

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 15821 of 2015 (S)

PETITIONER(S):

**M.P. RATHAN, S/O.LATE PADMANABHAN,
MOOTHATT HOUSE, KUMBALANGHI. P.O.,
ERNAKULAM, PIN-682 007.**

**BY SRI.M.R.RAJENDRAN NAIR, SENIOR ADVOCATE.
ADV. SRI.BLAZE K.JOSE.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
HEALTH & FAMILY WELFARE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. DIRECTOR OF HEALTH SERVICES,
DIRECTORATE OF HEALTH SERVICES,
GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM, PIN-695 035.**
- 3. DISTRICT MEDICAL OFFICER (HEALTH),
DISTRICT HOSPITAL COMPOUND,
ERNAKULAM-680 031.**
- 4. THE BLOCK PANCHAYATH, PALLURUTHY,
REPRESENTED BY ITS SECRETARY,
BLOCK PANCHAYATH OFFICE,
PALLURUTHY, PINCODE-682 006.**

*** ADDL. R5 TO R7 IMPLEADED**

- 5. JAYA JUDE, AGED 39,
PUTHUSSERY HOUSE, KUMBALANGHI.**
- 6. KUNJUMOL GEORGE,
MUDAVAMMARY HOUSE, KUMBALANGHI.**

WP(C).No. 15821 of 2015 (S)

**7. ANNIE JOSEPH, AGED 54,
KUNNEL HOUSE, CHELLANAM.**

*** ADDL. R5 TO R7 ARE IMPEADED AS PER ORDER DATED 01.07.2015 IN
IA. NO.9123/2015.**

**** ADDL. R8 IMPEADED**

**8. AKHILA KERALA DHEEVARA SABHA (AKDS)
VYASA DHARMA PARIPALANA YOGAM (A.K.D.S. BR.NO.133),
SREEKRISHNA TEMPLE ROAD, KUMBALANGHI, KOCHI - 682 007,
ERNAKULAM DISTRICT, REPRESENTED BY ITS PRESIDENT,
RAJESH, AGED 38 YEARS, S/O.LATE PURUSHOTHAMAN.**

**** ADDL.R8 IS IMPEADED AS PER ORDER DATED 01.07.2015 IN
IA. NO. 8850/2015.**

**R1 TO R3 BY SR. GOVT. PLEADER SRI.C.R. SYAMKUMAR.
ADDL. R5 TO R7 BY ADV. SRI.K.I.SAGEER IBRAHIM.
ADDL. R8 BY ADV. SMT.N.DEEPA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- A TRUE COPY OF THE GOVERNMENT ORDER DATED 06.01.1988.
- P2- A TRUE COPY OF THE CIRCULAR DATED 25.03.1988 OF THE DIRECTOR OF HEALTH SERVICES.
- P3- A TRUE COPY OF THE JUDGMENT IN WP(C).NO. 19525 OF 2004 DATED 02.08.2004.
- P4- A TRUE COPY OF THE AFFIDAVIT DATED 06.01.2006.
- P5- A TRUE COPY OF THE ORDER G.O.(RT)NO.43/2006/H&FWD DATED 04.01.2006.
- P6- A TRUE COPY OF THE G.O.(MS) 568/2008 H&FWD DATED 06.11.2008.
- P7- PHOTOGRAPHS OF THE PRESENT CONDITION OF THE HOSPITAL BUILDING, THE INPATIENT WARD, X-RAY BUILDING ETC.
- P8- A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PALLURUTHY BLOCK PANCHAYATH PRESIDENT TO THE FINANCE MINISTER AND ENGLISH TRANSLATION.
- P9- A TRUE COPY OF THE RELEVANT PAGES OF INDIAN PUBLIC HEALTH STANDARDS (IPHS) REVISED GUIDELINES 2012.
- P10- A TRUE COPY OF THE LETTER DATED 18.09.2012 BY THE MEDICAL OFFICER TO THE DISTRICT MEDICAL OFFICER, ERNAKULAM AND ITS ENGLISH TRANSLATION.
- P11- A TRUE COPY OF THE LETTER NO.C1.15710/12 DATED 27.09.2012 TO THE DIRECTOR OF HEALTH SERVICES AND ITS ENGLISH TRANSLATION.
- P12- A TRUE COPY OF THE VERIFICATION REPORT SUBMITTED BY THE MEDICAL OFFICER ERNAKULAM.
- P13- A TRUE COPY OF THE JUSTIFICATION REPORT SUBMITTED BY THE MEDICAL OFFICER CHC KUMBALANGHI.
- P14- A TRUE COPY OF REPORT FILED BY THE DIRECTOR HEALTH SERVICES BEFORE THE HUMAN RIGHTS COMMISSION DATED 08.05.2014 AND ITS ENGLISH TRANSLATION.
- P15- A TRUE COPY OF THE ORDER DATED 28.05.2014 IN HRMP NO.2149/2014 OF THE KERALA STATE HUMAN RIGHTS COMMISSION AND ITS ENGLISH TRANSLATION.

