(2011) 3 GLT 126

Gauhati High Court

Case No: Writ Petitions (C) 3280 of 2010, 1259 and 1260 of 2011

Dr. Sushil Agarwalla and Others		APPELLANT
	Vs	
State of Assam Dr. Chandra Kumar Das and Others Vs State of Assam and Others Dr. Nayem Raja Vs State of Assam and National Rural Health Mission		RESPONDENT

Date of Decision: May 26, 2011

Acts Referred:

- Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 1997 - Rule 15, 4(3), 4(4), 5, 7
- Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2006 - Rule 10, 5D, 6, 7(2)
- Assam Medical Colleges (Regulation of Admission to the Post Graduate Course (Amendment) Rules, 2010 - Rule 2
- Assam Medical Colleges (Regulation of the Admission to the Post Graduate Courses) Rules, 1992 - Rule 10
- Assam Public Service Commission (Limitation of Functions) Regulations, 1951 - Regulation 3
- Constitution of India, 1950 - Article 14, 15(1), 162, 164, 166
- Indian Medical Council Act, 1956 - Section 20, 33

Citation: (2011) 3 GLT 126

Hon'ble Judges: Amitava Roy, J; A.K. Goswami, J

Bench: Division Bench

Advocate: D.K. Mishra, S. Jahan, K. Agarwal and N. Deka, in Writ Petition C 3280/2010, K. Agarwal, N. Deka, P. Neog and P. Dutta, in Writ Petition C 1259/2011 and D.K. Mishra, M. More, P.K. Sharma and B. Prasad, in Writ Petition C 1260/2011, for the Appellant; G.N.

Sahewalla D. Saikia, Standing counsel, Health and Family Welfare in Writ Petition (C) 3280/2010, D. Saikia, Standing counsel, Health and Family Welfare, G.N. Sahewalla and K.R Saruna in Writ Petition (C) 1259/2011 and D. Saikia, Standing counsel, Health and Family Welfare in Writ Petition (C) 1260/2011, for the Respondent

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Judgement

A.K. Goswami, J.

The W.P (C) No. 3280 of 2010 was originally filed by 7 (seven) writ Petitioners. They had appeared in the Post Graduate Medical Entrance Examination, 2010, for short, PGMEE, 2010. On the prayer of learned Counsel for the Petitioners, the names of Petitioner Nos. 1,3,4 and 5 are struck off the record as they did not want to press the writ petition and therefore, the present writ petition survives so far as the writ Petitioner Nos. 2,6 and 7 are concerned. The case of the Petitioners is that after obtaining Bachelor of Medicine and Bachelor of Surgery (MBBS), being eligible, they had appeared in the PGMEE, 2010, for admission in the Post Graduate Courses in the 3 Medical Colleges throughout the State of Assam. In the rank wise merit list, the rank of the Petitioners (we have included all the Petitioners though they are not on record now) are 56, 64,73,74,76,78 and 83, respectively. The total marks of the examination was 300 and the marks obtained by the Petitioner Nos. 1 to 7 are 222, 220, 219, 218, 218, 217 and 217 respectively. The total number of seats for both degree and diploma courses under State Quota is 170 and the percentage of seats allotted as well as actual seats allotted in respect of all the categories of candidates entitled to get admission in Post Graduate Courses are available in the Rules holding the field . Out of the 170, only 60 seats were made available for the General category being 35% of the total seats while 110 seats were reserved under various categories constituting 65% of the seats. The seats reserved under the Teachers Quota and the North Eastern Council Quota were merged and adjusted in General category thereby portraying a picture that 82 seats were kept in the Unreserved General category. Adjustment of the seats under the State Health Quota as also the seats of Teachers Quota with the General category also could not succeed the percentage of reserved seats to be kept below 50%. The Petitioners claimed to be candidates belonging to the General category. Although they had secured comparatively very high position in the PGMEE, 2010, it soon became obvious to them that because of the many ills that beset the procedure for admission in the Post Graduate Courses due to the Rules which are in force and notifications issued by the Government in the field of procedure to be adopted for the purpose of admission into Post Graduate Courses, let alone being able to pursue the PG Courses in the subjects of their choice, the prospect of they being at all able to pursue the PG Courses was looming large with uncertainty.

2. The predicament that they face is due to certain provisions of the Rules of 2006, which, according to them are wholly arbitrary, discriminatory, unconstitutional and therefore, they say that such Rules should be declared ultra vires and null and void. According to the Petitioners, the offending Rules are:

(1) Rule 4(3)(i) of Rules of 2006 as amended by Amendment Rules of 2010

(2) Rule 4 (3)(vi) of Rules of 2006 as amended by Amendment Rules of 2010

(3) Rule 4(4)(i) of Rules of 2006 as amended by Amendment Rules of 2010

(4) Rule 7(2)(e) & Rule 7(2) (f) of Rules of 2006.

Therefore, they pray for striking down the aforesaid Rules. They have also made following additional prayers:

(5) Cancellation of seats allotted to physically handicapped candidate in 7 seats other than pool seats in violation of Sub-rule 7 of Rule 4 of Rules of 2006, which had been inserted by Amendment Rules of 2008.

(6) Inclusion of seats reserved under NEC quota under Rule 4(2) of Rules of 2006 within general category seats should be set aside.

(7) Inclusion of seats reserved for Teachers Quota under Rule 4(3) of Rules of 2006 within general category seats should be set aside.

(8) Direction to be used for restricting reservation/allocation of seats below 50% of the total seats available.

In this writ petition, State of Assam represented by the Commissioner and Secretary, Government of Assam, Health and Family Welfare (B) Department, Director of Medical Education, Assam and the Selection Board represented by its Chairman were arrayed as Respondent Nos. 1, 2 and 3 respectively.

3. W.P.(C) No. 1259 of 2011 is filed by 6 (six) Petitioners. All these Petitioners obtained MBBS degree in the year 2008 except Petitioner No. 6 who obtained MBBS degree in the year 2006. They all joined 1 year rural service, albeit, on different dates. Their dates of joining rural service are 24.1.2009, 18.9.2009, 23.9.2009, 19.9.2009, 18.9.2009 and 12.10.2009 respectively. These Petitioners had appeared in the PGMEE, 2011 and their positions in the rank wise merit list are 46, 81, 84, 104, 164 and 174, respectively. The grievance of these writ Petitioners are basically two-fold: (1) grant of additional marks @ 10% of the marks obtained in the Entrance Examination, for every year of service in remote and difficult areas and (2) relaxation of 1 year rural service before appearing in the Post Graduate Medical Examination, 2011.

These Petitioners have prayed for striking down of Rule 5(D)(xvi) of Rules of 2006 as amended. They also pray for quashing and setting aside of the following:

(i) Order dated 31.12.2010 (Annexure-11) whereby all such candidates who had joined the rural service and who wished to appear in the PG Entrance Examination, 2011, although not completing 1 year of rural service, were allowed to take part in the Entrance

Examination;

(ii) Educational notice dated 5.1.2011 (Annexure-12) which is a follow-up notice pursuant to issuance of order dated 31.12.2010;

(iii) Order dated 17.1.2011 (Annexure-13) reiterating that a one time relief by way of condonation of shortfall of 1 year period of rural service for permitting to take part in the Entrance Examination of 2011;

(iv) Educational notice dated 8.2.2011 (Annexure-15) whereby, candidates whose names appear in the merit list of PGMEE, 2011 and who had served rural service in the remote and difficult areas, are directed to apply for increase of additional marks;

(v) Recalling of the rank wise merit list containing the names of the candidates who have not fulfilled the eligibility criteria for 1 year compulsory rural posting on the date of application including the candidates belonging to 15% All India Quota in MBBS Course.

The State of Assam represented by the Chief Secretary, Government of Assam, Commissioner and Secretary, Health and Family Welfare Department, Director of Medical Education, Srimanta Sankardeva University of Health Sciences represented by the Registrar, Controller of Srimanta Sankardeva University of Health Sciences, were initially the party Respondent Nos. 1 to 5 in the writ petition. Subsequently, on an application filed by 5 applicants, vide order dated 21.3.2011, those applicants were impleaded as Respondent Nos. 6 to 10. These Respondent Nos. 6 to 10 are candidates who had served in remote and difficult areas.

4. W.P.(C) No. 1260 of 2011 is filed by 5 writ Petitioners. All of them obtained their MBBS degree in the year 2008. All the Petitioners except Petitioner No. 5 had served in rural areas. In the rank wise merit list, their positions are reflected in Sl. Nos. 35, 38,42,33 and 89, respectively. Their prayer is limited to striking down of Rule 5(D)(xvi) of the Rules of 2006 as amended. The Respondent Nos. 1 to 3 of this petition are same as that of W.P (C) 3280 of 2010. Additionally, National Rural Health Mission, represented by Mission Director, is arrayed as Respondent No. 4.

5. In W.P.(C) No. 3280 of 2010, the Respondent No. 1 had filed an affidavit to which a reply affidavit was also filed by the Petitioner. An additional affidavit was also filed by the Respondent No. 1 to which a reply was filed by the Petitioner No. 6. In W.P.(C) No. 1259 of 2011, an affidavit-in-opposition has been filed by the Respondent No. 2 to which a reply affidavit was also field by the Petitioner. An affidavit-in-opposition by Respondent Nos. 6 to 10, though typed as Respondent Nos. 5 to 9, has been filed. Reply affidavit by the Petitioner is also filed. The counsel for the State had represented that the affidavit filed in W.P.(C) No. 1259 of 2011 would also cover the case projected in W.P.(C) No. 1260 of 2011 and accordingly, to that effect there is an order dated 21.3.2011. It appears copy of the affidavit filed by the Respondent No. 2 in W.P.(C) No. 1259 of 2011 was furnished to the council for the Petitioner and accordingly, a reply affidavit is also brought

on record by the writ Petitioners in W.P.(C) No. 1260 of 2011.

6. The Petitioners in W.P.(C) No. 3280 of 2010 stated that the teachers who are entitled to seats under Rule 4(3) were allotted seats from the seats available for general category candidates even before the candidates from the merit list were called for counseling. Because of drastic and disproportionate increase of the seats under the teachers? quota from 5 seats to 20 seats and inclusion of such seats under general category, had deprived the meritorious candidates belonging to general category from obtaining seats in the Post Graduate Courses. According to them, in PGMEE, 2010, there were 3 seats in Anatomy and 6 seats in Pathology earmarked for general category candidates. It is the assertion of the Petitioners that all the 3 seats of Anatomy and 4 out of 6 seats in Pathology were allotted to teachers and it was only due to the fact teachers, under the Rule 4(3)(vi), are allowed to take 4 seats in a single subject as compared to 1 seat in a subject in earlier session.

7. The remaining 2 seats in Pathology were allotted to 2 eligible candidates under the physically handicapped quota in violation of Rule 4(7)(ii) inasmuch as there was no pool seat earmarked for the subject of Pathology for general category and the physically handicapped candidates should have been allotted seats in other subjects. Pathology was the first choice subject of the Petitioner No. 1 and after he was denied a seat in Pathology arbitrarily, he wanted to take up Pharmacology as his subject where there were 4 seats for the unreserved category. Out of the aforesaid 4 seats, 1 seat was earmarked as a pool seat and as no other general category candidate had opted for Pharmacology prior to the Petitioner No. 1, he was shocked, to say the least, when he was told in the counseling that there was no available seat in Pharmacology. He was also told that 1 seat was allotted to Teachers Quota and the remaining 3 seats were converted from general merit category to OBC/MOBC category as per Rule 7(2)(f) of the Rules of 2006. The Petitioners had pleaded that the conversion formula is not only unconstitutional, the implementation of the same was done by the authorities as per their own choice making the counseling process a mockery of law. It is averred that if a reserved category candidate opted for a reserved seat in general merit position, a general seat in the same subject should be brought under reservation in the same category to which the candidate belongs, but in reality, when the reserved category candidate opted for a reserved seat from general merit position, a general seat from some different subject was brought under reservation in that category. To substantiate the same, it has been stated that all the 3 seats in the subject of Pharmacology was converted from general merit category to OBC/MOBC even though none of the reserved category candidates opted for a reserved seat in general merit position in the subject of Pharmacology. In such circumstances, the Petitioner No. 1 had to take the subject of Psychiatry in the first round of counseling though the same was not his preferred subject. The Petitioner No. 2 had opted for Ophthalmology where there were 3 seats reserved for the general category. Candidates at ranks 41 and 59 of the merit list opted for Ophthalmology. Petitioner No. 2''s rank was 64 and although none of the reserved category candidates ahead of the Petitioner No. 2

opted for reserved seat in general merit position in the subject of Ophthalmology, the seat was arbitrarily converted to OBC/MOBC depriving him of the seat. The Petitioner No. 2 did not avail any other seat in that session while Respondent Nos. 3 to 7 did not even get a single seat.

8. It is further stated that 12 seats from general category were illegally converted to reserved category with the result that though on paper, 60 seats were earmarked for general candidates, in real sense of the term, after the illegal conversions were made, general category candidates had only 48 seats (28.42% of the total seats) to compete for out of total 170 seats in both degree and diploma courses. It is pleaded by them that the same is in clear derogation of the constitutional principles and established norms of reservation policy. It is also stated that the working of the Rule militates against candidates in the general category and they are at the receiving end for the injustices meted out. It is also the case of the Petitioners that the reservation under the State Health Service Quota on the basis of 5 years service in rural areas is not a valid classification and such qualification is directly in conflict with the judgment of the Hon''ble Supreme Court in the case of Dr. Narayan Sharma and Another etc. Vs. Dr. Pankaj Kr. Lehkar and Others etc., The Petitioners also castigated the approach of the authorities in not making available to the general category candidates even what is due to them under the Rules and as an illustration thereof, has stated that though only 18 seats under the Teachers Quota was filled up and 2 seats were available to be filled up from the merit list in order of merit, yet, strangely these 2 seats were kept in abeyance. According to them, candidates belonging to North Eastern Council Quota form a separate class in itself; but 2 seats on that account have also been included in the unreserved category along with general category candidates cutting into the already vastly depleting number of seats in the general category. In the scheme of the Rules, merit has taken a back seat and has become a casualty, so much so, that even if a general category candidate secures first position in the merit list, he will not be able to pursue PG Courses in Paediatrics, Pathology, Pharmacology, Biochemistry, Anatomy and Anaesthesiology.

