal reservation is arrived at as per the procedure contemplated u/r 9 (4) before application of the provisio clause.

8. In this regard, learned counsel for the petitioner drew the attention of this Court to Regulation 9 (4) wherein it has been clearly detailed that an all India merit list as well as a State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in NEET and candidates shall be admitted to post-graduate courses from the said merit list only. It is therefore the submission of the learned counsel for the petitioners that proviso to 9 (4) of Regulation, 2000, is, in effect, a stand-alone provision, as the fixation of merit for open category comes by application of 9 (4) and that the proviso pertains only to in-service candidates, whose *inter se* merit shall be determined after awarding weightage incentive marks and adding the same to the NEET score of the particular individual for arriving at the overall merit within the 50% quota earmarked for in-service candidates.

9. In this regard, learned counsel appearing for the petitioners placed reliance on the decision of the Hon'ble Supreme Court in ***State of M.P. & Ors. - Vs – Gopal D.Tirthani & Ors. (2003 (7) SCC 83)***, wherein the Hon'ble Supreme Court, while approving the earmarking of 50% seats under the State-wise quota for in-service candidates, had gone on to hold as under :

> ***"Nature of 20% seats allocated for the 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 the in-service candidates. We, therefore, propose to preface our discussion by determining the nature of 20% seats allocated to the 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. Duraisamy v. State of T.N. [(2001) 2 SCC 538] 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 se 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 for 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 simpliciter.

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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 centres (CHCs) and 169 first-referral units (FRUs) need to be manned by specialists and block medical officers who must be postgraduates. There is nothing wrong in the State Government setting apart a definite percentage of educational seats at postgraduation 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 postgraduate degree or diploma though secured 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 along with the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved."

10. On the strength of the ratio laid down above by the Hon'ble Supreme Court, it is the submission of the learned counsel for the petitioner that the two different sources of selection being found on intelligible differentia, the Hon'ble Supreme Court had distinguished the persons or things placed in a group from those left out or placed not in the group. That being the case, diluting the ratio laid down in the aforesaid decision by the inclusion of S. No.29 (c) is nothing but an affront attack on the said decision by administrative overreach.

11. It is the further submission of the learned counsel for the petitioners that similar issue, akin to the issue before this Court, has already been considered by the Hon'ble Supreme Court in the case of ***Satyabrata Sahoo & Ors. - Vs – State of Orissa & Ors. (2012 (8(SCC 203)***. In the said decision, in-service candidates in the Orissa Medical Service competing in the open category were also granted additional incentive marks if they had served in rural/tribal areas, etc., thus restricting the scope of directory category candidates to gain admission. In the said context, the Hon'ble Supreme Court held that giving weightage to in-service candidates to gain admission through the open category in post-graduate medical admission is invalid and it was held that the incentive marks granted not only made inroads into the few open category seats available to the candidates as it is also violative of Clause 9 (1)(a) of the MCI Regulations as per which comparative merit is the only admission criteria permissible. In the said context, the Hon'ble Supreme Court held as under :-

> *"13. Clauses 9(1)(a) and 9(1)(b) when read together would indicate that 50% seats are earmarked for direct category candidates and 50% seats are earmarked for in-service category. Clause 9(1)(a) clearly states that students for postgraduate medical courses shall be selected strictly on the basis of their inter se academic merit and Rule 9(1)(b) states that 50% of the*

seats stand reserved for in-service candidates who have rendered at least three years' service in remote and difficult areas.

* * * * * * * *

15. Above Clause 9, therefore, stipulates the methodology to be adopted for determining the inter se academic merit of candidates who fall under direct category and of those candidates who ultimately fall under 50% seats reserved for in-service candidates. Clause 9(1)(a) clearly stipulates that students for postgraduate medical courses shall be selected strictly on the basis of "inter se academic merit". The main controversy in this case is whether the candidates from direct admission category have to be selected strictly on the basis of their inter se academic merit or whether it is legal to dilute the merit to the extent as indicated in the third proviso to Clause 9(2)(d). Candidates who fall in the direct candidates category, whether they are fresh from the college or serving elsewhere, either on government service or under public sector undertakings, working in rural/tribal area or otherwise or doctors who are serving in private hospitals or nursing homes, etc. situate in remote or difficult area, all fall in that direct category and all of them have to take a common entrance examination and admission criteria is only comparative merit. When the comparative merit is the only criteria in the open category, the question is whether a weightage can be given exclusively to those candidates who are in service of the State of Odisha/Government of Odisha undertaking, whether contractual/temporary/ad hoc/regular on the ground that they had worked in rural/tribal/backward areas.

It may be noted that 50% seats have already been earmarked for such category of candidates which they can always claim depending upon the inter se merit after complying with other eligibility criteria. Question is whether those in-service candidates can appropriate seats from the open category where seats are only few.

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20. Now by virtue of the third proviso to Clause 9(2)(d) and Clause 11.2 of the prospectus, candidates who fall under the in-service category are given a weightage through which they can make an in-road into the direct candidates category while retaining their rights to get admission for PG course through in-service category. The appellants lament that already 66% reservation is there in the State for PG admissions, including all reservations and only 34% seats are available for direct unreserved category on merit and if the third proviso to Clause 9(2)(d) of the MCI Regulations and Clause 11.2 of the prospectus are given effect to then those seats would be occupied by the in-service candidates in large number and candidates who come strictly on the basis of merit through the competitive examination will have to stand out.

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24. We have referred to the abovementioned 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 have 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.

25. The purpose and object for giving weightage to in-service candidates who have rendered rural/tribal service is laudable and their interest has been taken care of by the Medical Council of India as well as the prospectus issued for admission to the various medical colleges in the State of Odisha but they have to come through the proper channel i.e. the channel exclusively earmarked for in-service candidates and not through the channel earmarked for candidates in the open category. The in-service candidates are also free to compete through the open category just like any other who fall under that category. Further, it is also relevant to note that those who get admission in postgraduate courses through the open category have to execute a bond stating that they would serve rural/tribal areas after completion of their postgraduation. In fact, weightage is given to those candidates who have rendered service in rural/tribal areas when they compete for admission to PG (medical) courses in in-service category for whom 50% seats are earmarked.