- P16- A TRUE COPY OF THE ANSWER TO THE SUBMISSION IN THE LEGISLATIVE ASSEMBLY DATED 27.06.2014 AND ITS ENGLISH TRANSLATION.
- P17- A TRUE COPY OF THE LETTER DATED 30.07.2014 OF THE PRESIDENT OF THE KPCC AND ITS ENGLISH TRANSLATION.
- P18- A TRUE COPY OF THE ACKNOWLEDGMENT RECEIPTS DATED 07.08.2014 AND ITS ENGLISH TRANSLATION.
- P19- A TRUE COPY OF THE ACKNOWLEDGMENT RECEIPTS DATED 23.09.2014 AND ITS ENGLISH TRANSLATION.
- P20- A TRUE COPY OF THE PUBLIC NOTICE ISSUED BY KUMBALANGHI HOSPITAL DEVELOPMENT PEOPLES COUNCIL AND ITS ENGLISH TRANSLATION.
- P21- PHOTOGRAPHS OF THE AGITATIONS IN FRONT OF THE COMMUNITY HEALTH CENTER KUMBALANGHI.
- P22- A TRUE COPY OF THE NEWSPAPER REPORT IN MALAYALA MANORAMA DATED 10.05.2015 AND ITS ENGLISH TRANSLATION.
- P23- A TRUE COPY OF THE NEWSPAPER REPORT IN MALAYALA MANORAMA DATED 18.05.2015 AND ITS ENGLISH TRANSLATION.
- P24- A TRUE COPY OF THE NEWSPAPER REPORT IN MATHRUBHUMI DATED 21.05.2015 AND ITS ENGLISH TRANSLATION.
- P25- A TRUE COPY OF THE NEWSPAPER REPORT IN MALAYALA MANORAMA DATED 23.05.2015 AND ITS ENGLISH TRANSLATION.
- P26- A TRUE COPY OF THE ANSWER GIVEN BY THE MEDICAL OFFICER INC-CHARGE C.H.C. KUMBALANGHI TO THE APPLICATION UNDER THE RTI DATED 14/09/2015 AND ITS ENGLISH TRANSLATION.

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.P. (C) No. 15821 of 2015

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Dated this, the 5th day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard the learned counsel for the petitioner and the learned Government Pleader.

2. This writ petition filed as a Public Interest Litigation seeks the following reliefs;

“a) To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents 1 to 3 to approve appropriate staff pattern as fixed by Ext.P6 G.O (MS) 568/2008 H& FWD dated 6.11.2008 and to post required staff in accordance with the proposal submitted as per Ext.P10 to P13.

b) To issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st and 2nd respondent to consider Ext.P10 to P13 as expeditiously as possible at any rate within a time limit fixed by this Hon'ble Court.”

3. Petitioner's case in the writ petition is that Kumbalangi was initially a Primary Health Centre, which has been upgraded as

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a Community Health Centre. Circular dated 25th March, 1988 of the Director of Health Services has been referred to where it was prescribed that Community Health Centre should have facilities such as 30 beds, X-ray, lab facilities and four major specialist services viz., Medical, Surgical, Gynaecology and Paediatrics. Petitioner relies and refer to the Government Order dated 6/11/2008 where Health and Family Welfare Department has issued order providing for necessary facilities to be provided in Primary Health Centres, Community Health Centres, Taluk Hospitals, District Hospital, Women and Children's Hospitals and Specialty Hospitals. The grievance raised by the petitioner in the writ petition is that although norms have been laid down by the Government Order, the State has not implemented the norms in so far as sanctioning of the necessary posts and infrastructure which was required for functioning of Community Health Centres are concerned.