9. In the affidavit filed on behalf of the Respondent No. 1, it has been stated that the Petitioner Nos. 3 to 7 remained absent in the counseling. It is stated that the total number of seats in the year 2009-2010 was 246 and the same had been increased to 339 seats out of which 272 seats are meant for degree and 67 for diploma. 50% of seats which are required to be surrendered for All India Quota works out to 136 in degree course. The state has 34 seats in diploma thereby totaling 176 number of seats. It is also stated that after the first round of counseling, 8 more seats had been allotted to the 3 Medical Colleges of the State by the Government of India and that the same would be filled up at the time of second counseling. In justification of the Teachers Quota, it has been stated that the entry level qualification for the post of Registrar/Demonstrator is an MBBS Degree. However, as per prescribed guidelines of the Medical Council of India, for short, MCI, educational qualification for the promotional post from the post of Registrar/Demonstrator is a Post Graduate Degree. Due to dearth of doctors possessing

Post Graduate Degree, State found it increasingly difficult to fill up the promotional posts inviting not only wrath from the MCI but also threat of de- recognition. Reservation of 5 seats in the Teachers Quota was considered to be inadequate to meet the emerging scenario and it was found that 45 number of MBBS doctors at the entry level were yet to acquire Post Graduate Degree. It is in that backdrop that entry level qualification had been raised to Post Graduate Degree in 2006 from the earlier MBBS Degree. It is the stand of the State Government that granting of 93 number of additional Post Graduate seats for the session 2010 acted as a catalyst for taking a decision to raise the quota of MBBS teachers from 5 to 20 as one time basis for the academic session 2010-2011.

10. It has been stated that there is a 3 (three) tier structure of Health Care System prevalent in the State of Assam. The public Health Centres take care of the Primary Health Care. Community Health Centre/FRU Level Hospitals/Sub-divisional Civil Hospital and District Civil Hospitals form the core of Secondary Level Health Care and the Medical Colleges and Hospitals are categorised as Tertiary Level Health Care Institutions. It is further stated in the affidavit that a perceptible and significant change has taken place regarding the development in terms of infrastructure and equipments in Primary and Secondary Health Care Institutions with the implementation of National Rural Health Mission in a big way. While asserting that the State is geared up to meet the challenges in the infrastructure development and availability of equipments, qualified special doctors in disciplines such as Medicine, Surgery, Gynaecology, Paediatrics, Anaesthesiology, Eye, ENT, Radiology, Pathology, Psychiatry and Orthopaedics required in the Secondary Level Health Care Institutions, is woefully lacking. It is also stated that the increase in the State Health Quota from 16 to 23 for a pool of 3000 doctors under State Health Services is justified. The State in their affidavit conceded that Pathology was not included in the pool seats under the General category in session 2010, and the 2 candidates belonging to physically handicapped quota were allotted seats in Pathology on sympathetic consideration. The affidavit also dealt with the formula of conversion under Rule 7(2)(f) explaining the same in the context of claim made by the Petitioner No. 1 for allotment of a seat in Pharmacology. It was stated that one Dr. Rondeep Kumar Nath whose position was 24 in the merit list was allotted a seat in Medicine at GMC by de-reserving the OBC seat and subsequently converting a Pharmacologist seat in AMC and that Dr. Alakesh Burman with rank 44 was allotted a seat in Surgery at GMC by de-reserving the OBC seat and subsequently converting a Pharmacologist seat at AMC. Dr. Rajkumar Paul at Sl. No. 21 at merit list was allotted a seat in Paediatrics at AMC by de-reserving the OBC seat and subsequently converting the Pharmacologist seat at AMC.

11. By filing an additional affidavit the Respondent No. 1 brought on record the fact that except Petitioner No. 6, the other 6 Petitioners had been admitted to the PG Medical Course for the session 2010 as per their choice of subject and merit position and that they were pursuing their courses in their respective subjects. The Petitioner No. 6 filed a reply to the additional affidavit filed by the Respondent No. 1 denying that other 6 Petitioners had been admitted in the PG Medical Courses as per their choice of subjects.

It is also stated that though the Respondent No. 7 was allotted a seat in Ophthalmology in the second round of counseling, the same was not his subject of choice and therefore, he surrendered the seat after 2 months. In the reply affidavit to the affidavit-in-opposition, the Petitioners have, more or less, reiterated the averments and the stand taken in the writ petition.

12. The Petitioners in W.P.(C) No. 1259 of 2009 stated that the Office Memorandum dated 28.8.2009, which relaxed the requirement of serving under the Government of Assam by way of compulsory rural service to one year has been made part of the Amendment Rules of 2010 by way of incorporation. It is averred that doctors who are appointed in rural areas against the one year period are appointed on contractual basis and an agreement is also executed by and between the doctors concerned and the appointing authority. They say that such appointments cannot be termed as regular appointments and such appointees stand on a different footing as compared to the doctors serving on regular basis in the State Health Services, for whom there is reservation in the provisions of the Rules. It is stated that un-amended Rule 6 of Rules of 2006 did not provide for mandatory service under the Government of Assam as an eligibility criteria and the same was introduced for the first time by the Memorandum dated 28.8.2009. The concept of remote and difficult area and awarding of additional marks for serving in remote and difficult area was introduced for the first time by the Notification dated 13.1.2010. It is stated by them that none of the Petitioners were given the option to serve in remote and difficult area and if any option was given, they would have exercised such an option. It has been stated that grant of additional marks would have disastrous results and the Notification dated 13.1.2010 and the Amended Rule 5 is violative of the mandate of Article 14 of the Constitution of India. It is further stated that the prescription of giving of 10% additional marks up to 30% as per the Amendment Rules of 2010 has the effect of lowering the standard of education and admission criteria and therefore, the same is violative of the provisions of the Regulations of 2000 framed by the MCI. The exercise of power purportedly under Rule 15 of the Rules of 2006 is also termed illegal, arbitrary and unreasonable. It has also been stated candidates who completed the MBBS Course under the State quota seats were discriminated by neither insisting on one year compulsory rural posting nor insisting on compliance of eligibility criteria of one year rural posting in respect of the candidates belonging to the 15% All India Quota Seats of MBBS and that they had been allowed to appear in the entrance examination and their names have also found place in the rank wise merit list. It is pleaded that such candidates should not be permitted to participate in the counseling for admission to Post-Graduate Medical Course under 50% State Quota seats. Additionally, it is pleaded that the students who were admitted in 15% All India Quota in the MBBS Course cannot be made a class apart from the candidates who have completed their MBBS Course under the State Quota seats for the purpose of 50% State Quota seats in the Post Graduate Courses and that such a classification is wholly antagonistic to Article 14 of the Constitution of India.

13. The Respondent No. 2 in the affidavit filed has reiterated its stand as reflected in the affidavit filed in W.P.(C) No. 3280 of 2010. In substance, the affidavit highlighted that the shortage of doctors is more acute in "remote and difficult area? as compared to other rural areas and therefore, 10% additional marks was provided for as an inducement to the doctors to serve in "remote and difficult area?. It is stated that the Petitioners could have also applied to the appointing authority for changing their posting to "remote and difficult area? but no such prayer was made by them. It is also stated that the Rule 5(D)(xvi) came into force w.e.f. 1.1.2010 and therefore, the Rule did not cover the rural posting of the Petitioners. The scheme for one rural service was made effective from September, 2009 and as such, one time relaxation was given to the doctors who had joined rural service in September, 2009. It was stated that at the time of when the Petitioners joined rural service, the Rule relating to 10% additional marks was not in force. It was further pleaded that although the terms and conditions did not permit the Petitioners to ask for transfer and posting, the Respondent authority could have considered such prayer if it had received any representation in this regard. The answering Respondent stated that students are admitted to the MBBS Course under 15% All India Quota in terms of Admission Rules covering Under-Graduate Course and as per the judgment and order dated 12.9.2002 passed by this Court in W.P.(C) No. 4375 of 2002 and therefore, they are exempted from execution of the bond to serve under the Government of Assam. Consequently, they are exempted from rendering one year compulsory rural service to be eligible to appear in PG Entrance Examination. It is also stated that students admitted under Central Pool and NEC quota are also exempted from rendering one year compulsory rural service.

14. By filing a reply affidavit to the affidavit-in-opposition, the Petitioners while reaffirming the stand taken in the writ petition, have stated that in W.P. (C) No. 6595 of 2010 (Dr. Ashish Kumar Mittal v. State of Assam), the State Respondents had taken a contrary stand to the effect that one year rural service is not transferable under any circumstances and a doctor cannot opt or request for a favorable place of posting. While denying the increase in the number of seats in State Health Quota from 16 to 23 was due to overcome acute shortage of specialist doctors, it is stated that the diploma seats has been increased from earlier 10 to present 17 to comply with the Regulations of 2000 of the MCI. While denying acute shortage of doctors in "remote and difficult area?, it has been stated that students admitted under 15% All India Quota should be also asked to execute bond. It is also categorically averred that no exemption has been given to the candidates in the Rules of 2006 as amended by the Amendment Rules of 2010 to the candidates belonging to 15% All India Quota seats so far as it relates to the eligibility criteria of 5 years Government service or one year rural service. The Petitioners also stated that Rule 15 of the Rules of 2006 does not empower the Government to relax eligibility criteria. The Respondents 6 to 10, according to them, are far less meritorious than the Petitioners as would be demonstrated by the marks and ranks obtained by them which are 170/466, 169/476, 181/325, 190/206, 176/393, respectively. The Respondent No. 9 who amongst Respondents 6 to 10 has the highest rank, with the addition 10%

marks would be pitch-forked to rank 50 and would steal a march over someone like the Petitioner No. 2 whose merit position is 81. This is the devastating effect of the Rule visualising 10% additional mark, they pleaded.

15. The newly added Respondents, i.e, the Respondents 6 to 10 while pleading that the impugned Rules and the Notifications are valid in all respects and they state that the writ Petitioners have not explained the delay for the belated approach to this Court challenging the Rules and they were fence sitters and as such, are not entitled to avail the discretionary relief under writ jurisdiction. They also plead that the writ Petitioners are barred by the principles of estoppels to agitate the issues raised in the writ petition. In sum, their projected case is that they having spent more than one year serving remote and difficult area, they are entitled to additional 10% of the marks obtained in the Entrance Examination.

16. Expectedly, in the reply to the affidavit-in-opposition filed by the Respondents 6 to 10, while denying the allegations and contentions, the writ Petitioners state that according to the Notification dated 13.1.2010, in order to get 10% additional marks, the service from 1.1.2010 was to be counted only and not any service prior thereto. It is also stated that in order to facilitate and accommodate the Respondents 6 to 10, their contractual service was extended so that they could complete one year from 1.1.2010 and thus, get the benefit of additional 10% marks.

17. Before we proceed to discuss the submissions advanced by the counsel of the parties, we feel it would be in order to have a close look of the provisions of the Rules and Regulations which would have bearing on these cases.

18. We start with the medical college of Assam and Regional Dental College (Regulation of Admission of Under-Graduate Student) Rules, 1996. As the title of the Rules suggests, this set of Rules, herein after referred to as the Rules of 1996, regulate the admission of under graduate students in Guwahati Medical College, Guwahati, Assam Medical College, Dibrugarh, Silchar Medical College, Silchar and the Regional Dental college, Guwahati. The purpose of drawing a reference to the Rules of 1996 is to trace the history of Bond, which term would be frequently used once the cases of the parties are unfolded by the submission of the learned Counsel for the parties at a later stage. It is only appropriate to quote Rule 10.

Bond. On selection, the candidates shall execute a duly registered bond on a non-judicial stamp paper of the value of Rs. 10 (ten) only in the Form at Schedule-II appended to these rules as and when directed by the authority for binding himself/herself to serve under the Government of Assam for a period of five years and in breach thereof to pay a sum of Rs. 5,35,000/- (Rupees five lakhs thirty five thousand) only to the Government as compensation.

The Bond, thus, visualizes the candidates selected to bind themselves to serve under the Government of Assam for a period of 5 years as and when directed and on any breach thereof, to pay a sum of Rs. 5,35,000/-.

19. Next, our attention will be riveted on Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2006, for short, the Rules of 2006. The Rules of 2006 was issued in super cession of the Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2004. Rule 3(1)of the Rules of 2006 provides the number of total seats in the Post Graduate Courses in different disciplines and their break up in Appendix-I thereto. The proviso to Rule 3 (1) further provides that the number of such seats shall be determined by the Government from time to time with the approval of the Medical Council of India and that the total number of such seats shall be notified before counseling for admission into the Post Graduate Courses.

20. Rule 4 of the Rules of 2006 deals with quota and reservation of seats.

Rule 4 (1) provides that 50% of the total seats as referred to in Rule 3 shall be reserved for the candidates recommended by the Government of India selected on the basis of All India Entrance Examination for each session and how the seats, subjects, number, college, etc. are to be determined is shown in Appendix-I thereto.