26. We also find another fallacy in Clause 11.2 read with Clause 6.2.1 of the prospectus. Clause 6.2.1 of the prospectus says that an in-service candidate is one who at the time of application is in the employment in the Government of Odisha and has completed a length of 5 years of service which includes

all categories of employment like contractual/temporary/ad hoc/regular by 31-12-2011. Therefore, a doctor who is doing rural service on contract or on temporary basis or on ad hoc basis by 31-12-2011 will also get the benefit. At the same time, the candidates who pass out MBBS either in regular service or in contractual/temporary/ad hoc service in a private hospital even though serving in remote/tribal areas would not get that benefit even though those doctors are also rendering the same service. Every doctor who goes out of medical college after MBBS would not get an opportunity to serve in a rural/tribal area by way of contractual/temporary/ad hoc or regular service offered by the State of Odisha or a public sector undertaking. Few may fall in that category for various reasons and they get an advantage and those who get that advantage of course can claim weightage when they are being considered in the in-service category.

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 that 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 compete 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.

28. We find that except the State of Odisha and, to some extent, the State of Tamil Nadu, none of the other States in India has incorporated such a clause in any of their prospectus for admission to the postgraduate medical courses and students who fall under the open category in those States are, therefore, not affected by such weightage."

12. Learned counsel for the petitioners, taking further cue from the aforesaid decision, further submitted that a candidate, practicing as a doctor in the rural area or working in a private hospital in rural area would not get the benefit which is being conferred on a Government doctor, who is in-service, either on regular service or contractual/temporary/ad hoc service and, there would arise a discrimination among two persons, who are equally placed, if weightage is granted to one to the exclusion of the other.

13. It is the further submission of the learned counsel for the petitioners that the Medical Recruitment Board had not conducted any exams for the past two and half years and, therefore, every doctor, who goes out of medical college after MBBS did not get an opportunity to serve in a rural/tribal area. That being

the case, making inroads into the open category by persons from the service of the Government carrying weightage incentive marks would further curtail the scope of the persons in the open category and, therefore, the said S. No.29 (c), which provides for the in-service candidates to compete in open category by carrying on the incentive marks obtained by them would be wholly arbitrary, discriminatory and in stark violation of Article 14 of the Constitution of India. Therefore, it is prayed that the said provision, viz., 29 (c) of the impugned prospectus deserves to be struck down or read down to the limited extent of curtailing the in-service candidates from using the weightage incentive marks only within the 50% quota earmarked for in-service candidates.

14. Per contra, learned Addl. Advocate General appearing for the State while vehemently opposed the submissions advanced on behalf of the petitioners, adverting to the counter filed by respondents 1 to 3, submitted that incentive weightage marks is provided only in a miniscule proportion to in-service doctors, discharging their duty in certain difficult terrains, as noted below :-

1	*Difficult Areas in Hills*	-	*10% marks per year*
2	*Difficult Areas in Plains*	-	*9% marks per year*
3	*Remote Area*	-	*8% marks per year*
4	*Rural Areas*	-	*5% marks per year*
5	*Urban Areas (Municipal/Corporation Areas)*	-	*No incentive marks*

15. It is the submission of the learned Addl. Advocate General that the said weightage incentive marks is given to the in-service persons, who discharge their duties in places, foregoing all the comforts and their youthful time. It is not that all the in-service candidates get the said incentive marks and, therefore, their inclusion in the open category with the incentive marks would in no way hamper the prospects of the petitioners in their selection process.

16. It is the further submission of the learned Addl. Advocate General that the power of the State to provide for reservation has been upheld by the Constitution Bench in ***T.N. Medical Officers Association & Ors. - Vs – Union of India & Ors. (2021 (6) SCC 568)***, wherein the Hon'ble Supreme Court had upheld the power of the State in the matters of admission in medical education flows from Entry 25, List III of the Constitution. The Hon'ble Supreme Court has also held that providing a separate channel for in-service candidates in the matter of selection to post-graduate medical degrees, as held in *Gopal Tirthani's case* and *Duraisamy's case* are good law, while overruling the three Judge Bench decision in *Dinesh Singh Chauhan's case* upon which decision, reference was made to the Constitution Bench. Therefore, in effect, the power of the State to provide for

reservation and also for weightage marks for in-service candidates having been recognized, the grievance of the petitioner that the respondents cannot provide for S. No.29 (c) in the prospectus, as it infringes on their rights and equality, is wholly misconceived.

17. It is the further submission of the learned Addl. Advocate General that the testing times during COVID-19 pandemic had pushed the in-service doctors to the brink of overburden and frustration and their union with their families during the testing times speaks volumes about the sacrifices made by them for the larger welfare of the general public and unmindful of the streesful times, the in-service doctors, have put in their heart and soul for the good of the common man and, therefore, their work was recognized by the State in the above manner by providing for the said reservation and also for weightage incentive marks and for carrying forward their marks to the open category seats as well. Placing reliance on the information bulletin issued for NEET-PG-2021, wherein in clause 10.8 (3), a clear provision has been made that State counselling will be conducted in accordance with the applicable regulations, qualifying criteria applicable guidelines and state reservation policies. That being case, the power for conducting State counselling insofar as State quota seats are concerned, vests

with the State Government, the State Government has prescribed the regulations and qualifying criteria for selection to the open category and in-service seats to the extent of reservation available to each category, which cannot be said to be bad.

