

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
&
THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH**

**Thursday, the 9th day of September 2021 / 18th Bhadra, 1943
RP NO. 379 OF 2021 IN**

**WP(C) 10659/2021 OF HIGH COURT OF KERALA, ERNAKULAM
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.**

BY ADVS.K.ANAND,SHYAM DIVAN,

**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,PERUMBAV00R-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 (ICMR) 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.
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,DIRECORATE OF HEALTH SERVICE,JAI VIHAR,KANNAKUZHY, 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.

P.T.O.

**13. THE STATE POLICE CHIEF, KERALA ADDL R13 is suo motu IMPEADED AS
PER ORDER DATED 09.09.2021 IN WP(C)**

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 and this Court's judgment dated 10/05/2021 in WP(C)10659/2021 & order dated 08/07/2021 and 26/08/2021 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, SRI.P. VIJAYAKUMAR, ASSISTANT 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 MANAVALAN, KURYAN THOMAS, PAULOSE C. ABRAHAM & RAJA KANNAN, Advocates for R10, Advocate SRI.M. AJAY, SRI.S. KANNAN, SENIOR GOVERNMENT PLEADER FOR ADDL.R13 and of SRI. SRI.N. NANDAKUMAR (SENIOR ADVOCATE) along with SRI.JAI MOHAN, Advocate, the court passed the following:



P.T.O.

**Devan Ramachandran,
&
Dr. Kauser Edappagath, JJ.**

R.P.No.379 of 2021
IN
W.P(C).NO.10659 of 2021

Dated this the 09th day of September, 2021

O R D E R

Devan Ramachandran, J.

The learned Senior Government Pleader, Shri.S.Kannan, has filed a Memo producing a Government order dated 12.08.2021, wherein certain steps for averting attacks and intimidation to the members of the health care system have been proposed. They are as under:

- “1. CCTV should be installed in all hospitals, initially in Taluk Hospitals, District Hospitals, General Hospitals, W&C Hospitals, Mental Health Centres and Medical Colleges in the Casualty and Out Patient Department (OPD) areas and a feed shall be given to Police AID Post (Whichever Hospital Police Aid Post is there). Proper functioning of the CCTV should also be ensured.
2. At the institution level, security in charge officer to be nominated by the Superintendent of Hospital.
3. The paramedical staff and others to be given security related training by coordinating with the Superintendent of the Hospital.
4. All further appointments of security personnel, especially for Casualty and Out Patient Department (OPD) areas shall only be from Ex-Serviceman Society/organizations. Also ex-serviceman shall be the qualification for hiring such personnel by Hospital Management Committee/Hospital Development Committee/Hospital Development Society.”

2. We further notice that a statement has been filed on behalf of the Additional Director General of Police (Law and Order), wherein, he avers that 278 cases have been registered under the provisions of the Kerala Health Care Service Persons and Health Care Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 (hereinafter referred to as 'the Act' for short). The information as to the progress of the said cases have not been made available; but we see, from the tabulated statement contained therein, that 232 of such cases have been charge sheeted and 28 are under investigation.

3. The statistics certainly create a very somber scenario. To be told that there were 278 attacks against Doctors, Nurses and Healthcare Workers is not something that can be easily digested.

4. Shri.Gopakumaran Nair, learned Senior Counsel appearing for the Indian Medical Association and Shri.K.Anand, learned counsel

appearing for the Association of Private Medical Hospitals, submitted that, in spite of the earnest efforts taken by the Government, instances of attacks on Doctors and Nurses are still continuing, mainly because of the delay in investigation and conclusion of the proceedings on the crimes registered; and also because the Police are often lax in responding to their plea for assistance or protection. The learned Senior Counsel added that sometimes certain vexatious messages in the social media give rise to misunderstanding on the working of a particular hospital, which leads to untoward incidents, but that the Police are slow in responding to it.

5. Shri.K.Anand, learned counsel then supplemented the above, saying that certain hospitals are away from the nearest Police Station and that unless there is a mechanism, by way of either establishment of a Police Aid Post or a dedicated Police line, attacks on Doctors and Nurses reach the attention of the Police much later

and they then react with still greater delay.

6. That being so recorded, the attacks on Health Care Workers or an attempt to intimidate or threaten them, for whatever be the reason, can never be condoned or tolerated. The measures now suggested by the Government perhaps are the first to be enforced and taking note of the evolving needs, more steps will require to be taken.

7. However, the proposed steps are only in the nascent state and it will need to be implemented across the State effectively. The Government has not been able to tell us whether such steps have already been implemented, apart from saying that they have been proposed.

8. We are certain that all the steps which we have extracted above, require to be effectively implemented, so that, to some extent, the problem can be controlled.

9. In this context, we must also remind the Government that it is only sensitization and education that the citizens be made aware that

their actions against Doctors and Nurses would invite penal consequences under the provisions of the Act. Even though we have suggested this at the Bar last time when this case was listed, we have not come across any public messages or news releases from the side of the Government informing the public that such attacks would attract very severe penalties under the provisions of the Act.

10. We, therefore, call upon the competent Authorities of the Government to ensure that the provisions of the Act are made known to the public at large, including by giving publicity in the premises of the hospitals and also by giving it good circulation through the Mainline and Online media.

11. As matters now stand, we understand that there has been some change in the scenario on account of the intervention of this Court. We are, therefore, certain that the State Police Chief must ensure that necessary instructions are given to all the Station House Officers to react swiftly and

quickly in case of any complaint being made to them by the hospitals; and to take necessary action thereon without any delay. The State Police Chief must also overview the various cases that have been registered under the provisions of the Act and ensure that investigation to the same concludes without any avoidable delay and that prosecution on it is taken forward effectively.

12. We, in fact, notice that the Additional Director General of Police (Law and Order) has, in the statement referred to above, submitted that instructions have been already given by the State Police Chief to all the District Police Chiefs on 31.08.2021 in this regard. We are certain that these instructions must percolate down to the lowest level, so that the personnel of the Police Stations concerned will be aware of the absolute necessity of reacting quickly to complaints made by the hospitals.

13. We, therefore, further direct the State Police Chief to act as per the observations above

and to ensure that the instructions, which he has issued to the District Police Chiefs on 31.08.2021, is made aware to all the Station House Officers; with a resultant direction to them to act without any delay, as and when any complaint is received from any hospital, both Government owned or private.

14. Before we conclude, we are also told by the learned counsel for the writ petitioner, Shri.Sabu P.Joseph, that the Government has brought out another order, bearing number G.O(Rt)No.1750/2021/H&FWD dated 16.08.2021, whereby they have now prescribed certain fees and charges for treatment of patients suffering from "post COVID complications".

15. We have made a cursory glance through the afore mentioned order, which has been made available to us by Shri.Sabu P.Joseph across the Bar. Though we do not propose to say anything affirmatively about it now, we notice that this has been issued with respect to persons above the

poverty line. However, we are of the view that the Government must explain the necessity for having issued the order dated 16.08.2021, particularly when post COVID complications - by its very nature - indicates problems that arises out of COVID-19 infections.

List this case for further consideration on 22/09/2021; within which time, the learned Senior Government Pleader will obtain necessary instructions in this regard; and also for a report from the State Police Chief with respect to the directions issued to him as afore.

Sd/-

DEVAN RAMACHANDRAN, JUDGE

Sd/-

Dr. KAUSER EDAPPAGATH, JUDGE

MC

H/O