Rule 4(2), inter-alia , provides that 1 seat in degree and 1 seat in diploma courses shall be reserved for the candidates for North Eastern States except Assam in each session and the selection shall be made in order of merit in the entrance examination wherein the intending candidates have to appear. Rule 4(3) deals with seats pertaining to Teachers Quota. The Rule 4(3)(i) provides that 5 seats shall be reserved for the teachers belonging to the 3 medical colleges of Assam in each session in the subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Microbiology, Social Preventive Medicine and Forensic Medicine for the session 2007 onwards. Rule 3(ii) to 3(vi) are not relevant for our purpose and therefore, the same are not discussed.

Rule 4 (4) deals with seats relating to State Health Service Quota. Rule 4(4)(i) provides that 16 seats (6 in degree and 10 in diploma) shall be reserved in each session for the doctors appointed in the State Health Services on regular basis on the recommendation of the Assam Public Service Commission and who have completed 5 years or more services in rural areas. The allotment of seats have been shown in Appendix- I thereto. Rule 4(4)(ii) provides that the selection of the candidates under this quota shall be on the basis of their merit amongst them in the entrance examination. Provision has been made to the effect that they shall also be eligible to compete in other seats as per their merit position.

The term rural areas appearing in 4(4)(i) is explained in Rule 4(4)(iii) to the effect that the term rural area shall denote an area which is not a notified urban/town area and shall be situated at a minimum distance of 5 km from such notified urban area and town area and

5 km beyond the nearest point of National Highway.

While Rule 4(5) deals with percentage of seats available and reserved for scheduled castes, scheduled tribes and OBC/MOBC candidates, Rule 4(6) (i) conceptualises the number of seats indicated in Rule 4(6)(ii) to be pool seats to be rotated between different candidates in every session by the selection board serially with details given in Appendix-I thereto, to be filled up according to merit. There is a rotational formula in case of pool seats and the same has been dealt with in Rule 4 (6) (ii).

21. Rule 5, in essence, delineates the procedure from the stage of issuing of application to the preparation of the merit list as well as declaration of the results through websites.

22. Rule 6 provides the eligibility criteria for entrance examination.

23. Rule 7 (1) provides for constitution of the selection board. Rule 7(2) provides for various facets to be taken note of during the counseling where the candidates whose names appear in the merit list shall be called in according to merit. Rule 7(2)(e) and 7(2)(f) are very relevant for our purpose and therefore, it is only proper that the Rules be read as it appear and so, the same are quoted herein below:

(e) A candidate belonging to SC/ST/(P)/ST(H) and OBC/MOBC can opt for General open seats in any subject/college if such a seat is available according to their position in the merit list or they may opt for any reserved seat of their own category that is available.

(f) Conversion formula in case of candidate belonging to the reserved category opting for a reserved seat in general merit position.

If a candidate belonging to ST(P),ST(H),SC and OBC/MOBC reserved categories opt for a reserved seat from General merit position in a subject and college of their choice, the said seat shall be considered to be de-reserved and shall be brought to the General category to accommodate the candidates.

After doing so, a general seat in the same subject shall be brought under reservation in the same category to which the candidate belongs.

If a seat in the same subject is not available, then a seat in the subject in the broad stream of medical specialities/subjects or surgical specialities/subjects to which the original seat belonged shall be so reserved.

If no such seat is available even in the broad Medical or Surgical Specialities, then the Board may decide to reserved any subject in any college.

This formula is adopted to keep the total number of seats belonging to a particular reserved category constant as per the judgment of Honourable Gauhati High Court in W.P.(C) No. 1431/97.

24. Rule 12 deals with a Bond to be executed by a selected candidate in Appendix-II for binding himself/herself to serve under the Government of Assam for a period of 10 years on completion of the Post Graduate Courses and any breach thereof to pay a sum of maximum of Rs. 10 lakhs only to the Government as compensation.

25. Rule 15 is also germane for our purpose and therefore the same is quoted in its entirety.

15. Notwithstanding anything contained in these Rules, the Govt. shall have the power to take any action, not inconsistent with the provisions of these rules, as may be necessary to remove any difficulty for which no express provision exists in these rules.

26. By a Notification dated 28.1.2008, certain provisions of the Rules of 2006 was amended. This Notification was published in the Assam Gazette Extraordinary on 28.1.2008 itself and the Rules are called the Assam Medical College (Regulation of Admission to Post Graduate Courses) (Amendment) Rules, 2008. We shall refer to these Rules as Amendment Rules of 2008.

27. One of the amendments effected by the Amendment Rules of 2008 was insertion of Sub-rule (7) after Rule 4(6) in the Rules of 2006. By this amendment, 3% of the seats in Post Graduate Courses are required to be reserved for the candidates with physical disability in the manner prescribed in Clauses (i) to (iv) of Sub-Rule 7. By Rule 4(7)(ii), it is stipulated that the aforesaid 3% reservation is not a separate reservation over and above other reservation and that if a disabled candidate belongs to reserved categories such as SC/ST/OBC/MOBC or General and other category, he/she shall be adjusted against the pool seats earmarked for the respective session in the category to which he/she belongs to. It is also clarified that only persons with loco motor disability of lower limbs and having between 50% to 70% of the disability shall be eligible for this quota.

28. By the Amendment Rules of 2008, Rule 5(D) (vi) has been amended by prescribing that to be eligible of admission of candidates under State Health Service Quota, both General and reserved category shall have to secure 40% marks in the entrance examination conducted for the purpose. Prior to amendment, the minimum percentage of marks prescribed for the General candidates was 50% marks.

29. By another Notification date 13.1.2010, the Rules of 2006 was further amended. This Notification came to be published in the Assam Gazette Extraordinary on 31.1.2010 and these Rules are called Assam Medical College (Regulation of Admission to Post Graduate Courses) (Amendment), Rules, 2010. These Rules shall be called as Amendment Rules of 2010. There is an amendment in Rule 2 of the Rules of 2006 in the sense that 2 clauses, namely, Clause (x) and Clause (xi) had been inserted therein. Clause (xi) is having a direct bearing with the cases in hand and therefore, the same is reproduced herein below:

(xi) "Remote and Difficult Area" means an area which is situated in the two hill Districts of Assam i.e. North Cachar Hills and Kargi Anglong District as well as remote areas namely, Dhemaji District, Sadia Sub-division, Majuli Sub-division Dhakuakhana Sub-division and South Salmara Sub-division other than the head quarters of the said Districts/Sub-divisions.

30. Furthermore, another amendment effected by the Amendment Rules of 2010, relevant for the purpose of these cases is a new Clause (xvi) that is inserted after Clause (D) of Rule 5 of Rules of 2006 and it needs to be reproduced. The same reads as follows.

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

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

Provided, however, that the period of service in remote and difficult areas shall be counted with effect from 01-01-2010 onwards only and service offered prior to this date shall not be counted for awarding this additional marks:

Provided also that Doctors serving in rural areas in establishment other than establishment of the Government of Assam or Society/Agency created for implementation of National Programmes of disease control or National Rural Health Mission shall not be eligible to be awarded additional marks as mentioned above.

31. There are also amendments by way of substitution in Rules 4(3)(i) and 4(3)(vi) substituting the earlier provisions. The substituted Clause (i) reads as follows:

(i) 20 seats shall be reserved for each session namely session 2010 and session 2011 only in degree courses for the teachers belonging to the three Medical colleges of Assam who have joined service after due selection through the Commission or whose services were regularized by the Commission. They shall have to appear before the Selection Board constituted under Clause (ii) of this sub-rule.

Provided that if any of the Teacher''s Quota seats are not filled up due to non-availability of an eligible candidate in a particular year, then the vacant seat shall be filled up by candidates from the merit list of the respective year in order of merit.

Similarly, the substituted Clause (vi) reads as follows.

(vi) Up to a maximum of 4(four) seats in a subject shall be allowed in each session for teacher quota.

Earlier, prior to amendment, only 1 seat in a subject was allowed in each session for teachers? quota.

32. 4(4)(i) is also substituted by the Amendment Rules of 2010 as follows:

(i) 23 (twenty-three) seats- 6 in P.G. Degree and 17 in P.G. Diploma Courses shall be reserved for the doctors appointed under the State Health Services on regular basis on recommendation of the Commission and who have completed 5 years or more service in rural areas. However, for counting the experience of 5 years of service in rural areas period working under regulation 3(f) of the Assam Public Service Commission (Limitation and Functions) Regulation, 1951 or service under any Society/Agency created by the Government for implementation of National Programme of disease control or National Rural Health Mission shall also be a continuous service in such areas and the applicant must complete the required period of service in rural areas at the time of submission of the application for Entrance Examination. The subject wise reservation of seats have been shown in Appendix-I.

33. Rule 4 (b) is also substituted by the following:

(6) Pool: (i) The following number of seats shall be pool seats to be treated between different candidates in every session by the Selection Board Serially (details in Appendix-I) and shall be filled up according to merit:

DEGREE SEATS:

1.	Orthopaedics	AMC-1
2.	Ophthalmology	GMC-1
3.	ENT	SMC-1
4.	Paediatrics	GMC-1
5.	Radiology	SMC-1
6.	Anaesthesiology	AMC-1
7.	SPM	GMC-1
8.	Dermatology	AMC-1
9.	Psychiatry	SMC-1
		GMC-1
10.	FSM	GMC-1
11.	Biochemistry	AMC-1
12.	Physiology	GMC-1
13.	Microbiology	GMC-1
14.	Pharmacology	AMC-1
15.	Anatomy	GMC-1

(SC-3, STP-1, STH-3, OBC/MOBC-1 & General including Teachers Quota and NEC quota-8)

DIPLOMA SEATS:

1. DGO	AMC-1
2. DCP	AMC-1
3. DCH	AMC-1
4. DA	AMC-1
5. DO	GMC-1
6. DLO	GMC-1
7. DMRD	AMC-1

(SC-2, STP-1, STH-2, OBC/MOBC-1 & General including NEC quota-1)

34. There is also insertion in the form of Clauses (vi) and (vii) in Rule 6 of the Rules of 2006 after Clause (v). Clauses (vi) and (vii) read as follows:

(vi) A candidate prior to his appearance in the P.G. Entrance Examination shall have to serve under the Government of Assam for the period as stipulated in the Bond signed by the candidate after being selected for the MBBS Course as per The Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Under Graduate Students) Rules 2007 and in breach thereof shall pay compensation as mentioned in the said Bond to the Government before he/she applies for the Post Graduate Entrance Examination against the State Quota Seats:

Provided that he/she shall also be eligible to apply in lieu of above mentioned provision if the conditions of the Office Memorandum vide No. HLB/400/2009/06, dated 28-08-2009 relating to the period of service in rural areas as contained therein are fulfilled by a candidate:

Provided however, that a candidate who does not want to serve under the Government for a period of 5 years as stipulated in the Bond duly signed and delivered by him/her after being selected for the MBBS Course, or the required period of service in rural areas as laid down in the O.M. No. HLB/400/2009/06, dated 28-08-2009 may pay the compensation as stipulated in the Bond, in lieu of such service under the Government, and on such payment he/she shall be eligible to become a candidate for admission to the Post Graduate Courses.

The amount of compensation is to be paid in favor of "Director of Medical Education, Assam" by a Bank Draft payable at Guwahati at the time of submission of the application for admission to the Post Graduate Courses.

(vii) The doctors who have been serving/has served in rural areas shall have to produce certificate/certificates to the effect that he/she has been working/has worked in rural areas under the Government of Assam or under Society/Agency created by the Government for implementation of National Programmes of disease control or under National Rural Health Mission for period as stipulated under these rules and/or the Office Memorandum vide No. HLB/400/2009/06, dated 28-08-2009. Certificate/Certificates shall have to be produced along with the application as per format at Appendix-III.

35. There is a reference in Rule 6(vi) to an office Memorandum No. HLB/400/2009/06 dated 28.8.2009 and therefore, to maintain the sequence, it would be most appropriate to refer to the said Memorandum straightway. By the Memorandum dated 28.8.2009, the Government of Assam decided to prescribe a procedure in respect of mandatory government service for specific period by the candidates who had completed Medical Degree Course from Government Medical Colleges of Assam. The salient features of this Memorandum which are necessary for the purpose of the instant cases are required to be highlighted.

It has introduced a definition of rural area to mean an area which falls within the jurisdiction of any gaon panchayat of the State, and autonomous council areas excluding the notified municipality, town committee, town corporation that falls within the said council areas. There is another significant definition: that of rural service. Rural service, according to the definition, means service in the rural areas as specified in the definition of rural area under the Department of Health and Family Welfare, Government of Assam or under its society/agency created for implementation of national programmes of disease control, NHRM. This office memorandum primarily dealt with the scheme of the Bond. Introductory part of the office memorandum brings it to the fore that almost the entire cost of courses are subsidised and only a nominal fees is charged upon the students and that is why, with an objective to redeem public debt to some extent, it binds the students by way of execution of Bond, both at the time of admission in the Under Graduate Courses as well as in the Post Graduate Courses. The preface also notes the concept of compensation envisaged by the Bond by way of payment of sum of rupees as mentioned in the Bond. By this office memorandum dated 28.8.2009, the Government decided that a student will be eligible for admission in the Post Graduate Courses in the Medical Colleges under the State Quota Seats only after serving the Government for a Bond period of 5 years. It also goes on to provide by way of relaxation that this stipulation of service of 5 years under the Government is reduced to a period of 1 year, if the candidate volunteers to serve in rural areas under the Government of Assam or under its society/agency created for implementation of national programmes of disease control and NRHM. Payment of remuneration as fixed by NRHM for the period of 1 year rural service was also envisioned. Even under this memorandum, without offering 5 years Government service or 1 year of rural service, a candidate, otherwise eligible, can become a candidate for admission to the Post Graduate Courses by paying compensation of the amount mentioned in the Bond. There was also a provision for withdrawal of the relaxation

granted under the office memorandum for 1 year rural service in lieu of 5 years under the Government as and when deemed necessary by the Government in public interest. The relaxed provision was directed to come into effect from 1.9.2009. A special consideration was also stipulated to the effect that the students who voluntarily joined in rural service as per the provisions of the memorandum dated 28.8.2009, will be eligible to appear in the Post Graduate Entrance Examination for the year 2010 for the State Quota Seats although at the time of appearing in the Entrance Examination, they may not have completed 1 year of rural service. This special consideration was treated to be a one time relaxation, and not to be treated as a precedent in future. Completion of 1 year rural service shall be a must to make a candidate eligible to appear in the Post Graduate Entrance Examination for the students appearing in 2011. It is further provided there that the 1 year rural service must be a continuous one and clubbing or adding of piece-meal or short term periods of rural services would not suffice to satisfy the eligibility of the student. The Bond was also made applicable to a doctor obtaining MBBS degree from Medical Colleges Assam irrespective of the fact as to whether he pursues Post Graduate studies under the State Quota. A residuary power has also been vested on the Government under the heading of "Removal of Difficulties" enabling it to take any action as it may deem necessary under special circumstances and to take any action to remove any difficulty for which no express provision exists in the office memorandum.