18. Learned senior counsel appearing for the private respondents, who are candidates in-service of the Government and working at various places, where they would be entitled to get incentive marks, as the place of their work falls within the board classification of difficult/hilly/remote areas, submitted that the proviso to Regulation 9 (4) should be read in tandem with Regulation 9 (4) and should not be read in isolation. It is the submission of the learned senior counsel that the *inter se* merit of a candidate is arrived at after publication of NEET results and the score obtained by the candidate in the merit list on the State-wise quota is finalized after adding the incentive marks given to an in-service candidate for his services rendered in difficult/hilly/remote/rural areas. It is the submission of the learned senior counsel that the merit list, found in proviso to Regulation 9 (4) is a consolidated merit list and it cannot be two different merit lists, one for the open category and one for in-service candidates.

19. It is the submission of the learned senior counsel for the respondents that G.O. Ms. No.462, which forms the basis for inclusion of S. No.29 (c) providing the incentive marks to be carried over by the in-service candidates to open category having not been challenged at all by the petitioners, the adding of the incentive marks to the NEET score for arriving at the merit list cannot be questioned by the petitioner. Further, the *inter se* merit has to be arrived at only after adding the incentive marks to the overall NEET score, whereinafter, the overall *inter se* merit of the individuals are assessed and, accordingly, they are placed in the respective categories as per the percentage of reservation provided. In this regard, learned senior counsel for the respondents drew the attention of this Court to Regulation 9 (4) and proviso appended thereto to the Regulations, 2000, which is quoted hereunder, and submitted that the determination of merit of the candidates found in the proviso to Regulation 9 (4) is the overall merit of the candidate in the State-wise merit list and it cannot be a merit list applicable only to in-service candidates.

> *"9. .....*
>
> *(4) 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 postgraduate courses from the said merit lists only.

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive up to 10% of the marks obtained for each year of service in remote and/or difficult areas or rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or difficult areas or rural areas shall be as notified by State Government/Competent Authority from time to time."

20. Learned senior counsel appearing for the respective respondents submitted that the object of providing for reservation for in-service doctors, was held to be a laudable object even by the Supreme Court as early as in the decision in *Duraisamy's case* and *Gopal Tirthani's case.* However, it is the contention of the learned senior counsel for the respondents that the decision relied on by the petitioner in *Gopal Tirthani's case* and *Satyabatra Sahoo's case* have not considered Regulation 9 (4) and the proviso appended thereto and, therefore, the said decisions cannot be taken in aid of by the petitioner to seek similarity with the issue before this Court.

21. It is the further submission of the learned senior counsel for the respondents that the Hon'ble Supreme Court, in *T.N. Medical Officers Association & Ors. - Vs – Union of India & Ors. (2021 (6) SCC 568)* had, in fact, held Regulation 9 (4) as constitutionally valid and has held that any infraction of Regulation 9 (4) would defeat its purpose. It is the further submission of the learned senior counsel that approval has been granted by the Hon'ble Supreme Court for admission from within the State's own merit list, inspite of there being a slight variation in the merit list of the State. Reference was drawn to the relevant observations of the Hon'ble Supreme Court, which are extracted hereunder :-

> *"23.5. That Regulation 9 of the MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the States concerned to make reservation and/or make special provision like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the States concerned to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under List III Entry 25.*
>
> *23.6. If it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council*

Act, 1956 and it will be beyond the legislative competence under List I Entry 66.

23.7. Regulation 9 of the MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India.

* * * * * * * *

80. The disadvantages spelt out by the in-service doctors are of being out of touch with academic developments because of their pressing duties often in remote locations. These disadvantages were considered by this Court in AIIMS [AIIMS Students' Union v. AIIMS, (2002) 1 SCC 428 : 1 SCEC 886] , and it was recorded in that judgment, in reference to K. Duraisamy [K. Duraisamy v. State of T.N., (2001) 2 SCC 538 : (2007) 1 SCC (L&S) 1004 : 5 SCEC 126] in para 31 of the report: (AIIMS case [AIIMS Students' Union v. AIIMS, (2002) 1 SCC 428 : 1 SCEC 886] , SCC pp. 447-48)

> *"31. … 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, may be, they could not get a seat in postgraduation 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 postgraduation by opening a separate channel for admittance would enable their continuance in government service after postgraduation which would enrich health services of the nation. Candidates in open category having qualified in postgraduation may not necessarily feel attracted to public services. Providing two sources of entry at the postgraduation level in a certain proportion between in-service candidates and other 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."

* * * * * * * *

91. Regulation 9(IV) of the 2000 Regulations stipulates entry into the postgraduate courses from the two merit lists, one all-India and the other that of the State. The same was the scheme of Regulation 9(IV) in its erstwhile form. The dispute in these proceedings, however, is mainly on admission norms to postgraduate degree courses. If the State authorities provide reservation for in-service doctors from within the State's own merit list, our view is that such an exercise would be relatable to the admission process and the same would not be in breach of any prohibition flowing from the 2000 Regulations. This would entail some form of variation of the merit list of the State, but

we do not find any prohibition under the 2000 Regulations against a State undertaking that exercise. Such step undertaken by the State would be relatable to the State's legislative power derived from Entry 25 of the Concurrent List and not covered by the 2000 Regulations. We do not find any repugnancy with the 2000 Regulations if the State authorities create such a distinct channel of entry.

92. In Gopal D. Tirthani [State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 : 2 SCEC 301] , there was reservation for in-service candidates. This was found to be a separate and exclusive channel of entry or source of admission. As we have already observed, having a separate entry-channel for in-service candidates to postgraduate medical courses has been a long-standing practice. The Bench of three Hon'ble Judges of this Court in Dinesh Singh Chauhan [State of U.P. v. Dinesh Singh Chauhan, (2016) 9 SCC 749 : 8 SCEC 219] sought to distinguish this factor on the ground that the provisions of Regulation 9, which was applicable at that time Gopal D. Tirthani [State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 : 2 SCEC 301] was decided, was different from its form as it subsisted when the former case was decided. But the relevant clause, as reproduced in the judgment of Gopal D. Tirthani [State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 : 2 SCEC 301] did not contain any provision for separate entry route for in-service candidates.

