

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

Thursday, the 25th day of May 2023 / 4th Jyaishta, 1945

RP NO. 379 OF 2021(S) IN WP(C) 10659/2021(S)

REVIEW PETITIONER/RESPONDENT NO.5:

KERALA PRIVATE HOSPITALS ASSOCIATION HAVING ITS REGISTERED
OFFICE AT KPHA HEAD QUARTERS,ASHIR BHAVAN ROAD,
KACHERIPPADY,ERNAKULAM,KOCHI-682018,
REPRESENTED BY ITS PRESIDENT,HUSSAIN KOYA THANGAL.

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 4 & RESPONDENTS 6 TO 12
IN WP(C)No.10659/2021:

- 1.ADV.SABU P. JOSEPH ,AGED 46 YEARS,S/O.T.A.JOSEPH,
VICE-CHAIRMAN,LEGAL CELL,HUMAN RIGHTS FORUM,
REG.NO.186/IV/19,REGISTERED OFFICE AT
B NO:XX-638,CLASSIC TOWER,A M ROAD,PERUMBAVOOR-683542.
- 2.THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF
KERALA,SECRETARIAT,THIRUVANANTHAPURAM-695001.
- 3.DIRECTOR GENERAL OF HEALTH SERVICES,
DIRECTORATE OF HEALTH SERVICES,
GENERAL HOSPITAL JUNCTION,THIRUVANANTHAPURAM-695035.
- 4.INDIAN COUNCIL OF MEDICAL RESEARCH ,
V.RAMALINGASWAMI BHAVAN,
P O BOX NO.4911,ANSARI NAGAR,NEW DELHI-110029.
REPRESENTED BY ITS SECRETARY AND DIRECTOR GENERAL.
- 5.UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
HEALTH AND FAMILY WELFARE,NIRMAN BHAVAN,NEW DELHI-110011.

P.T.0

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- 6.STATE HEALTH AGENCY, REPRESENTED BY EXECUTIVE DIRECTOR,
ARTECH MEENAKSHI PLAZA,5TH AND 8TH FLOOR,OPP.GOVT.WOMAN
AND CHILD HOSPITAL,THYCAUD,THIRUVANANTHAPURAM-695014.
- 7.NATIONAL HEALTH MISSION REPRESENTED BY THE EXECUTIVE
DIRECTOR, NRHM BUILDING,GENERAL HOSPITAL,DIRECTORATE
OF HEALTH SERVICE, JAI VIHAR,KANNUKUZH, Y,
THIRUVANANTHAPURAM-695035.
- 8.KERALA MEDICAL SERVICES CORPORATION LTD.
REPRESENTED BY EXECUTIVE DIRECTOR,C.V.RAMAN PILLAI ROAD,
WOMAN AND CHILDREN HOSPITAL,THYCAUD,
THIRUVANANTHAPURAM-695014.
- 9.THE INDIAN MEDICAL ASSOCIATION(IMA),KERALA
REPRESENTED BY PRESIDENT,HEADQUARTERS,ANAYARA.P.O,
THIRUVANANTHAPURAM-695029.
- 10.QUALIFIED PRIVATE MEDICAL PRACTITIONERS ASSOCIATION,
REPRESENTED BY ITS PRESIDENT,FLOOR-V-E/F,
VALLAMATTAM ESTATE, RAVIPURAM,M.G.ROAD,KOCHI-682015.
- 11.CATHOLIC HEALTH ASSOCIATION OF INDIA,
REPRESENTED BY THE EXECUTIVE DIRECTOR,PASTORAL
ORIENTATION CENTRE, CIVIL LINE ROAD,PALARIVATTOM,
KOCHI-682028.
- 12.MUSLIM EDUCATIONAL SOCIETY ,BANK ROAD,CALICUT-673011,
REPRESENTED BY ITS PRESIDENT DR.P.A.FAZAL GAFOOR.
- *ADDL. R13 IMPEADED
- 13.THE STATE POLICE CHIEF, KERALA
*ADDL R13 SUO MOTU IMPEADED AS PER ORDER DATED 09.09.2021
IN RP 379/21 IN WPC 10659/21.