36. Close on the heels of the office memorandum dated 28.8.2009, a notice dated 29.8.2009 was issued by the Commissioner and Secretary, Government of Assam, Health and Family Welfare Department for general information of the decision of the Government as contained in the Memorandum dated 28.8.2009. Additionally, the students who wanted to pursue 1 year rural service instead of 5 years Government Service, were requested to apply to the Mission Director, NRHM for suitable posting of 1 year in rural area on or before 7.9.2009. A monthly remuneration of Rs. 25,000/- was to be paid during the 1 year rural posting. However, the notice specified that in difficult areas like Karbi-Anglong, NC Hills District and Sadia, Jonai, Majuli and South Salmora district Sub-divisions, the students would get remuneration of Rs. 28,000/- per month.

37. Another order came to be passed on 31.12.2010 on the basis of representations received from a number of MBBS degree holders working as doctors under NRHM in the rural areas whereby they had prayed for permitting them to appear in the Entrance Examination for the year 2011 for PG courses although they had not completed 1 year of rural service by then. This order dated 31.12.2010 was stated to have been passed in terms of Rule 15 of the Rules of 2006. By this order it was clarified that students, who had joined the rural service and who wish to appear in the PG Entrance Examination, 2011, shall be allowed to appear in the examination subject to the condition that they will have to complete 1 year rural service at the time of their admission to the PG Courses. Based on the said order dated 31.12.2010, the Controller of Examination, Srimanta Sankardeva University of Health Sciences, issued an Educational Notice which came to be published in the 5th January, 2011 issue of "The Assam Tribune".

38. There was further relaxation in the form of an order dated 17.1.2011 whereby in continuance of the order dated 31.12.2010, it was made clear that all candidates seeking admission to Post Graduate Courses for the year 2011, shall be provided a one time relief by condoning the period by which anyone of them runs short of prescribed 1 year period of service in rural areas. By the said order dated 17.1.2011, a time table was chalked out to be followed by all the principals of the Medical Colleges for the purpose of implementation of the provision of 1 year rural service finding place in the Rules of 2006 as amended.

39. The narration will not be complete without the mention of Educational Notice dated 8.2.2011. By this notice, candidates whose names had appeared in the merit list of Post Graduate Entrance Examination, 2011 and who had served in remote and difficult areas as defined in the Notification dated 13.1.2010, were asked to apply directly to the Director of Medical Examination, Assam for additional marks. It was also provided that the period of service in remote and difficult areas shall be counted with effect from 1.1.2010 onwards only and the service offered prior to this date shall not be counted for awarding the additional marks.

40. It will also be worthwhile to take note of Assam Health Service Rules, 1995 at this juncture. For the sake of brevity, these Rules will be called the Rules of 1995. Rule 2(h) defines rural station to mean a station in a district of the State other than the district of Karbi-Anglong and North Cachar Hills, not being within 8 Kilometers (5 miles) of the Headquarter of a District or sub-division. Service is defined in Rule 2(j) to mean the Assam Health Service and strength, method of recruitment, qualifications are all embodied in the various provisions of the Rules of 1995. Rule 24(2) provides that a member of the service shall have no option against any posting or transfer. Rule 24(4) provides that every member in a cadre of Medical and Health Officer-I shall be liable to render compulsory service in rural areas for a minimum period of 5 years.

41. The MCI, with the previous sanction of the Central Government, in exercise of the power conferred u/s 33 read with Section 20 of the Indian Medical Council Act, 1956, has framed a Regulation called "The Post Graduate Medical Education Regulations, 2000", for short, the Regulation. Regulation 9(1) and (2) have been substituted in terms of a Notification published in the Gazette of India on 20.10.2008. Regulation 9 deals with selection of Post Graduate Students and has relevance for the purpose of the instant petitions. Therefore, we extract herein below Regulation 9, in un-amended as well as in amended form.

9. SELECTION OF POSTGRADUATE STUDENTS.

1. Students for Postgraduate medical courses

Shall be selected strictly on the basis of their academic merit.

The above Clause 9(1), after substitution reads as follows:

9(1) (a) Students for Post Graduate medical courses shall be selected strictly on the basis of their Inter-se Academic Merit.

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

2. For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses:

i. On the basis of merit as determined by the 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

ii. On the basis of merit as determined by a centralized competitive test held at the national level; or

iii. On the basis of the individual cumulative performance at the first, second and third MBBS examination, if such examination have been passed from the same university; or

iv. Combination of (i) and (iii):

Provided that wherever entrance test for Postgraduate admission is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty per cent for candidates belonging to general category and 40 per cent for the candidate belonging to Scheduled Castes, Scheduled Tribes and Other Backward classes.

Provided further that in non-governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institution on the basis of merit.

The above Clause 9(2) after substitution reads as follows:

9(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

(d) Combination of (a) and (c)

Provided that wherever "entrance Test? for postgraduates admission is held by a state government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidate belonging to Scheduled castes, Scheduled tribes and Other Backward Classes.

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

The following proviso is added after Clause 9(2)(d) in terms of Gazette Notification published on 17.11.2009 and the same is as follows:

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% of the marks obtained for each year in service in remote or difficult areas up to the maximum of 30 % of the marks obtained.

The following is added after the word General Category candidates in the fourth line of first proviso to Clause 9(2)(iv) in terms of Gazette Notification dated 25.3.2009 and the same is enclosed as Annexure IV:

45% for persons with loco motor disability of lower limbs in the same manner as stipulated in Clause 9(1) (a) above.

The following Sub-clause 9(1) (a) is added after Sub-clause 9(1) in terms of Notification published in the Gazette of India on 25.03.2009 and the same is enclosed as Annexure IV:

1(a). 3 % seats of the annual sanctioned intake capacity shall be filled up by candidates with loco motor disability of lower limbs between 50% to 70%.

Provided that in case any seat in this 3 % quota remains unfilled on account of unavailability of candidates with loco motor disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with loco motor disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions and in no case any admission will be made in the Postgraduate Medical course after 31st of May.

42. Assailing the validity of Rule 7 (2) (e) and Rule 7 (2) (f) of the Rules of 2006, Mr. D.K. Mishra, the learned senior counsel for the Petitioner submits that there is no rational and logic behind the conversion formula and the same is grossly unfair and detrimental to the general category candidates. Mr. Mishra submits that reservation cannot be carried out to the extent as is contemplated under the impugned Rules which has resulted in deprivation of the candidates belonging to the General Category Candidates of securing subjects which are more in demand. Therefore, according to him, impugned Rules being arbitrary, is violative of the Article 14 of the Constitution of India and therefore, the same should be declared null and void and ultra-vires. He submits that if a candidate belonging to reserved category does not give his option or consent to be treated as general category candidate he continues to be a reserved category candidate but once he/she opted to be considered in the general category, he/she is to be treated to be in general category for intents and purposes and cannot, avail the seats or Colleges which are meant for reserved category candidates. The impugned Rule are a hybrid of general and reserved category which is clearly not sustainable. In support of his submission, Mr. Mishra relies on a decision reported in the case of State of Bihar and Others Vs. M. Neethi Chandra and Others,

43. The objection of Mr. Mishra to the Rule 4(3) (i) of the Rules of 2006 is that the reservation has been made for the Doctors appointed under the State Health Services on regular basis on recommendation of the Commission and those who had completed 5 (five) years or more service in rural areas. This qualification of completion of 5(five) years or more service in rural areas is not sustainable in law. According to the learned senior counsel, the service in rural areas is not a valid classification and therefore, reservation of seats for the Doctors appointed under the State Health Services is illegal and arbitrary. The learned senior counsel further submits that the Hon''ble Supreme Court in State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, had held that the reservation in favor of the candidates from rural areas do not represent socially and educationally backward classes of students. He also refers to a decision of the Apex Court in the case of Dr. Narayan Sharma and Another etc. Vs. Dr. Pankaj Kr. Lehkar and Others etc., where some of the Rules of Assam Medical Colleges (Regulation of the Admission to the Post Graduate Courses) Rule, 1997, had fallen for consideration. The Supreme Court, while examining the validity of the Rule relating to State Health Services quota seats had struck down the said Rule and had also made an observation that even if a reservation was made for Doctors serving in rural areas, same would not have been a valid provision. The Rule as it was, had reserved seats for Doctors working on regular basis on recommendation of the Commission and who had worked for at least 5(five) years on regular basis in any Health Centre/Institution, which is not situated in the Municipal Areas. Mr. D.K. Mishra submits that even though such an observation made by the Supreme

Court is an obiter, having regard to the fact that the same was observed in connection with the Rules which was holding the field in the State of Assam, the same has a binding effect on the State Respondents. The challenge to Rule 4 (3) (i) is confined to the increase in number of seats. Mr. Mishra submits that the Supreme Court in Narayan Sharma (Supra) had upheld the validity of the Rules relating to reservation of seats for teachers. Increase of seats from 5(five) in Rules of 2006 to 20(twenty) by the Amendment Rules of 2010 cannot be justified under any yardstick and therefore, same is also antagonistic to the mandate of Article 14 of the Constitution of India. As a logical corollary, Mr. Mishra submits that likewise Rule 4 (3) (vi) is arbitrary in as much as 4 (four) seats in the maximum shall be allowed in a subject in each session for teachers? quota. The increase in numbers of total seats as well as in respect of the subjects has the portent of depriving the general category candidates from getting any seat in respect of some of the subjects where the teachers are entitled to pursue Post Graduate Courses as they are allotted the seats even before the other candidates are called for counseling. It is apparently clear that general category candidates have been crushed from all sides. Mr. Mishra also submits that the Writ Petitioners stand vindicated when the Respondents had admitted in the counter affidavit that on humanitarian considerations the physically handicapped students were allowed seats outside the pool seats earmarked for them. Mr. Mishra, however, did not go to the extent of making a prayer for setting aside the admission taken by the students under physically handicapped quota but argues strenuously that such humanitarian consideration should not be a guiding precedent in future and the Rules are to be followed strictly, including in physically handicapped quota.

44. Inviting the attention of the Court to Rules of 2006, Mr. Mishra submits that there was no requirement for service of one year in the rural areas of Assam as an eligibility condition for pursuing Post Graduate Courses in three Medical Colleges under the Government of Assam and the same was introduced by an Office Memorandum dated 28-08-2009 followed by a Notification dated 29-08-2009. However, reflection of rural service is found in the Bond under the Rules of 1996. He submits that even though the Rules are executive Rules, the Bond cannot override the provision of the Rules. Under Rule 10 of the Rules of 1996, the candidates were to execute a bond in the form prescribed as and when directed by the authority for binding himself/herself to serve under the Government of Assam for a period of 5 years. He has also brought to our notice that the Amendment Rules of 2010 has provided for the requirement of service in rural areas in that the applicants are now required to give attested copy of the certificate relating to service in rural areas in terms of appendix III. Mr. Mishra submits that the provision of Rule 5 D (xvi) of the Rules of 2006 as amended by the Amendment Rule of 2010 have curved out a separate class of candidates serving in remote and difficult areas, from the candidates who share the common platform of serving in the rural areas of the State. The provision of granting of additional marks @ 10 % is ambiguous and it is not discernable as to in which category of the candidates, the Rule will be applied and at what stage. The Rule is absolutely silent as to whether it would be granted only to those candidates who has secured minimum qualifying marks or to any candidate whether or

not he or she had secured minimum eligibility marks. Weightage of 10 % marks has the potentiality of making an otherwise un-qualified candidate to become eligible for admission to Post Graduate Courses. According to Mr. Mishra, a crucial element in the application of Rule 5 (D) (xvi) is that a candidate has to be in service. However, service has not been defined in the Rules. Having regard to the scheme of the Rules, and also with reference to Fundamental Rule 9 (30-A), he contends that it relates to a tenure post and not a post for a definite period. Relying upon the terms of the contractual appointment as Medical Officers and with particular reference to Clauses 2,3,4 & 9 thereof, the learned Senior Counsel submits that the appointment is purely on a contract basis and the appointee would not be entitled to any claims, rights, increased further benefits in terms of regularisation or consideration for further appointment to the said post or any other post under the Society and that service of such person stands automatically terminated at the expiry of the contract period without any notice or any compensation, would conclusively determine that the period of service in remote and difficult areas as conceived by Rule 5 (D) (xvi) do not embrace within it fold contractual service. He has also highlighted that the place of posting of such Medical Officer are not transferable. He also argued that Appendix 2 of the terms of contractual appointment of teachers provides that as remuneration, the Doctors concerned shall be paid a consolidated monthly fee. He contends that the same would demonstrate that such a contractual employee is not entitled to any salary which a person in service is otherwise entitled to. The contractual appointees like the Petitioners who had served one year of rural service including in remote and difficult areas are beyond the sweep of Rule 5 (D) (xvi) and therefore, he argues that even if the Rule is held to be valid, it should not be extended to the contractual appointee. It has also strenuously been argued that the candidates have no choice with regard to their posting and there is only element of chance and luck when one gets posted to a remote and difficult area. It has been submitted that many of the Petitioners wanted to work in remote and difficult area to gain additional 10 % marks but that was not acceded to. He has also argued that, at any rate, the weightage of 10 % additional marks for each year of service in remote and difficult area, if at all needs to be given, should be restricted to the in-service Doctors of the State Health Service. He also submits that the posting is entirely a discretionary power of the authorities and there is no mechanism in place to afford a guideline for such posting. By referring to the Respondent Nos. 6 to 10 in W.P.(C) 1259 of 2010, he submits that Respondents 6,7,9 & 10 have got posting in their own home places and yet, because such postings had fallen in difficult and remote area, they would be entitled to 10 % additional weightage, which does not make any sense. No option was given to the students to serve in difficult and remote area and therefore, the fortuitous circumstance of getting a posting in a difficult and remote area should not permit a candidate to steal a march over similarly situated candidates by grant of weightage of 10 % additional mark for each year of service and on the face of it, it does not serve the object which it seeks to achieve, which is to encourage Doctors to serve in difficult and remote area. He has also impeached the grant of weightage of 30 % as excessive and unreasonably high and therefore, the Rule does not satisfy the test of reasonableness as enshrined in the very concept of Article 14 of the Constitution of India.