* * * * * * * *

94. The selection criteria as contained in Regulation 9 of the 2000 Regulations, which was considered by this Court in Gopal D. Tirthani [State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 : 2

SCEC 301] and the content of Regulation 9, which is the subject of dispute in the present set of proceedings are no doubt not identical. But the said clause which was examined in Gopal D. Tirthani [State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 : 2 SCEC 301] had a merit based approach. Reservation of in-service candidates was made through executive orders of the State Government. We are not to undertake a word to word comparison of Regulation 9 as it prevailed at different points of time. What matters here is that in its original or earlier version, no provision for reservation or separate entry-channel for in-service doctors has been shown to us by any of the learned counsel appearing for the parties. The State Government orders laid down such distinct source of entry. Interpretation of the same clause in its present form should also be based on the same underlying reasoning."

22. It is therefore the submission of the learned senior counsel for the private respondents that the Hon'ble Supreme Court having given its seal of approval to providing of a separate channel for selection of in-service candidates (doctors) under the State quota, the State is clothed with power under Entry 25 List III of the Constitution to frame any scheme for selection of candidates under its quota and further Regulation 9 (4) and the provisio thereto having been held to be constitutionally valid by the Hon'ble Supreme Court, the case of the petitioners that the State cannot impose double reservation by counting the

weightage incentive marks obtained by the in-service doctors, for services rendered by them in difficult/hilly/remote/rural areas while considering their case under the open category falls foul of the decision of the Hon'ble Supreme Court in *T.N. Medical Officers Association case* and, therefore, the petitions deserve to be dismissed.

23. In reply to the submissions advanced by the respective learned counsel for the respondents, learned counsel appearing for the petitioners submitted that the Hon'ble Supreme Court upholding Regulation 9 (4) and the proviso appended thereto does not in any way imply that the Hon'ble Supreme Court has endorsed double reservation to a group of persons to the exclusion of others. Learned counsel for the petitioners submitted that in *Satyabatra Sahoo's case,* the Hon'ble Supreme Court, in unequivocal terms has held that importing the incentive marks granted to in-service candidates to be considered for their merit being assessed in the open category is *per se* impermissible as the two avenues of selection to the post-graduate degree courses are separate and one does not lean over the other. It is the further submission of the learned counsel for the petitioners that merely because Regulation 9 (4) and proviso thereto were not the point for consideration in *Satyabatra Sahoo's case* would in no way be

termed that the said decision cannot be taken as a binding precedent for giving a finding in the present case.

24. It is the further submission of the learned counsel for the petitioners that nowhere the petitioners question the reservation granted to in-service candidates, nor they question the incentive marks granted to persons rendering service in difficult/hilly/remote/rural areas amongst the persons in-service. The grievance of the petitioners is only to the limited extent of the said incentive marks being considered for drawing the merit list in the open category, as that is not what is envisaged under Regulation 9 (4) and the proviso thereto. It is the further submission of the learned counsel for the petitioners that the Hon'ble Supreme Court, in *T.N. Medical Officers Association case,* while held that Regulation 9 (4) to be constitutionally valid, had only spoken about the two modes of selection and in fact, the Constitution Bench, in the said decision, has affirmed the ratio laid down in *Duraiswamy, Gopal Trithani and Satyabatra Sahoo's case* and had overruled only that portion of the decision in *Dinesh Singh Chauhan's case.* Once the decision in *Duraiswamy, Gopal Trithani and Satyabatra Sahoo's case* have not in any way been disturbed by the Constitution Bench, the necessary inference that flows from the same is that the ratio laid in

the said decisions have received the approval of the Constitution Bench. In such a scenario, it is the submission of the learned counsel for the petitioners that the said decisions having held that the State has power to grant reservation to in-service candidates and also award incentive marks to such of those doctors, who are in the service of the Government, discharging their service in remote/hilly/difficult/rural areas, while arriving at the *inter se* merit of the said persons in-service as valid, in equal terms had held that the two avenues of selection, viz., open category and in-service are two separate channels and that *inter se* merit has to be assessed in the respective channels and the *inter se* merit of one channel cannot be imported to the *inter se merit* of the other channel. In this regard, reference was made to para 3.14 and 3.15 of the decision in *T.N.Medical Officers Association case* in which the Constitution Bench, while referring and affirming the decision rendered by a Constitution Bench of equivalent composition in ***Modern Dental College & Research Centre – Vs – State of M.P. (2016 (7) SCC 353)***, held as under :-

> *3.14. In Modern Dental College & Research Centre [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , the Constitution Bench of this Court has affirmed that even though List III Entry 25 is subject to List I Entry 66, the power of States to enact laws concerning admissions would not stand extinguished so long as such laws*

did not have the effect of wiping out the law enacted by the Union under List I Entry 66.

3.15. When the States create a separate source of entry for in-service candidates, the standards of medical education are not impinged inasmuch as:

(a) Only eligible in-service candidates can qualify i.e. those have obtained minimum eligibility marks;

(b) Amongst eligible in-service candidates admission is made based on inter se merit;

(c) The preferential weightage would merely alter the order in which in-service candidates would rank in the merit list prepared for in-service candidates. Thus, it would not be a case of "double reservation."

25. It is therefore the submission of the learned counsel for the petitioners that the ratio in *Modern Dental College case* having been affirmed by the Hon'ble Supreme Court and the Hon'ble Supreme Court has categorically held that the separate source of entry for in-service candidates by giving incentive marks and, thereby, assessing the *inter se* merit between similarly placed persons in the service of the Government, the attempt on the part of the official respondents to read something into Regulation 9 (4) and the proviso appended thereto is nothing but trying to set at naught the decision rendered by the Hon'ble Supreme Court in *Duraisamy, Gopal Tirthani and Satyabatra Sahoo's case*, which have since been affirmed by the Constitution Bench in *T.N.Medical Officers Association*

case. It is therefore the submission of the learned counsel for the petitioner that the impugned S. No.29 (c) of the prospectus is in clear contradiction to the dictum laid down by the Hon'ble Supreme Court in the aforesaid decisions.