P.T.O.

ADDL. R14 IMPEADED

**14.DR.ARAVIND C.S., S/O.SREEDHARAN, AGED 50 YEARS,
RESIDING AT THIRUVANANTHAPURAM, GENERAL SECRETARY,
KERALA GOVERNMENT MEDICAL COLLEGE TEACHERS ASSOCIATION,
THIRUVANANTHAPURAM-695 011.**

**ADDL. R14 IS IMPEADED AS PER ORDER DATED 19/01/2023 IN
IA.1/2023 IN RP 379/21 IN WPC 10659/21.**

ADDL.R15 IMPEADED

15. KERALA UNIVERSITY OF HEALTH SCIENCES

**REPRESENTED BY REGISTRAR DR MANOJ KUMAR,
AGED 58 YEARS, S/O KUNJAN PILLAI,
MEDICAL COLLEGE P.O, THRISSUR, KERALA 680 596.**

**ADDL. R15 IS IMPEADED AS PER ORDER DATED 10/05/2023 IN
IA 9/2023 IN RP 379/21 IN WPC 10659/21**

ADDL.R16 IMPEADED

16. KERALA GOVERNMENT MEDICAL OFFICER'S ASSOCIATION

**REG. NO. 63/1966, KGMOA HEAD QUARTERS,
RED CROSS ROAD, THIRUVANANTHAPURAM- 695 035,
REPRESENTED BY ITS GENERAL SECRETARY,**

**DR. SUNIL P.K., AGED 48 YEARS, S/O KUMARAN P.K.,
SANDRANANDAM, KESARI ROAD, NORTH PARAVUR,
ERNAKULAM- 683 513.**

**ADDL.R16 IS IMPEADED AS PER ORDER DATED 23/05/2023
IN IA 14/2023 IN RP 379/2021 IN WP(C) 10659/2021**

P.T.O.

ADDL. R17 IMPEADED

17. KERALA JUDICIAL OFFICERS' ASSOCIATION

DISTRICT COURT ANNEX, KALOOR, ERNAKULAM- 682 017,

REPRESENTED BY ITS SECRETARY, RAKESH M. G.,

AGED 34 YEARS, S/O. DR.P.MADHUSOODANAN PILLAI,

MADAVILAKATHU VEEDU, ALAPPURAM ROAD,

THIRUVANANTHAPURAM, PIN - 695 006.

ADDL.R17 IS IMPEADED AS PER ORDER DATED 23/05/2023

IN IA 12/2023 IN RP 379/2021 IN WP(C) 10659/2021.

Review petition praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to allow the above the Review Petition, review the judgment dated 10/05/2021 in WP(C)No.10659/2021, and to pass such other order or further orders as this Honourable Court may deem fit and proper in the circumstances of the case.

This petition again coming on for orders upon perusing the petition, this Court's judgment dated 10/05/2021 in WP(C)10659/2021 & order dated 11/05/2023 in RP.379/2021 and upon hearing the arguments of SRI.SYAM DIVAN (SENIOR ADVOCATE) along with SRI.K. ANAND, Advocates for the petitioner, ADVOCATE GENERAL & GOVERNMENT PLEADER for R2 & R3, DEPUTY SOLICITOR GENERAL OF INDIA for R4 & R5, DR.S. GOPAKUMARAN NAIR (SENIOR ADVOCATE) along with SRI.SURAJ T.ELENJIKKAL, Advocate for R9, M/S.M.GOPIKRISHNAN NAMBIAR, K.JOHN MATHAI, JOSON MANAVAN, KURYAN THOMAS, PAULOSE C. ABRAHAM, JAI MOHAN & RAJA KANNAN, Advocates for R10, SRI.S. KANNAN, SENIOR GOVERNMENT PLEADER for Addl.R13 and of SRI.P.SREEKUMAR, ADVOCATE for Addl.R14 & STANDING COUNSEL for Addl.R15, SRI.J.G.SYAMNATH, Advocate for Addl.R16 and of M/S. K.N.ABHILASH, SUNIL NAIR PALAKKAT, RITHIK S.ANAND, ANU PAUL & SREELAKSHMI MENON P., Advocates for Addl.R17, the court passed the following:

P.T.O.