The learned senior counsel in this context, refers to the case of Dr. Dinesh Kumar and Ors. (II) v. Motilal Nehru Medical College, Allahabad and Ors. reported in (1986) 3 SCC 22 and Dr. Snehelata Patnaik and Others Vs. State of Orissa and Others,

45. Mr. D.K. Mishra winds up his argument by passionately pleading that the counseling for Post Graduate Courses has been conducted by the Respondents authorities in a none too transparent manner and rather, it can be said that there is a ring of confidentially in the procedure adopted during the counseling. According to him, the candidates are not really aware of the subjects available or the Colleges in which what subjects are available before they attend the counseling and therefore, they are unable to make a conscious decision. This, according to him, is an area which needs to be improved so that entire mechanism of the counseling process becomes transparent so as to allay the apprehension expressed by the students that manipulations may take place during the process of counseling.

46. The challenge made in W.P.(C) 1260/2011 is also one of the challenges in W.P.(C) 1259 of 2011 and we have heard Mr. K. Agarwal, learned Counsel for the Petitioner in W.P.(C) 1259 of 2011. While endorsing the arguments advanced by Mr. Mishra, Mr. K. Agarwal also has elaborately advanced his arguments and has placed reliance on 3 judgments of the Supreme Court namely, (i) State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, (ii) Harish Verma and Others Vs. Ajay Srivastava and Another, and (iii) State of Assam and Ors. v. Shri Rajeev Dey and Ors. reported in 1995 (3) GLT 157. His first submission is that relaxation of 1 (one) year rural service is not permissible. He submits that the Government could not have invoked Rule 15 to relax the requirement of one year rural service. According to him, Rule 15 applies only if there is no Rule or if there is any grey area. He has submitted that the Office Memorandum dated 17-01-2011 cannot change the Rule. He has also submitted that the contractual appointees and the Government servants cannot be clubbed together as belonging to one class so as to enable both the categories to get the benefit of weightage under Rule 5 (D) (xvi). They are distinctly separate and by no stretch of imagination can it be said that they form one homogenous group. He has also pressed into service Rules of 1995 to support his argument. He has also submitted that contractual appointees in difficult and remote area are already enjoying higher fee as remuneration as compared to their counterparts in other areas and therefore, extra benefit in the form of weightage to such contractual employees is arbitrary. He submits that candidates belonging to 15 % All India Quota Seats of MBBS cannot be allowed to compete for the purpose of 50 % State quota seats inasmuch as they were not insisted upon for doing one year compulsory rural posting. They lack eligibility criteria as laid down in Rule 6 (vi) and (vii) as amended, yet they have been allowed to appear in the examination and, therefore, discrimination is writ large. It has further been submitted that Rule 5 (D) (xvi) is vague and does not clearly specify to whom this benefit will be given, namely, Doctors working on regular basis in the State Health Service and/or Doctors working on contract or both. No opportunity was given to the Petitioners at the time of initial posting on contractual basis or after coming

into force of the Amendment Rules of 2010 on 13-01-2010 to choose their place of posting in the remote and difficult area. He has also submitted that grant of weightage of additional marks would change the very complexion of the rank wise merit list and the candidates down below in the merit list may come up to occupy top position in the merit list.

47. Mr. D. Saikia, learned State counsel, at the very outset, has submitted that except the Writ Petitioner No. 6 in W.P.(C) 3280 of 2010, all other Petitioners therein, had availed the seats in the Post Graduate Course and therefore, they are stopped from challenging the validity of the Rules in question. He has relied on the stand of the Government as reflected in the affidavit. He has submitted that the Apex Court had already held that it is permissible to allot certain seats for the teachers in the case of Dr. Narayan Sharma (Supra). He has also submitted that the increase in number of seats in the Teachers Quota is also justified. It is his submission that the weightage assigned is reasonable and is worked out on a rational basis. According to him, a judgment of the Apex Court in Dr. Gopal D. Tirthani, clinches the issue. Though not pleaded, the learned Counsel also points out to the Regulation, 2000 of the M.C.I. and submits that in terms of the Regulations, it is permissible to grant such weightage as is contemplated in the Rules. He has also submitted that the judgment rendered in Dr. Narayan Sharma (Supra) has to be considered in the context in which it was passed and the said judgment has to be read along with other judgments having a bearing on the issue. It is submitted by him that the service of the Writ Petitioners did not cover the period of their rural posting and there is also no prayer for granting retrospective effect to the provision which visualises grant of additional mark with effect from 01-01-2010. Mr. D. Saikia, learned State counsel also submits that the conversion formula that has been adopted is in terms of the judgment of this Court dated 04-09-1997 passed in Civil Rule No. 1431 of 1997. This Rule has been followed for last couple of years without any objection from any quarter and therefore, this Court should lean in favor of holding the Rules to be valid. The learned Counsel further submits that the genesis of the conversion formula lies in order to maintain the percentage of seats required to be made for the reserved category. The learned Counsel further submits that element of public interest is implicit in Rule 5 (D) (xvi) as it seeks to reach out to the remote and difficult areas.

48. Mr. G.N. Sahewalla, learned Senior Counsel appearing for the Respondent Nos. 6 to 10 in W.P.(C) 1259 of 2011, submits that there is no challenge to the definition of remote and difficult area as provided in Rule 2 (ix) of the Amendment Rules of 2010. He also, in essence, supports the stand taken by the State Respondents. He has submitted that all the said Respondents had worked in remote and difficult area for more than one year. He brushes aside the argument advanced by the Petitioners that the grant of weightage is admissible, if at all, to the Doctors in the State Health Service only and not to the contractual appointees as wholly misconceived. According to him, there is no scope to read the provision of Rule 5 (D) (xvi) in the manner as the Petitioners had suggested. There is no ambiguity in the Rule and the impeachment thereof is without any substance.

He has also seriously contended that the unexplained delay in approaching this Court, disentitles the Writ Petitioners to obtain equitable reliefs from this Court.

49. Before we analyse and consider the rival contentions, it will be helpful to briefly discuss the judgments cited by the parties as construed to be relevant so as to have a fair idea of the law as propounded by the Apex Court in arriving at our decision on the contentious issues raised.

AUTHORITIES CITED AT THE BAR

A. Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others,

In Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. reported in (1986) 3 SCC 22, the Supreme Court had held that wholesale reservation on the basis of domicile or residence requirement or on the basis of institutional preference regardless of merit as unconstitutional and void as violative of Article 14 of the Constitution of India. However, the Supreme Court also held that the mandate of the equality clause in the backdrop of perspective of social justice would to some extent justify reservation based on residence requirement within the state or on the basis of institutional preference and taking that view directed that at least 30% of the open seats shall be made available for admission of students on all India basis irrespective of the state or university where they come from and that admission shall be granted only on the basis of merit on the basis of either All India Entrance Examination or entrance examination to be held by the state. Dr. Dinesh Kumar (II) (supra) is a fall out because of the Government of India or the Indian Medical Council not taking any steps for holding All India Entrance Examination for selection of students so far as the minimum 30% non-reserved seats for the MBBS course and minimum 50% non-reserved seats for the Post Graduate Course. In such circumstances, Supreme Court had given certain directions from time to time resulting in formulation of a scheme for holding the examinations aforesaid and this scheme was circulated amongst the various state governments. Supreme Court also gave a direction to the Government of India for holding a meeting with such authorities as directed in the said judgment including the representatives of the state governments for consideration of the aforesaid scheme and also for evolving a new scheme, if necessary, for smooth conduct of the examinations. A revised scheme was submitted by the Government of India to the Supreme Court. The scheme was debated upon in detail. In the said scheme, the Government of India had suggested that for admission to Post Graduate Courses a weightage equivalent to 15% of the total marks obtained by a student at the All India Entrance Examination should be given if he had put in a minimum of 3 years of rural service. The said suggestion, however, did not find favor with the Supreme Court and in categorical terms, the court said that no weightage should be given to a candidate for rural service rendered by him so far as admissions to Post Graduates are concerned.

B. State of Uttar Pradesh and Others Vs. Pradip Tandon and Others,

In Pradip Tandon (supra), the principal question that had fallen for consideration of the Apex Court was as to whether the instructions framed by the state in making reservations in favor of candidates from rural areas, hill areas and Uttarakhand for admission of students to medical colleges in the state of Uttar Pradesh are constitutionally valid. In support of such reservation, poverty, nature of occupation, place of residence, lack of education and also the substandard education of the candidates for the test in comparison to the average standard of candidates from general category, which were recognised by the court as the factors to determine socially and educationally backward classes, were cited. It was also contended that classification was not made on the basis of place of birth but on the basis of geographical or territorial basis and therefore, the same was not violative of Articles 15(1) or 29(2) of the Constitution of India. The Supreme Court took note of the fact that in hill and Uttarakhand areas in Uttar Pradesh, traits of social backwardness manifested by lack of social structure, lack of organisations to improve economy and growth of cash economy responsible for greater social wealth is writ large. While upholding the reservation for the hill and Uttarakhand areas, the Supreme Court held the reservation in favor of candidates from rural areas as unconstitutional on the ground that the rural areas do not represent socially and educationally backward classes of students.

C. State of Bihar and Others Vs. M. Neethi Chandra and Others,

The question involved in M. Neethi Chandra (supra) was with regard to mode of allotment of seats in the various branches of the Post Graduate Medical Courses in the State of Bihar wherein the state had made provisions for reservation of seats for the underprivileged sections of the society. A resolution was published by the department concerned on the subject of "provision for reservation for nominating (admission) of Scheduled Castes/Tribes/Backward Class/Extremely Backward Class/Females into the Professional Training Institutes." Paragraph 6 of the said resolution needs to be reproduced to understand the implications thereof:

As there is provision in direct appointment to the effect that the candidates belonging to reserved classes, who are selected on the basis of merit, would not be adjusted against reserved seats, similarly maintaining the same here also the candidates selected on the basis of merit for admission into professional institutes would not be adjusted against the reserved quota for the candidates of reserved classes.

As a direct fallout of the aforesaid resolution the candidates in various reserved classes who could qualify on merit were treated on a par with the general candidates were given seats which would fall to them on merit-cum-choice basis which led to allotment of such courses, which because of their low position in general merit were not of their choice. On the contrary, the circular enabled a candidate in the reserved category, who were much lower in merit position to get the course/college of their choice because they were

fortunate enough not to secure marks which would have made them qualify on merit. It is in this context, the Supreme Court observed that the circular was counter productive as it clashed with the interest of very candidates for whom the protective discrimination was conceived. The circular operated against the meritorious students to the extent it denied them the choice of college and subject which they could otherwise avail of under the rule of reservation and accordingly, the circular was directed to be given effect to only if the reserved category candidate qualifying on merit with general candidates consents to being considered as general candidate on merit-cum-choice basis for allotment of college/institution and subject.

D. Dr. Snehelata Patnaik and Others Vs. State of Orissa and Others,

In Dr. Snehelata Patnaik (supra), the Supreme Court had occasion to consider Dr. Dinesh Kumar (supra) and the Supreme Court observed that the observations made by the Supreme Court that offering of weightage of 15% to a doctor for 3 years? rural service would not bring about a migration of doctors from an urban to rural areas and that no weightage should be given to a candidate for rural service rendered by him so far as admissions to Post Graduate Courses are concerned were not held to be ratio of Dinesh Kumar (supra) and that those observations were made in connection with All India Selection and do not apply with equal force in the case of selection from a single state. Supreme Court suggested that authorities may consider grant of some preference to in-service candidates who have done 5 years of rural service as it might act as an incentive to doctors who had done their graduation to do rural service for some time as it is well known that rural areas had suffered for long for non availability of qualified doctors. Supreme Court also opined that authorities may also consider giving of weightage up to a maximum of 5% of marks in favor of in-service candidates who have done rural service for 5 years or more, with a caveat that the suggestions do not confer any legal right on the in-service students.