26. It is the further submission of the learned counsel for the petitioners that Regulation 9 (4) and proviso thereto were inserted in Regulations, 2000 on 15.2.2012, whereas the decision of the Hon'ble Supreme Court in *Satyabatra Sahoo's case* was rendered on 3.8.2012 much after the introduction of the aforesaid provision. The Hon'ble Supreme Court, while laying down the above ratio, would definitely have been conscious of Regulation 9 (4) and the proviso thereto and would have rendered the said decision holding that the incentive marks granted to in-service candidates for discharging duties in difficult/hilly/remote/rural areas should be counted only within the 50% quota earmarked for in-service candidates, which will be only for the purpose of putting them on an equivalent footing with the in-service candidates, who have had the luxury of working in urban centres of the Governmental machinery and it is not intended for the purpose of putting them on an equivalent footing with the persons belonging to open category, as the two category of persons are not an equatable denomination. Therefore, it is prayed that this Court may strike down

Rule 29 (c) to the limited extent that it channelises the incentive marks obtained by the in-service candidates to be taken into consideration for the purpose of arriving at the merit list of the open category candidates.

27. This Court paid its careful consideration to the erudite submissions advanced by the learned counsel on either side and perused the decisions as also the relevant provision of law to which this Court's attention was drawn.

28. In extenso, decisions which have a bearing on the case, as relied on by the respective counsel have been extracted adjacent to the relevant portion of the submissions advanced by the respective counsel. Therefore, it would not be necessary for this Court to once again extract the said portions, except to cull out the ratio laid down in the said decisions to arrive at a decision one way or the other.

29. The pith and substance of the argument advanced by the respondents is that the proviso to Regulation 9 (4) of Regulations, 2000, providing incentive marks should be taken into account while finalising the composite merit list for filling up the seats under the State-wise quota through both modes of selection,

viz., open category and in-service. To this end, the respondents draw the requisite assistance from the decision of the Constitution Bench in *T.N. Medical Officers Association case.*

30. However, the petitioners lay their hands on the decisions in *Duraisamy, Gopal Tirthani and Satyabatra Sahoo's case* to put forth their case that the incentive marks should be taken into consideration only for the purpose of arriving at the *inter se* merit of the in-service candidates for the 50% quota earmarked for in-service candidates and the said incentive marks cannot be added to the NEET score for finalising the merit list insofar as open category seats are concerned.

31. Before proceeding further to analyse the contentions and counter contentions advanced on behalf of the contesting parties as also the State for inclusion of S. No.29 (c) in th prospectus, an overall picture of the need to the quota for in-service candidates, which has been carved under the State-wise quota necessitates a look.

32. The reason for providing for reservation of 50% in the State quota for in-service candidates is mainly for the purpose of sustaining the objective of the State in providing critical and necessary health care to the public and provide valuable medical care to the poor and vulnerable members of the society. The incentive marks and reservation of 50% in the state quota is mainly provided for taking care of the welfare of the people by the State by improving the health system and improving the overall quality and ability of the doctors, manning the primary health centres to render timely service to the poor and needy.

33. It is also to be remembered that more than 50% of the population in Tamil Nadu live in villages, where the basic medical facilities are below par. There are about 1885 primary health centres in Tamil Nadu and many of the primary health centres are located in the remotest part of the State, where giving even the basic medical facilities is a herculean task. The State, with the laudable object of improving the health care system and to provide the public with good medical services at the opportune point of time has carved out the reservation from among its quota in the medical seats in post-graduate and super specialty courses for in-service candidates, so that such of those persons, would attach themselves to the services of the Government in taking the necessary health

facilities to the doorstep of the common man. The idea of providing the reservation and incentive marking for in-service candidates is clear from the observation made by the Constitution Bench in *T.N. Medical Officers Association case* based on the submissions made therein and for better appreciation, the relevant portion of the order is quoted hereunder :-

> *"3.18. It is submitted that so far as the State of Tamil Nadu is concerned, the Hon'ble Chief Minister of Tamil Nadu in his Letter dated 25-4-2017 to the Hon'ble Prime Minister, has highlighted that providing only 30% weightage to in-service candidates seeking admission to postgraduate degree course is not enough since if this procedure is followed, out of the 557 postgraduate government seats available under the State quota in Tamil Nadu, only 20 seats would go to in-service quota candidates. It is submitted that vide Letter dated 6-2-2019, the State of Tamil Nadu wrote to the Ministry of Health and Family Welfare and highlighted the contribution of the policy to provide 50% reservation for in-service candidates in postgraduate degree courses in attracting meritorious doctors to government service and also enabling the State Government to provide uninterrupted healthcare in rural, difficult and remote areas of the State. It is submitted that it was further highlighted that this reservation was critical for the maintenance of quality healthcare in the government medical facilities.*
>
> *3.19. The learned counsel appearing on behalf of the State of Tamil Nadu has highlighted the benefits to be achieved by providing 50% reservation for in-service candidates in*

postgraduate degree/diploma courses. It is submitted that continuance of given incentive marks and reserving 50% seats for in-service candidates who performed duty in remote, rural area, hilly terrain, etc. in postgraduate courses will sustain the achievement made by the State Government in the health sector and provide valuable medical care to the poor and vulnerable society. It is submitted that therefore, it is in the larger public interest of the State that there is a provision for 50% reservation in postgraduate degree/diploma courses/seats for in-service candidates."

34. It is to be pointed out that the State of Tamil Nadu is called the health capital of India for the medical facilities that it boasts of and the numerous advances that have taken place in the medical field in the State. Persons, suffering ailments, from all parts of the country, reach the doorsteps of Tamil Nadu for getting themselves treated with the vast and rich experience of the doctors in the State. Further, it is also to be not lost sight of that the infrastructure provided for the Government Hospitals is one of the highest in the country. The Government, keeping in mind that a healthier society is the fulcrum of a developing society, is continuously trying to improve the medical facilities that it provides to the public so that the health of the public is maintained, thereby, the State marches forward in all fronts and be a pioneer in all the fields of excellence.