**DEVAN RAMACHANDRAN &
Dr.KAUSER EDAPPAGATH, JJ.**

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R.P.No.379 of 2021 in W.P.(C)No.10659 of 2021
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Dated this the 25th day of May, 2023

ORDER

Devan Ramachandran, J.

Sri.S.Kannan – learned Senior Government Pleader, has filed a memo, producing therewith the Ordinance promulgated to amend the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 (“Act” for short). We do not propose to speak on it since same is unnecessary on our side at the moment. Suffice to say, a long pending request of the healthcare professional community appears to have been taken note of and acted upon.

2. Coming to the protocols to be followed by the police while producing persons in their custody before learned Magistrates and healthcare professionals, Sri.S.Kannan has brought to our notice that a draft has been prepared by the police department and submitted before the Government.

This certainly is a welcome step, but, as we had said on the earlier date when this case was listed, same should be settled on a war-footing, because we cannot afford another incident to happen.

3. That said, the State must also take into confidence the Association of Doctors and Judicial Officers, as also the Health University, while finalising the protocols, because they are the persons who will be immediately affected by them in their professional capacity.

4. There is another issue that is pending before us, namely, the protection to be offered to the various categories of hospitals on a regular basis. Sri.Ajith Kumar, the Additional Director General of Police, who had appeared before us in person through the online medium on 11.05.2023, had informed us that the services of the State Industrial Security Force (SISF) can be made available to both Government and private sectors, but on approved terms.

5. Sri.S.Kannan - learned Senior Government Pleader, today informs us that there is a proposal under active consideration to give SISF protection to the Government hospitals without any charge; and that the Health Department has been asked to make a list of those

in priority.

6. As far as the private hospitals are concerned, Sri.S.Kannan submitted that the Government is of the opinion that they should make their own arrangements, without having to rely upon the SISF.

7. Though the policy of the Government with respect to the Government hospitals is certainly in the right direction, we are of the view that the affording of protection to private hospitals, on their request, by the SISF is also one that they must consider and address, particularly when they unequivocally say that they are willing to pay for such.

In the afore circumstances, we issue the following directions:

(a) The Government will hear the representatives of the Kerala Judicial Officers Association; Kerala University of Health Sciences (KUHS); Indian Medical Association, Kerala State Branch; Kerala Private Hospitals Association; Kerala Government Medical Officers Association (KGMOA) and Kerala Government Medical College Teachers Association (KGMCT), while finalising the protocols for production of persons from their custody.

Though Sri.S.Kannan has sought for a month's time

for the above purpose, we are of the opinion that we require to be informed much earlier. Therefore, the decision of the Government in this regard shall be made available to us, as far as practically possible, by the next posting date.

(b) The Government will actively consider providing security cover to all hospitals - be that Government or private – through the SISF. They will be at full liberty to consider and enumerate the terms, including for payment by the hospitals in the private sector; and for this, when the Kerala Private Hospital Association is heard as ordered above, this aspect shall also be kept in mind.

(c) We make it clear that our earlier orders, regarding the registration of an FIR within an hour of the intimation to the Police of an incident involving an attack on medical professionals, will continue to be in effect.

List on 08.06.2023.

H/o

Sd/- **DEVAN RAMACHANDRAN,**
JUDGE

Sd/- **Dr. KAUSER EDAPPAGATH,**
JUDGE.

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