E. Dr. Narayan Sharma and Another etc. Vs. Dr. Pankaj Kr. Lehkar and Others etc.,

Validity of Rules 4 (ii), (iii) and (iv), 5 and proviso to 8(vii) of the Assam Medical Colleges (Regulation of the Admission to the Post-Graduate Courses) Rules, 1997, for short, the Rules, was also a subject matter in Dr. Narayan Sharma (supra).

(4) Reservation in seats

(ii) N.E.C. quota seats: Two seats in degree and two seats in diploma courses shall be reserved for the candidates recommended by the North Eastern Council.

(iii) Teachers Quota seats: Six seats shall be reserved for those teachers who are appointed on a regular basis on the recommendation of the Commission, in any of the Medical Colleges of Assam and who had at least 3 years teaching experience after regular appointment in the subject/discipline for which the seat is available provided that the requirement of teaching experience may be relaxed by a maximum of 1 year in case

of pre and para clinical subjects, by the Government.

(iv) State Health Service quota seats: Twenty seats shall be reserved for the doctors appointed in the State Health Service on a regular basis on the recommendation of the Commission and who have worked for at least five years on a regular basis in any Health Centre/ Institution which is not situated in a municipal area.

Sub-rule (v) and (vi) are in the following terms:

(v) Following percentages of the seats available after excluding the seats reserved as referred to in (i), (ii), (iii), and (iv) above shall be reserved for Scheduled Castes, Scheduled Tribes and Castes, OBC/ MOBC candidates:

S.C.	-	7%
S.T.(P)	-	10%
S.T.(H)	-	5%
S.T.(H)	-	15%

(vi) On the date of commencement of these rules, the number of total seats in different disciplines in different colleges and their break up among the reserved categories as mentioned in Sub-rule (i), (iv) and (v) above shall be as in Appendix-I. Changes, if any, in this regard shall be notified at the time of advertisement for admission by the Government.

Rule 5(i) and (ii) as corrected are as follows: "5. Entrance examination and eligibility thereof:

(i) An examination shall be conducted for the purpose of admission to the Post-graduate Degree and Diploma courses in the Medical Colleges of Assam by the Gauhati University as per the scheme given at Appendix-II. Provided that the candidates referred to in Sub-rule (i), (ii), (iii) and (iv) of Rule 4 shall not be required to appear in the Entrance Examination.

(ii) The University authorities shall prepare a merit list based on the sum total of the marks obtained in the Entrance Examination and the percentage of marks obtained in all the three MBBS examinations by each candidate and publish the same in the leading newspapers in the State.

Rule 8(vii) reads as follows: "8. Vacancies:

(vii) Any seat lying vacant under the category referred to Rule 4(i) shall be filled up by the Director, Medical Education, with approval of the Government in accordance, with the procedure of Rule 8(i) and 8(v) and after informing the Government of India of such

vacancy.

Provided, if there is any demand for such vacant seats by North Eastern Council for allotment of the same to the candidate from North Eastern States other than Assam, the Govt. may allot the seats to North Eastern Council as first priority

It is to be noted that the High Court had struck down Rule 4(ii), (iii) and (iv) as well as Rules 5 (i) and 8 (vii).

The contention advanced by writ Petitioners in the High Court with regard to Rule 4(ii), (iii) and (iv) in the Supreme Court was that there could be no reservation for Post Graduate Courses and that at any rate, the reservation provided therein are arbitrary and uncanalised. It was also put forward that there could not be justification for exempting the persons covered by those sub-rules from writing the entrance examination.

Holding that there is absolutely no doubt that the candidates belonging to states of north eastern region where there is no medical college form a separate class and a reasonable provision for them reserving a few seats in the medical colleges is not violative of any of the provisions of the Constitution of India, upheld the reservation of 4 seats under the NEC quota.

Taking note of the stand of the state government that the reservation for teachers under Rule 4(iii) is necessary on the ground of institutional requirements, the Supreme Court held that the teachers form a class by themselves and the classification is based on intelligible differentia having a rational nexus with the object of the rule and therefore upheld the reservation of 6 seats under the teachers? quota. Be it noted that the said seats were included in the general category.

The Rule 4(iv) was couched in negative terms and the Supreme Court concurred with the view of the High Court that the Rule did not require the doctor to serve in a remote rural area for getting the benefit of the Rule and that even if the Rule had provided for service in a rural area, the same would not have been a valid provision in view of the fact that rural element did not make it a class and that, it does not represent socially and educationally backward class of citizens. Taking that view decision of the High Court quashing the same was upheld.

While maintaining the validity of Rule 5(i) so far as it related to candidates belonging to NEC quota as pronounced by the High Court, the Supreme Court directed that NEC has to recommend candidates only in accordance with the rank secured in the entrance examination. However, the Supreme Court exempted the teachers from appearing in the entrance examination on the ground that the teachers have been constantly in touch with the subject/discipline and the criteria of merit generally insisted upon is also satisfied in respect of teachers who have been working in the medical colleges of Assam for the required number of years. The Supreme Court although had struck down Rule 4(iv) as it stood, made it explicitly clear that there can be no exemption from appearing in the

entrance examination by the candidates belonging to the State Health Services Quota even if a valid Rule is formulated specifying a quota for the State Health Service. The Supreme Court also upheld the validity of the proviso to Rule 8(vii) on the analogy of findings recorded while discussing Rule 4(ii).

F. State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others,

In Dr. Ashok Kumar Gupta (supra), the Supreme Court considered the validity of a provision embodied in an ordinance of the University of Rajasthan which provided for uniform addition of 5% marks to a student applying for admission to the Post-Graduate Course in any one of the 5 medical colleges provided the student has passed his final MBBS examination from the college in which admission in Post-Graduate Course is sought. The provision was struck down by the High Court primarily on the ground that it would virtually amount to making 100% reservation in favor of the students of Rajasthan University. On analysis of the factual data made available by the pleadings on record, the Supreme Court held that the impugned Rule has an extremely unfair and unjust impact as demonstrated by a candidate who failed to secure admission in PG Course in any college in Rajasthan in spite of securing 1650 marks in the common competitive examination, though a candidate securing 1548 marks in the very same examination earned the seat by application of the Rule. The Supreme Court also noted that though on the face of it, the impugned Rule extended equal treatment of 5% weightage to the students of each of the 5 medical colleges, in actual operation it brings about oppressive and obnoxious inequality.

G. The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others,

The controversy in Gopal D. Tirthani (supra) before the Supreme Court was confined to the in-service candidates. The Madhya Pradesh High Court had upheld the validity of reservation of 20% seats out of the total seats in favor of in-service candidates. However, the weightage given to in-service candidates in view of rendering services in rural areas was held to be violative of Article 14 of the Constitution of India. The Supreme Court held that in-service candidates and the candidates not in the service of the state government, are two classes based on an intelligible differentia and there is a laudable purpose which is sought to be achieved, inasmuch as, on attaining higher academic achievements, they would be available to be posted in rural areas to serve the rural population better. Supreme Court construed it to be a source of entry or channel for admission and not reservation. The Supreme Court further took note of the concept of a minimum qualifying percentage as laid down by the Medical Council of India Regulations framed in that behalf. The Apex Court held that it is permissible to assign a reasonable weightage for services rendered in rural/tribal areas by the in-service candidates for the purpose of determining inter-se merit within the class of in-service candidates who have qualified in the pre-Post Graduate test by securing the minimum qualifying marks as prescribed by the Medical Council of India. Some other issues had also fallen for consideration of the Apex Court, which, however, are not relevant for our purpose.

H. Harish Verma and Others Vs. Ajay Srivastava and Another,

In Harish Verma (supra) the Hon''ble Supreme Court had occasion to consider Regulation 9 of the Post-Graduate Medical Education Regulations, 2000 framed by the Medical Council of India, which provided, amongst others, that for any entrance test for Post-Graduate admission, the minimum percentage of marks for eligibility for admission to Post-Graduate Medical Course shall be 50% for the general category candidates and 40% for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes. The Supreme Court, on consideration of judgment rendered in Ajay Kumar Singh and Others Vs. State of Bihar and Others, held that the Medical Council Regulations have statutory force and are mandatory. In that view of the matter, the Supreme Court set aside the admissions of those in-service candidates who had secured admission on the basis of the judgment of the Full Bench of the Court which directed fixation of eligibility mark lower than 50% but not below 40%. The Hon''ble Supreme Court had also taken note of the judgment rendered in a similar issue in Gopal D. Tirthani. The court also noted that subject to securing the minimum qualifying marks, if the in-service candidates formulate a class by themselves for whom a separate channel of entry has been curved out, then, within the group, there may be scope for assigning weightage for the rural service rendered, for the purpose of determining the order of merit inter-se, but such weightage cannot be utilised for the purpose of relaxing the condition as to minimum qualifying marks as prescribed by the Medical Council of India.

I. 1995 (3) GLT 157 State of Assam and Ors. v. Shri Rajeev Dey and Ors.

In the aforesaid case, Rule 10 of the 1992 Rules governing admission to MBBS and BDS courses in the Medical colleges in the State of Assam was also a subject matter of consideration. Rule 10 conferred power of relaxation to the Government. By exercising power under Rule 10, Government has granted admission to candidates who were not eligible for admission. The learned Advocate General for the State has submitted that 1992 Rules having been made and notified under Articles 162 and 166 of the Constitution of India, any amendment to the 1992 Rules can be made and notified in the same manner, and not otherwise.

50. From the submissions advanced by the learned Counsel for the parties, as also the written submissions, it emerges that the issues and points that require adjudication by this Court are: (i) Validity of Rule 4(3) (i), Rule 4(3) (vi), Rule 4(4) (i), Rules 7(2) (e) and (f) {In W.P.(C) 3280/2010} Rule 5(D) (xvi) {both in W.P.(C) 1259/2011 and W.P.(C) 1260/2011}. The validity of the order dated 31-12-2010, the Educational Notice dated 05-01-2011 and the Order dated 17-01-2011 were also called upon to be decided in W.P.(C) 1259/2011. The fate of the candidates belonging to 15% of All India Quota for MBBS qua the State quota is also required to be addressed. Additionally, in W.P.(C) 3280/2010, whether any directions are called for to make the counseling process more transparent and open and also to consider whether the candidates belonging to physically handicapped quota are entitled to sympathetic consideration in the matter of allotment of seats in derogation to

what they are entitled to under the Scheme of the Rules need consideration. Having laid out the broad spectrum and range of issues engaging the attention of the Court, we proceed to answer the questions involved.

51. Rules 7(2) (e) and (f).

Rule 7(2) (e) permits a candidate belonging to SC/ST(P)/ST(H) and OBC/MOBC to opt for general open seats in any subject/college, if such seat is available according to their position in merit list or they may opt for any reserved seat of their own category that is available. A perusal of the said Rule would indicate that the reserved category candidates have the option of choosing the subject and the college from general open seats as well as reserved seats of their own category. A candidate is not called upon to exercise an option as to whether he chooses to opt for the general open seats or to remain in the reserved category. We have already noticed the provision of Rule 7(2) (f), which, inter-alia, provides that in case a candidate belonging to reserved category, who finds a place on his own merit in the general merit list, is unable to get a subject of his choice and college and opts for a reserved seat of his own category, in such eventuality, the seat opted by such a candidate in the reserved category shall be treated to be de-reserved and shall be brought to general category to accommodate the reserved candidate and a general seat in the same subject, if available, shall be brought under reservation in the same category to which the candidate belongs and if a seat in the same subject is not available, then, a seat in the subject in broad stream of speciality/subject to which the original seat belongs, shall be reserved. This is the essence of the conversion formula. The learned senior counsel for the Petitioners had highlighted the effect of conversion formula with reference to the subject of Ophthalmology, for which subject there are eight seats in the State quota and the distribution of seats under various head are as follows:

For State Quota	S.C.	S.T.(P)	S.T.(H)	OBC/MOBC	State Health Quota	General/ TQ/NEC Quota	Pool Seats
AMC-4	AMC-1	AMC-1	-	GMC-1	AMC-1	AMC-1	GMC-1
AMC-3					SMC-1	SMC-1	
SMC-1							

In a hypothetical situation, he wants us to assume that first two ranks are occupied by candidates belonging to general category and they have each opted for the subject to Ophthalmology, thus exhausting the general category seats in Ophthalmology. He also wants us to assume that Serial No. 3, 4 & 5 in the merit list are candidates belonging to OBC,SC, ST(P). Now, there is a seat available for OBC in Ophthalmology. The OBC candidate at Serial No. 3 wants to opt for Ophthalmology as a subject but since there is no seat available in general category in Ophthalmology, he opts for the seat in reserved

category. Consequently, one seat in some speciality/subject, say ENT, shall have to be brought under reservation in OBC category. It is also stated that there are three seats available for ENT under general category in the year 2011. If the candidates ranked at Serial Nos. 4 & 5 also opt for Ophthalmology available in their respective reserved categories, it is quite possible that there may be no seats available for general category candidates in ENT. The Petitioners have also demonstrated that three seats in the subject of Pharmacology in the general category were converted to reserved category seats. The fall out of the aforesaid conversion formula is the picture that has emerged from the aforesaid illustrations. The Respondents, in their affidavit, have not advanced any justification for the aforesaid Rule 7 (e) and (f) except stating that the formula was adopted to keep the total number of seats belonging to a particular reserved category of students constant as per the judgment of this Court in Civil Rule No. 1431 of 1997. During the course of hearing also Mr. Saikia had reiterated that the foundation of the conversion formula was laid in the aforesaid judgment of this Court. We have perused the judgment of this Court in Civil Rule No. 1431 of 1997. A perusal of the aforesaid judgment indicates that the two Writ Petitioners who belonged to ST (P) category were placed at Serial No. 75 and Serial No. 91, respectively and the authority had fixed a cut-off position at Serial No. 104 for the general candidates according to marks obtained. The said two Petitioners were consequently treated as general category candidates. Their grievance was that they belonged to reserved category and having been brought to the general category, they would be deprived of getting subject of their choice though who are listed below in the merit list in their category, having remained in the reserved category, were better placed to get subject of their choice. It is in the context of the aforesaid that this Court directed as follows:

Accordingly, after hearing the Advocates for both sides, I direct that in giving the subjects of choice, the merit will get better hand and the candidates shall be given preference to get the subject of their choice according to the merit position in the list both in the reserved category as well as in the general category according to marks obtained by them.