35. It is only in this backdrop that reservation of 50% of the seats from the State quota and also provision of incentive marks to the in-service candidates performing their duty in remote/hilly/difficult/rural areas has been envisaged, which is only to enable such in-service candidates to acquire higher and advanced education in specialized fields to improve their professional talents for the benefit of the patients to be treated in such medical institutions where the in-service candidates are expected to serve. Further, permitting the in-service candidates to do postgraduation by opening a separate channel for admittance would enable their continuance in government service after postgraduation which would enrich health services of the nation. Therefore, the object sought to be achieved is to benefit the 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.

36. Further, it is also not to be lost sight of that the villages are the backbone of the country and developing the villages alone would pave the way for further development of the country. The health of the villages and its villagers is of foremost importance in securing the health of the nation. The

degradation of the villages and villagers would have a cascading effect on the physical health of the nation and the degradation of the physical health of the public in the rural areas would have far reaching consequences in uplifting the country on the global frontiers. Therefore, keeping in mind the necessity to enrich the capabilities of the in-service candidates and making them acquire higher academic qualification for the purpose of rendering better services to the poor and needy public in the remotest part of the State, the State has stitched together various provisions in the prospectus so that the public health is maintained in higher standards by improving the quality and service of the doctors, who render their service in such of the difficult terrains in the State and this Court has to keep in mind the necessity for such a policy having been drafted by the State while addressing the issue raised before this Court.

37. It is fairly conceded by the learned counsel on either side that Regulation 9 (4) and proviso thereto were not subjected to discussion in the decisions in *Gopal Tirthani* and *Satyabatra Sahoo's case.* However, in *T.N. Medical Officers Association case,* the Constitution Bench had deliberated on Regulation 9 (4) of Regulations, 2000 and held it to be valid in the context of the

MCI Regulations. For better appreciation, the relevant portion of the decision of the Constitution Bench is quoted hereunder for easy reference :-

> *"85. Regulation 9 of the 2000 Regulations is no doubt a self-contained code. But as we have already observed, it is not an exhaustive code covering all aspects of admission in postgraduate medical degree courses. The scope of this code and extent of its operation has been explained by this Court in Yatinkumar Jasubhai Patel [Yatinkumar Jasubhai Patel v. State of Gujarat, (2019) 10 SCC 1] .*
>
> * * * * * * * *
>
> *91. Regulation 9(IV) of the 2000 Regulations stipulates entry into the postgraduate courses from the two merit lists, one all-India and the other that of the State. The same was the scheme of Regulation 9(IV) in its erstwhile form. The dispute in these proceedings, however, is mainly on admission norms to postgraduate degree courses. If the State authorities provide reservation for in-service doctors from within the State's own merit list, our view is that such an exercise would be relatable to the admission process and the same would not be in breach of any prohibition flowing from the 2000 Regulations. This would entail some form of variation of the merit list of the State, but we do not find any prohibition under the 2000 Regulations against a State undertaking that exercise. Such step undertaken by the State would be relatable to the State's legislative power derived from Entry 25 of the Concurrent List and not covered by the 2000 Regulations. We do not find any repugnancy with the*

2000 Regulations if the State authorities create such a distinct channel of entry."

(Emphasis Supplied)

38. The Constitution Bench has further held that Regulation 9 (IV) of the MCI Regulations making provision for reservation of in-service doctors by the State from the State-wise merit list published in pursuance of that provision would result in deviation from a mandatory statutory scheme. The aforesaid sub-clause is required to be construed in the light of the State's power to make provision over the admission norms, provided the candidates fulfill the basic admission criteria contained in the MCI Regulations. In the above context, the Constitution Bench held as under :-

> *"83.3. Having regard to the legal and factual context of this case and considering the fact that the issue of legislative competence arises in respect of an entry belonging to shared, and not exclusive field of legislations, in our opinion the said sub-clause cannot be interpreted to mean that the State is denuded of the power to make a separate channel of admission to the said courses for in-service doctors from the State merit list. This is an issue of legislative competence and the Nazir Ahmad [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] dictum does not come into conflict with the interpretation we are giving to this clause. Application of that principle solely on the basis of a Union legislation,*

without examining the scope of the State's legislative power in the given context, would be contrary to the constitutional scheme in having concurrent field of legislation. The said sub-clause does not prescribe specific bar on the State authorities in providing for such reservation or such separate entry channel."

(Emphasis Supplied)

39. As already extracted supra, the Constitution Bench has held that if Regulation 9, more particularly Regulation 9 (IV) of MCI Regulations deals with reservation for in-service candidates, in that case, it will be *ultra vires* of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under List I Entry 66. The Constitution Bench has, therefore, held that the States cannot be precluded from providing for reservation to in-service candidates under its quota in exercise of its powers under List III Entry 25. For better clarity, the relevant portion is extracted hereunder :-

"12.1. As held by this Court in earlier decisions, Regulation 9(IV) is limited only to reservation in favour of SC/ST/OBC and as per the prevailing laws in the States. If that be so, then the proviso which as such is not dealing with the reservation cannot be said to be in the form of an exception to first part of Regulation 9(IV) and it can be seen that it is an independent provision dealing with the in-service candidates and that too for the purpose of preparing the merit list. Thus, the proviso becomes the substantive provision and is more concerned with

the marks to be allocated which is the concern of Regulation 9(III). It is also required to be noted that even this proviso confers a discretion on the State to provide for weightage in marks for the services rendered in remote or difficult areas. The proviso only enables the States by conferring the discretion for weightage. The proviso has nothing to do with the reservation in the postgraduate degree courses and therefore it shall not negate the State's power to make reservation and/or make special provision to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses. Thus, Regulation 9(IV) as such cannot be said to be taking away the power of the States under List III Entry 25, to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses. Any contrary view would affect the right of the States to make reservation and/or to make special provision for admission in exercise of powers under List III Entry 25. If it is construed that Regulation 9 of the MCI Regulations, 2000, more particularly Regulation 9(IV) provides for reservation and/or deals with the reservation for in-service candidates, in that case, it will be beyond the legislative competence of the Union as well as it will be ultra vires to the Indian Medical Council Act, 1956. As observed hereinabove, Section 33 of the Indian Medical Council Act, 1956 does not confer any power on MCI to make regulations with respect to reservation. At the cost of repetition, it is observed that "institutional preference", despite the MCI Regulations, 2000, has been upheld and held to be permissible by the States concerned.

* * * * * * * *

13.5. That Regulation 9 of the MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the States concerned to make reservation and/or make special provision like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the States concerned to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under List III Entry 25.

13.6. If it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under List I Entry 66.

40. From the above, it is crystal clear that the Constitution Bench, in the aforesaid case, has clearly held that the State is within its legislative competence to create channels for filling up the seats which fall under the State-wise quota. In exercise of the said power, the State had created two channels, not disputed, being the open category and in-service category apportioning 50% of the seats to each of the category of persons.

41. To achieve the objective of catering to better public health, Regulations 2000 is pressed into service, more particularly Regulation 9 (4), which prescribes that State-wise merit list of eligible candidates shall be prepared on the basis of the marks obtained in the National Eligibility-cum-Entrance Test and candidates shall be admitted to post-graduate courses from the said merit lists. From the above, it is amply evident that initially the merit list is based on the NEET score obtained on all India basis. The said merit list would form the basis for being considered for selection under the all India quota. Insofar as the State-wise quota is concerned, based on the said merit list, after giving the 50% quota to the all India merit list, the balance 50% quota is taken over by the State for being given in accordance with the State-wise merit list. At this point, comes into play the proviso to Regulation 9 (4) and the provisio thereto.

42. There is no quarrel with the fact that the candidates shall be admitted to postgraduate courses from the two merit lists only as provided in Regulation 9 (4) and the same has been affirmed by the Constitution Bench in its judgment at para-83.

43. In the above backdrop of the affirmation by the Constitution Bench, it is further evidenced from the said decision that the power of the State to make provisions over the admission norms, provided the candidates fulfil the basic admission criteria contained in the Regulations has been held to be valid by the Constitution Bench. For better appreciation, the relevant portion of the said finding is extracted hereunder :-

> *"83.2. But having regard to Regulation 9(IV) of the 2000 Regulations, we do not think the provision for reservation of in-service doctors by the State from the State-wise merit list published in pursuance of that provision would result in deviation from a mandatory statutory scheme. The aforesaid sub-clause is required to be construed in the light of the State's power to make provisions over the admission norms, provided the candidates fulfil the basic admission criteria contained in the 2000 Regulations.*
>
> *83.3. Having regard to the legal and factual context of this case and considering the fact that the issue of legislative competence arises in respect of an entry belonging to shared, and not exclusive field of legislations, in our opinion the said sub-clause cannot be interpreted to mean that the State is denuded of the power to make a separate channel of admission to the said courses for in-service doctors from the State merit list. This is an issue of legislative competence and the Nazir Ahmad [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] dictum does not come into conflict*

with the interpretation we are giving to this clause. Application of that principle solely on the basis of a Union legislation, without examining the scope of the State's legislative power in the given context, would be contrary to the constitutional scheme in having concurrent field of legislation. The said sub-clause does not prescribe specific bar on the State authorities in providing for such reservation or such separate entry channel."

(Emphasis Supplied)

44. The Constitution Bench has approved the decision ratio laid down in *Gopal Tirthani* and *Satyabatra Sahoo's case* relating to the two modes of selection, but insofar as the additive value of the incentive marks given to in-service candidates to be carried over by the said in-service candidates even to the open category, which has been held to be not correct as per the aforesaid decisions, have been diluted by the Constitution Bench in the aforesaid paragraphs to hold that the State's power to make provision over the admission norms stand secured so long as the candidates fulfill the basic admission criteria. The Constitution Bench, in *T.N. Medical Officers Association case* to the limited extent, as aforesaid, has divested the said ratio laid down in *Gopal Tirthani* and *Satyabatra Sahoo's case* and approved the stand of the State to allow the in-service candidates to import the incentive marks given to them to be carried over to the open category. To arrive at the said finding, the Constitution Bench has

adverted to the reasoning adopted in *Gopal Tirthani's case* wherein the nature of work rendered by the said in-service candidates unmindful of the nature of the terrain and the difficulties faced by them and their family members, definitely warrant a different yardstick to be adopted by the State in considering their case for allowing them to carry their incentive marks even to the open category. The relevant observation of the Constitution Bench on the aforesaid aspect is extracted hereunder :-

> *".....*
>
> *14.9. However, this Court in Gopal D. Tirthani case [State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 : 2 SCEC 301] has further held that there shall be only one common entrance test. In paras 25 to 28, it is held as under: (Gopal D. Tirthani case [State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 : 2 SCEC 301], SCC pp. 103-04)*
>
> > *"25. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than*

the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification consistently with the aforequoted observation of this Court in Dayanand Medical College & Hospital case [State of Punjab v. Dayanand Medical College & Hospital, (2001) 8 SCC 664 : 1 SCEC 940] .

27. The in-service candidates may have been away from academics and theories because of being in-service. Still they need to be assessed as eligible for entrance in PG. For taking up such examination, they must either keep

updating themselves regularly or concentrate on preparatory studies to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services.