This disposes of the writ application. But it is made clear that subjects of choice shall be given to the candidates without any cut-off point strictly according to the merit i.e according to the marks obtained by them. Of couse, this order does not mean interference with the reservation made for the candidates. The reserved quota will be applicable, but in giving the subject of choice, merit will be adhered to.

We do not find that there was any occasion for the Court to consider the provision of the Rule holding the field. The judgment also does not speak of de- reservation of the seat in the reserved category and taking it to the general category and again reserving a seat in the reserved category by taking a subject away from the general category as is contemplated by the impugned Rules. According to us, the impugned Rules are arbitrary. There is no gainsaying the fact that merit is the guiding factor in the Scheme of the Rule of 2006 for admission into the Post Graduate Courses and therefore, it is important to

protect the interest of the meritorious students also. A balance is to be struck between the general category candidates and the reserved category candidates. In our considered opinion, the impugned Rules are lop-sided to an extent which militates again the principles of equality. No doubt, a Rule cannot also jeopardise the interest of the reserved category candidates for whom shield of protective discrimination is available. It will be grossly unfair to encounter a situation as was confronted with in Civil Rule No. 1431 of 1997. We find considerable force in the submission of learned senior counsel for the Petitioners that a reserved category candidate should be given option to decide as to whether he would like to be treated as a general category candidate in the event of his qualifying in merit to get a seat in the general category or he would still like to be treated as a reserved category candidate and once the option is exercised, the same is binding on him. If he gives his option or consent to be treated as a general category candidate, he should be treated as a general category candidate for all purposes. The judgment of the Apex Court in M. Neethi Chandra and ors (supra) would lend such a view.

There cannot be any two opinions that admission to the Post Graduate Courses should be strictly based on merit and there should be no dilution of standard in higher educational courses and in particular, in Post Graduate Courses. While the conversion formula may result in more candidates from the reserved category gaining admission in the Post Graduate Courses, the same cannot be the foundation for holding the Rules to be valid. In view of the above discussion, we strike down Rules 7 (e) and (f) to be unconstitutional, offending Article 14 of the Constitution of India.

52. Rule 4(3) (i).

In Narayan Sharma (Supra), taking note of the stand of the State Government that the reservation for teachers is necessary on the ground of Institutional requirements, the Supreme Court held that teachers formed a class of themselves and the classification is based on intelligible differentia having a rational nexus with the object of the Rule and therefore, upheld the reservation of those seats under the Teachers Quota. The said seats were included in general category. Therefore, there cannot be any dispute with regard to the proposition that there can be no reservation for the teachers. We have taken note of the submission of Mr. Mishra that increase of seats from 5 in the Rules of 2006 to 20 by the Amendment Rules of 2010 is wholly unjustified, arbitrary and disproportionate. We have also considered the submission that the increase in the number of seats in the Teachers Quota is, per-se, discriminatory. Mr. Saikia, learned State counsel has argued that the State Government was awarded 93 numbers of additional seats in Post Graduate Courses for the session 2010. The State was also experiencing acute shortage of teachers to fill up the posts in the rank of Assistant Professor and above, the reasons traceable for the said situation was that the entry level qualification for the post of Registrar/Demonstrator, prior to 2006, was only MBBS. As per the Regulation of the Medical Council of India, unless one possesses Post Graduate Degree, he or she is ineligible to be considered for appointment to the post of Assistant Professor which is the next higher post to the post of Registrar/ Demonstrator. We have also taken note of the

submission of Mr. Saikia that because of non filing up of the promotional posts due to absence of qualified teachers, the Regulatory Body, namely, Medical Council of India had also warned the State of possible de- recognisation of the Medical Colleges. According to him and as also categorically stated in the affidavit that increase of seats from 5 to 20 by the Amendment Rules of 2010 was on a one time basis only for the academic session 2010-2011 for the larger interest of the State, as de-recognising of the Medical Colleges would have grave consequences. During the course of hearing, Mr. Saikia also submitted that the State may be in a position to scrap the Teachers Quota from 2013 onwards as it is expected that by that time all such teachers would have acquired Post Graduate Degree. It is also seen that teachers are entitled to seats only in the subjects of Anatomy, Physiology, Bio- Chemistry, Pharmacology, Micro-Biology, Social-Preventive Medicine and Forensic Medicine, totaling 7 subjects.

In the factual background as narrated above, we are not inclined to take a view that Rule 4 (3) (i) is arbitrary or discriminatory. The State had increased the number of seats in the Teachers Quota only on being granted 93 numbers of additional Post Graduate seats for the session 2010. Correspondingly, it has also increased seats in general category. With increase in number of seats from 5 to 20, necessarily, re-fixation of the maximum number of seats that can be allotted in a subject is to be made. Having regard to the fact that seven subjects are available to teachers, we do not consider four seats to be allotted for Teachers Quota in the maximum to be unreasonable or arbitrary. This is all the more so because increase of seats from 5 to 20 is only for one academic session, namely, 2010 session, and correspondingly, maximum four seats in a subject would also hold the field only for one academic session. In view of our discussion as aforesaid, we held the Rule 4(3) (i) and Rule 4(3) (vi) to be valid.

53. RULE 4 (4) (i)

The constitutional validity of this Rule is impeached on the ground that the classification of the State Health Services Quota cannot be founded on the criteria of 5 (five) years or more services in the rural areas. It has also been vehemently argued that the provision runs counter and is in conflict with the judgment of the Apex Court in Narayan Sharma (supra). By the Amendment Rules of 2010, 16 seats (6 in degree and 10 in diploma) in the Rules of 2006, have been increased to 23 (6 in degree and 17 in diploma). However, the reservation in both the Rules of 2006 and the Amendment Rules of 2010 is for Doctors, apart from other requirements, who have completed 5 years or more services in rural areas. Mr. Saikia, the learned Counsel for the State Respondents has submitted that the observations of the Apex Court in Narayan Sharma (supra) to the effect that even if the reservation Rule for reservation of seats for the Doctors in the State Health Services had provided service in the rural areas as the basis for such reservation, the same would not have been a valid provision is not binding on the State Respondents inasmuch as no issue had arisen before the Apex Court to determine as to whether service in rural areas would not make it a class by itself. In order to sustain the validity of the Rules in question, Mr. Saikia had submitted that the judgment rendered in Gopal D. Tirthani and Ors.

(supra) would set at rest any doubt with regard to the validity of the Rule.

A fine distinction is sought to be made by Mr. D.K. Mishra that in Gopal D. Tirthani (supra), the reservation for in-service candidate was not on the basis of the criteria of having served in the rural areas but the reservation was available to all the Doctors under the State Health Services. Contrary to this, the impugned Rule provides reservation of the in-service Doctors on the criteria of rural service and therefore, the question as to whether reservation can be provided on the ground of having served in rural areas did not even arise for consideration in Gopal D. Tirthani (supra). We are unable to accept this submission of Mr. Mishra. No doubt the issue involved in Gopal D. Tirthani (supra) was relating to weightage assigned for services rendered in rural/tribal areas. However, significant observation has been made by the Apex Court that it could be recognized as a source of entry or channel for admission and not reservation. Viewed in the aforesaid context, the impugned Rule provides a channel for admission to the Post-Graduate courses to the Doctors who have rendered 5 years or more of rural service. This concept was not even canvassed in Narayan Sharma (supra). Furthermore, we are of the opinion that the observation relied on by Mr. Mishra in Narayan Sharma (supra) is an observation which in view of the judgment in Gopal D. Tirthani (supra) will not have the force of a binding precedent. In Gopal D. Tirthani (supra), the Supreme Court had upheld the validity of reservation of 20% seats in favor of the in-service candidates.

Mr. Saikia has also justified the increase of seats from 16 to 23. According to him, Assam has witnessed a radical change in the Health sector and infrastructure for expanding specialized Medical Health Care has been placed on a firm footing. However, the availability of Doctors having specialization for catering to the needs of the rural population is a cause of concern and therefore, the increase of seats from existing 16 to 23 cannot be said to be excessive and arbitrary. We find merit in his submission and setting apart 23 seats for State Health Services Quota appear to be reasonable.

Therefore, it is our considered view that the seats earmarked under the State Health Services Quota cannot be invalidated on the ground that it refers to reservation in favor of those Doctors who have completed 5 years or more service in rural areas. Therefore, we hold Rule 4 (4) (i) to be a valid Rule.

54. TRANSPARENCY IN THE COUNSELLING PROCESS

Rule 7(2) of the Rules of 2006 provides for counseling for selection to fill up the seats other than the All India Quota and Teachers? Quota seats on the date and place notified by the Chairman of the Board. It visualizes calling of candidates, whose names appear in the merit list serially before the Selection Board, who on being satisfied with documents and certificates produced by the candidates shall seek their choice of subject and college and the candidate shall be allotted a seat in the subject and college of his choice by the Board in accordance with the position of the candidates in the merit list. It is provided that the Board may not allot the choice of subject by any candidate for reasons to be recorded

in writing in the minutes of the Selection Board. It is also laid down that the general or open candidates shall be called for counseling to be followed by the candidates belonging to the NEC quota followed by reserved quota and lastly, the candidates for the State Health Services Quota. The candidate is also required to sign on the acceptance slip, stating the subject and college in Post Graduate courses allotted to him expressing his acceptance or non-acceptance of the same and deliver it to the Member Secretary of the Board. While second counseling is not ordinarily to be held, the selected candidates are to take spot admission on the date of counseling. It is also provided under Rule 10 of the Rules of 2006 that under no circumstances a candidate once selected and admitted for a particular subject shall be transferred to another course or another college or another subject.

That there is cut-throat competition for admission in the Post-Graduate Course is stating the obvious. An analysis of the salient features of the counseling as incorporated in the Rules of 2006 would indicate that there is no mechanism of making the candidates aware what subject and in what college is available for their exercise of choice of subject and college. While we do not propose to, in absence of any materials to sustain the same, make any observation with regard to the contention advanced by Mr. Mishra that apprehensions have been expressed by candidates that there is manipulation during the process of counseling, we agree with his submission that there has to be a mechanism in place so that before a candidate goes in for counseling when he/she is called, he/she must know and he/she must be made aware that these are the options available to him/her, so that depending upon his preference, he/she can take a conscious decision with regard to his choice of subject/college. Otherwise, it will not amount to an informed exercise of choice. The issue of transparency as raised by the Petitioners has to be seen in this context. Therefore, we direct that the Respondent authorities will provide Electronic Display Board at the time when the counseling process is on to enable the candidates to know the availability of subjects as well as colleges.

We are informed that in view of the Regulations of the MCI, the admissions have to take place before 31-5-2011. If for shortage of time, it is not realistically possible to install Electronic Display Board for this session, the authorities must ensure that the same is installed from the next session onwards.

55. Relaxation of the eligibility criteria:

Rule 10 of the 1992 Rules which was also a subject matter of consideration in Rajeev Dey (supra) read as follows:

Power to relax: Where the Government is of opinion that it is necessary or expedient so to do, it may by order and for reasons to be recorded in writing relax any of the provision of these rules.

The power conferred by the aforesaid provision visualizes that subject to other conditions appearing therein, the Government could by an order, with reasons in writing, relax any of the provisions of the Act. During the course of hearing of the aforementioned case, the learned Advocate General, Assam conceded that the 1992 Rules had been made and notified under Articles 162 and 166 of the Constitution of India and thus, any amendment to the 1992 Rules could only be made and notified in the same manner. This Court further noted that in the guise of relaxation under Rule 10 of the 1992 Rules, the Government cannot amend any provision of the Rules so as to cause prejudice to the candidates seeking admission. In the case at hand, Rule 15 of the Rules of 2006 provides to the Government the power to take any action, not inconsistent with the provisions of the Rules, as may be necessary to remove any difficulty for which no express provision exists in the Rules.

The Rules of 2006 are also Rules framed and notified under Articles 162 and 166 of the Constitution of India. In the context of the challenge made to the order dated 31/12/2010 and 17/1/2010, it will be necessary to focus on what the said orders aimed to relax or whether in the guise of relaxation, it purports to amend the Rules.

By the Office memorandum dated 28/8/09, the Government decided that a student will be eligible for admission in the Post Graduate Course under State Quota seats only after serving the Government for the Bond period of 5 years. It has also provided, by way of relaxation, the stipulation of service of 5 years under the Government would stand reduced to a period of 1 year, if a candidate volunteers to serve in rural areas under the Government of Assam or under its Society/Agency created for implementation of National Programmes. It is also to be noticed that under this Memorandum, a candidate can still be eligible for admission to the Post Graduate Course by paying the amount of the compensation as stipulated in the Bond,. A special consideration was provided as a one time relaxation that students who had voluntarily joined in rural service as per the provisions of the Memorandum, would be eligible to appear in the Entrance Examination for the year 2010 for the State Quota seats though they may not have completed one year of rural service at the time of appearing in the Entrance Examination. It has further been stated that completion of one year rural service shall be a must to make a candidate eligible to appear in the Post Graduate Entrance Examination for the students appearing in 2011. The Amendment Rules of 2010 vide Rule 6(vi) incorporates the requirement of serving the Government of Assam for the period as stipulated in the Bond signed by the candidate after being selected for the MBBS course and in lieu thereof to pay compensation as mentioned in the said Bond to the Government before he or she applies for the Post Graduate Entrance Examination against the State quota seats. The aforesaid Rule 6(vi) would, thus, indicate that a student can become eligible to appear in the Post Graduate Entrance Examination by paying the compensation amount in lieu of service under the Government for the period of 5 years or a period of one year service in rural areas.