28. Clearly, the State of Madhya Pradesh was not justified in holding and conducting a separate entrance test for in-service candidates. Nor could it have devised a formula by combining clauses (i) and (iii) of Regulation 9(1) by resorting to clause (iv). Recourse can be had to clause (iii) when there is only one University. When there is only one University in one State, the standard of assessment can reasonably be assumed to have been the same for assessing the academic merit of the students passing from that University. When there are more universities than one in a State, the standards of different universities and their assessment methods cannot obviously be uniform and may differ. Then it would be futile to assess the comparative merit of individual performances by reference to clause (iii). The High Court is, therefore, right in forming an opinion that in the State of Madhya Pradesh, where five universities exist, the method of evaluation contemplated by clause (iii) is not available either in substitution of or in addition to clause (i). The candidates qualified at the pre-PG or PG entrance test held in common for in-service and open category candidates, would then be divided into two separate merit lists to be prepared for the two categories and merit inter se of the

successful candidates shall be available to be assessed separately in the two respective categories."

(Emphasis Supplied)

45. Not only the reason for providing incentive marks to the in-service candidates has been approved by the Hon'ble Supreme Court, but the State's power to recognise the services rendered by such of the in-service candidates have also been considered by the Hon'ble Supreme Court. In the above backdrop, the Constitution Bench, holistically has held that the State is not denuded of its power to to make a separate channel by prescribing norms for admission to post-graduate courses from the State's merit list on the state-wise quota.

46. The Constitution Bench also has quoted with approval the observation made in *Duraisamy's case* by holding that providing two sources of entry at the postgraduation level in certain proportion between in-service candidates and other candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. In the aforesaid context, the Constitution Bench held as under :-

"80. The disadvantages spelt out by the in-service doctors are of being out of touch with academic developments because of

their pressing duties often in remote locations. These disadvantages were considered by this Court in AIIMS [AIIMS Students' Union v. AIIMS, (2002) 1 SCC 428 : 1 SCEC 886] , and it was recorded in that judgment, in reference to K. Duraisamy [K. Duraisamy v. State of T.N., (2001) 2 SCC 538 : (2007) 1 SCC (L&S) 1004 : 5 SCEC 126] in para 31 of the report: (AIIMS case [AIIMS Students' Union v. AIIMS, (2002) 1 SCC 428 : 1 SCEC 886] , SCC pp. 447-48)

> *"31. … 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, may be, they could not get a seat in postgraduation 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 postgraduation by opening a separate channel for admittance would enable their continuance in government service after postgraduation which would enrich health services of the nation. Candidates in open category having qualified in postgraduation may not necessarily feel attracted to public services. Providing two sources of entry at the postgraduation level in a certain proportion between in-service candidates and other 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."

47. Therefore, from a careful analysis of the decision of the Constitution Bench in *T.N. Medical Officers Association case* vis-a-vis the decisions in *Gopal Tirthani* and *Satyabatra Sahoo's case* clearly reveal that the scope, which was kept minimised in *Gopal Tirthani* and *Satyabatra Sahoo's case* has been expanded by the Constitution Bench in the decision in *T.N. Medical Officers Association case*. The reasons for expanding the scope and armouring the State with the necessary ammunition to lay down relevant guidelines for filling up the seats in the state-wise quota for the in-service candidates by awarding incentive marks and considering the said marks even while considering their case in open category is only with the laudable object of enabling the in-service doctors, to pursue higher studies and, thereafter to serve in rural and difficult areas, which otherwise would weaken the public health system and make medical assistance a distant dream for such of those general public co-habiting in difficult/hilly/remote/rural areas.

48. In the above backdrop of the legal position coupled with the reasonable and intelligible differentia in classifying the two groups of persons aspiring for post-graduate admission in the State-wise quota, this Court is of the considered view that not only the State is empowered to create channels of selection by prescribing quotas for open category and in-service candidates, but the State is also within its powers to lay down norms with regard to the basis in which the merit list is to be prepared for determining the *inter se* merit of the candidates competing in the two different categories and how the *inter se* merit is to be arrived at by considering the marks obtained by the candidates in the eligibility test conducted by the testing agency coupled with the incentive marks awarded to the in-service candidates. Precluding the State from exercising the powers conferred on it by the Constitution, more especially Entry 25 List III of the Constitution would be denuding the State of its power, which has been given to it by the Constitution and as approved by the Hon'ble Supreme Court.

49. Further, it is also to be pointed out that the petitioners have not challenged G.O. Ms. No.463 in and by which the incentive marks, that were awarded to the in-service candidates were allowed to be counted while finalising the *inter se* merit of the candidates in the open category. Without there being a

challenge to the said Government Order, the basis on which the subsequent order has flown resulting in grant of incentive marks and counting the same along with the eligibility marks obtained in NEET while arriving at the *inter se* seniority in the open category cannot be tested on the touchstone of the Constitutional provisions and in the case on hand, Regulation 9 (4) and the provisio thereto having already received the affirmation from the Constitution Bench, testing the said G.O. No.463 would in no way alter the findings arrived at by this Court.

50. For the reasons aforesaid, this Court is of the considered view that the norms prescribed under S. No.29 (c) of the impugned prospectus and the consequential Government Order in G.O. (D) No.1108 dated 4.10.2021 issued for selection of candidates to the post-graduate medical degree courses under the State-wise quota does not suffer the vice of any illegality, irrationality, arbitrariness or perversity and the same is founded on well guided principles and application of law and, therefore, the said norm does not require any interference at the hands of this Court.

51. In the result, both the writ petitions fail and the same accordingly stands dismissed. Consequently, connected miscellaneous petitions are closed. In the circumstances of the case, there shall be no order as to costs.

19.01.2022

Index : Yes / No

Internet : Yes / No

GLN

To

1. The Prl. Secretary to Government
   Health & Family Welfare (MCA-1) Department
   Fort St. George, Chennai 600 009.

2. The Director of Medical Education
   Directorate of Medical Education
   Kilpauk, Chennai 600 010.

3. The Secretary
   Selection Committee
   Directorate of Medical Education
   162, Periyar E.V.R. High Road
   Kilpauk, Chennai 600 010.

4. The Secretary
   National Medical Commission
   Pocket-14, Sector-8
   Dwarka Phase-I, New Delhi 110 077.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NOS. 22937 & 25749 OF 2021

Pronounced on
19.01.2022