Significantly, it would appear that Clause-5 of the Memorandum dated 28/8/09 which required that completion of one year rural service shall be a must to make a candidate eligible to appear in the Post Graduate Entrance Examination in the year 2011 and thereafter, was not incorporated in the Amendment Rules of 2010. Therefore, the provision of Rules 6(vi) and (vii) as it exist today would go to show that by paying the amount of compensation as indicated in the aforesaid Rule, a candidate can become eligible to appear in the Post Graduate Entrance Examination. By the order dated 31/12/2010, the students who had joined the rural service and who wished to appear in the Post Graduate Entrance Examination 2011, were allowed to appear in the examination subject to the condition that they will have to complete one year rural service at the time of their admission to the Post Graduate Course. The order dated 17/1/2011 also provided a one time relief to all the candidates seeking admission for Post Graduate Course in 2011 who cannot complete one year rural service on 1/6/2011 by condoning the period of rural service by which any one of them runs short of prescribed one year period. The necessity to issue order dated 17/1/2011 appears to have been occasioned by the fact that the students would not be able to complete the period of one year of rural service as required under the order dated 31/12/2010 at the time of admission to the Post Graduate Course.

It is to be noted that an express provison has been incorporated by way of Rule 6(vi) regarding service under the Government for a period of 5 years or one year of rural service or to pay compensation in lieu of such services. The order dated 31/12/10 and 17/1/11 have, in essence, done away with the requirement of payment of compensation. This, in our opinion, is an amendment of Rule 6(vi) of the Amendment Rules of 2010. The requirement of 5 years Government service or one year service in rural areas and in lieu thereof payment of compensation, as indicated in the Memorandum dated 28/8/09 having been eventually incorporated in the Rule 6(vi), relaxation thereof, the Rules being instrument made in exercise of powers under Articles 162/164 of the Constitution of India, cannot be made, otherwise than by the amendment thereof and not by orders such as the orders dated 31/12/10 and 17/1/11. According to us, the judgment of Rajeev Dey (supra) is directly on the point. Therefore, we set aside and quash the orders dated 31/12/10 and 17/1/11. All consequential notifications/orders issued in pursuance of the aforesaid two orders would also automatically be construed as non-est in law. However, it is to be borne in mind that pursuant to the aforesaid orders dated 31/12/10 and 17/1/11, a large number of candidates including Petitioner No. 4 in W.P(C) 1260/11 have taken part in the Post Graduate Entrance Examination. They were led to believe by the aforesaid orders that they would be eligible to take the Post Graduate Entrance Examination without paying the amount of compensation in lieu of one year of rural service. It would be inequitable to render them disqualified for not paying the amount of compensation, by payment of which, they would have been eligible to appear in the examination in question, though not completing one year of rural service. Accordingly, we direct that such of the candidates who had appeared in the examination without completion of one year rural service, would be afforded an opportunity to make payment of the compensation amount as indicated in

the Bond to render them eligible to take admission in the Post Graduate Course.

56. RULE 5 (D) (xvi)

Rule 5 (D) (xvi) provides that in determining the merit in the Entrance Examination for Post -Graduate admission, additional marks shall be given at the rate of 10% of the marks obtained in the Entrance Examination, against completion of each year of service in "remote and difficult areas" subject to maximum of 30% of the total marks obtained provided the candidate produces a certificate to that effect issued by the Director, Health Services (FW)/Joint Director, Health Services of the concerned area as per Appendix-iv of the Rules. The provisos of the said Rule are to the effect that total marks obtained after inclusion of the additional marks shall not exceed the total marks of the Entrance Examination and that the period of service in remote and difficult areas shall be counted w.e.f. 1.1.2010 onwards only and the service offered prior to that shall not be counted for awarding the additional marks. It is also provided that Doctors serving in the rural areas in the establishment other than the establishment of Government of Assam and other societies created for implementation of National Programmes of Disease Control of National Rural Health Mission shall not be eligible to be awarded additional marks as mentioned above. The aforesaid Rule came into effect with the publication in the office gazette on 13.1.2010.

The argument of the Petitioners are basically three- fold: (i) Rule is ultra vires, (ii) even if it is valid, same will not apply to contractual appointees including the Petitioners and (iii) the benefit should not be extended to candidates who had joined one year rural posting together with them on or about Sept/Oct 2009. The students who were engaged in one year rural service on contractual basis around Sept/Oct,2009 had completed their period of rural service on or about Sept/Oct 2010. The impleaded Respondents in WP(C) 1259/2010 had also joined one year rural posting around the same time like the Petitioners and after completion of one year service, their services were extended and they are still working . The impleaded Respondents were posted in what is defined as remote and difficult areas under Rule 2 (xi) of the Amendment Rules of 2010. It is to be noted that there is no challenge to the definition of remote and difficult areas. However, contentions have been advanced that the remote and difficult areas may not come within the purview of "rural areas" and "rural station" which expressions are available in the Rules of 1995 and in the Office Memorandum dated 28.8.09. In view of the absence of definition of rural areas in the Rules of 2006, save and except for the purposes of State Health Services quota, remote and difficult areas may even fall outside rural areas and rural station and, therefore, the rule, according to the Petitioners, is vague and as such, the Rule is arbitrary. It has also been submitted that a reading of the Rule gives rise to many interpretations with regard to its application vis-ï¿½-vis different categories of candidates taking the entrance examination. Arguments have been advanced that even if the Rule is valid, the same should be made applicable only with regard to Doctors serving in the State Health Service and not with regard to open category candidates. It has been urged that only those Doctors who are in service would be entitled to the weightage under

Rule 5 (D) (xvi) because contractual employees, in view of the nature of their appointments which is limited for a year, cannot claim the benefit having regard to the object sought to be achieved by the State, which is to attract more Doctors to serve in difficult remote areas. We are unable to read the Rules in the manner that it would be confined only to Doctors serving in the State Health Services. According to us, the Rule in question did not refer to tenure post. It has given emphasis of service in remote and difficult areas. That the Doctors serving in rural areas in the establishment of Government of Assam or Society/Agency created for implementation of National Programme of Disease Control or National Rural Health Mission would also be entitled to additional marks have been specifically mentioned. Therefore, there is no substance in the argument of the learned Counsel for the Petitioners that the impugned Rule is vague on account of it being not specific with regard to its application. The reservation expressed that difficult and remote areas may not fall within the rural areas is also, according to us, not well founded in view of the fact that the Doctors serving in rural areas are also entitled to weightage. The only conclusion that can be drawn is that while rural areas is a genus, remote and difficult area is species and, therefore, rural areas would automatically include remote and difficult area. The arguments of the learned Counsel for the Petitioners that they have been discriminated as against similarly situated candidates is founded on the basis that they were already posted in rural areas which is not a remote and difficult areas which concept came into being with issuance of the notification dated 13.1.2010. The terms of appointment did not enable them to opt for a change in view of the fact that no transfer was permissible. They had no choice in their posting and, therefore, they would not be eligible to get 10% additional weightage at the minimum, whereas candidates who were posted in areas which later on came to be included in remote and difficult area would be so entitled. This argument of the Petitioners also cut at the root of their contention that there is ambiguity in the definition of remote and difficult areas. The arguments is also advanced that though no where indicated, the private impleaded Respondents were allowed to be continued by way of extension in their present posting making them entitled to weightage of 10%. No documents have been brought on record by the Petitioners that after coming into force of the amended Rules on 13.1.2010, they had submitted any representation in view of the changed circumstances to permit them to serve in remote and difficult areas. The private Respondent Nos 6 to 10, may be, had been posted as part of the rural service, in a remote and difficult areas. May be, some of them were posted in their home districts or home places. Fact remains that they, even after expiry of their one year rural service, had their engagements extended and continued to serve remote and difficult areas. The writ Petitioners never challenged or questioned such extension orders issued in favor of the Respondent Nos. 6 to 10. By virtue of the extension orders only, the said Respondent Nos. 6 to 10 could complete one year of service in remote and difficult areas. Therefore, the contention raised that they were not given opportunity after the impugned Rule came into force pales into insignificance. As has been noticed earlier, Gopal D. Tirthani (supra) dealt with in-service candidates. We have also noted that Doctors who appear under the State Health Services quota, are also eligible to compete for open seats. However, in the instant Rule,

emphasis is not in "in service" but service in difficult and remote area. Therefore, we see no reason to introduce a classification omitting or excluding the contractual appointees who had worked in difficult and remote areas from the purview of the Rule. The argument of the learned Counsel for the Petitioners, if valid, the Rule only applies to in-service candidates is rejected.

We, however, find substance in the argument for the leaned counsel for the Petitioners that the grant of 10% of marks for every year of service in remote and difficult areas to be excessive and unreasonable and, therefore, such a prescription offends Article 14 of the Constitution of India. In a fiercely competitive examination like the Post Graduate Entrance Examination, one single mark may make a world of difference. On the other hand, the stark reality that we see in the remote and difficult areas, where medical facilities leave a lot to be desired and where, for reasons we need not probe, not many Doctors are available to cater to and serve such population, grant of incentive in the form of weightage by addition of certain percentage of marks may bring in the desired result, which is, to have a pool of Doctors working in remote and difficult areas. Learned Counsel for the Petitioners have demonstrated the effect of grant of 10% marks for each year of service in the remote and difficult areas by an illustration with reference to the candidate whose rank is 170 in the rank wise merit list and who had secured 193 marks. Assuming that he had served in difficult and remote area for one year, he would be entitled to additional 19.3 marks taking his total to 212.3 resulting in his rank being now 29. If he had served for 3 years, he would get additional 57.9 marks making his total 250.9, catapulting him to rank 1. Learned Counsel for the State Respondents had drawn our attention to the Regulation of the MCI to justify that it is permissible to give incentive of 10% of marks for each year service in remote and difficult areas up to the maximum of 30% of the marks obtained. The said provision of MCI, indisputably, refers to Doctors in service. We have already held that 23 seats reserved for the Doctors in State Health Service to be valid . Such Doctors can also complete for open seats. Therefore, grant of 10% additional marks for each year of service in remote and difficult areas, in the present scheme of the Rules of 2006 including the amendments thereof, would not be justified. We recall the judgment of the Apex Court in Dr. Snehelata Pataik (Supra) where the Apex Court suggested giving of maximum 5% of marks in favor in service candidates who had done rural service for 5 years or more. Considering that difficult and remote areas is in a much more disadvantageous position compared to a general rural area, we consider it will be appropriate to scale down the additional marks against completion each year of service in remote and difficult area to 3% subject to a maximum of 9% of the total marks obtained.

We nevertheless make it clear that additional 10% marks could be granted only if candidates secure qualifying marks as prescribed by the Regulations of the MCI, specifying 50% for general category and 40% for the reserved category candidates in the entrance examination. The additional marks of 10% for every year of service would not be added to a candidate who have not secured, the aforesaid qualification prescribed by the Regulation Of MCI, notwithstanding anything contrary to the Rules. All categories of

candidates taking the examination including teachers under Teachers Quota must fulfil the aforesaid qualification for being entitle to be admitted in the Post Graduate Courses.

57. Relaxation of eligibility criteria for Doctors completing MBBS Course under All India Quota.

It is an admitted position that the candidates who are admitted under All India Quota in MBBS course are not required to sign the Bond or to serve the Government of Assam. Arguments were advanced that they will also have to satisfy the eligibility criteria as laid down in Rule 6 (vi) and (vii) of the Amendment Rules of 2010, and without such fulfilment, they have been allowed to participate in the Post Graduate Entrance Examination. Alternatively, it had also been argued that if students competing MBBS Course under 15% All India Quota are allowed to compete for 50% State Quota seats, in that event, the Petitioners, who are required to serve in rural areas in Assam, should be given weightage and this having not been given, there is gross discrimination between the two categories of candidates.

In our considered opinion, the very language of Rule 6(vi) of the Amendment Rules of 2010, excludes its application to candidates belonging to 15% All India Quota. When the requirement of executing a Bond which is the foundation of 5 years service or 1 year service in rural areas, is not required to be executed by them, all consequence emanating from the Bond would have to held to be not applicable to such candidates. Therefore, we are unable to accept the contention that without fulfilling the norms, students completing MBBS course in the Medical Colleges of Assam under 15% All India Quota had been allowed to take part in the Entrance Examination. We also do not consider that absence of requirement of service of 5 years under the Government of Assam or to render 1 year rural service and in lieu thereof to pay compensation is of such a magnitude that necessarily the only conclusion that could be arrived at is such a classification is wholly antagonistic to the concept as embodied in Article 14 of the Constitution of India.

58. The issue relating to allotment of seats in Physically Handicapped Quota need not detain us for long. When there is a Rule in force, it goes without saying that the provisions of the Rules are to be scrupulously observed. It is said that sentiment is a dangerous will-o-the-wisp to act as a guide in search of legal principles. Therefore, the allotment of seats in the Physically Handicapped Quota also shall be made in terms of the Rules and not otherwise.

59. In the result, the writ petitions are disposed of in terms of our discussions and conclusions as indicated above. We also make it clear that the decision rendered by us will in no way affect the admissions that had already taken place for the session 2010.

60. No costs.