4. Counter affidavit has been filed by the State wherein, in paragraphs 5 and 6, following pleadings have been made.

"5. It is submitted that the Community Health Centre, Kumbalangi is having a bed strength of 22

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beds and therefore as per Government Order prescribing the staff pattern for the Community Health Centres, the Community Health Centre, Kumbalangi is not eligible for Specialty cadre. It is submitted that as per G.O(MS) No.112/95/H&FWD dated 27.04.1995 it has been prescribed that specialty doctors need only to be sanctioned for hospitals having a bed strength of more than 100 beds. However, in spite of the guidelines prescribed by the Government, have taken earnest efforts by deploying sufficient staff to the Community Health Centre, Kumbalangi taking note all the patients' strength and in compliance of the undertaking given by respondent in the earlier cases. In this regard, it is also further submitted that the State Government is committed to improve the facilities in all the health institutions in the State for the welfare of the general public with the limited financial resources. But huge financial commitment required is a hurdle for implementing the decision for providing the staff strength as mentioned in Exhibit P6 Government Order. The demand of the petitioner is to provide the staff strength for the Community Health Centre, Kumbalangi alone, but the State Government is not in favour of providing amenities to the Community Health Centre, Kumbalangi alone, but also to provide such amenities to all other Community Health Centres and Health Institutions equally. It is to be noted that maximum facilities have already been provided to the Community Health Centre,

-:4:-

Kumbalangi with the limited financial resources available. The non availability of sufficient specialist doctors in the State is an impediment to the Government for providing the services of specialist doctors in all Community Health Centres. The proposal for creation of post in the Community Health Centre, Kumbalangi is under the active consideration of the finance department and as it requires a policy decision consultation with other departments are also required.

6. As stated earlier among the 7 doctors at present working in Community Health Centre, Kumbalangi, 4 doctors are having post graduate qualification in Paediatrics, ENT, Ophthalmology and Respiratory Medicine. Though there is no post of specialist doctors sanctioned, the service of 4 specialist doctors are provided in the Community Health Centre. Sufficient number of staff nurses, Pharmacist and Lab Technician were also provided to the Community Health Centre, Kumbalangi to cater to the medical needs of the patients of the Community Health Centre. However, it is also submitted that action is being taken by the Medical Officer in charge of Community Health Centre, Kumbalangi for purchasing X-Ray machine for the Community Health Centre by utilizing the MLA funds granted by Sri.Dominic Presentation MLA. Urgent steps will be taken for creating one post of X-Ray Technician in the health centre or to appoint on temporary basis, when the X-ray unit is installed in the Community health Centre."

5. State in its counter affidavit has stated that although the petitioner has pleaded in the writ petition to provide the staff strength for the Community Health Centre, Kumbalangi alone, the State Government is not in favour of providing amenities to the Community Health Centre Kumbalangi alone, but to provide such amenities to all other Community Health Centres and Health Institutions equally. It has been further pleaded that the proposal for creation of posts in the Community Health Centre, Kumbalangi is under the active consideration of the finance department and as it requires a policy decision, consultation with other departments is also required. With regard to X-ray Technicians, it has been pleaded that steps are being taken for creating one post of X-ray Technician or to appoint a person on temporary basis, when the X-ray unit is installed. Other pleadings have been made in the counter affidavit. It has further been stated in para 9 that in the details furnished by the District Medical Officer during the months of May, June and July, 2015, the average out patients in the Community Health Centre was 200-250, 300-350 and around 400 and the in patient strength was 30, 54 and 40 respectively.

6. We have considered the submission of the parties and

perused the records.

7. When standards are laid down by the Government for providing particular strength of staff and infrastructure, the State has to make all endeavour to ensure that the particular staff and infrastructure are made available so that medical facilities with regard to all level of hospitals are made available which in turn shall render necessary medical services to the public in general. Although it has been pleaded that with regard to creation of additional posts, the matter is under active consideration, we are of the view that appropriate decision and periodical assessment have to be taken by the State in the context of Community Health Centre, Kumbalangi with regard to which issue, this Public Interest Litigation has been filed. It is true that the State had its own financial constraints with regard to creation of all posts in all Community Health Centres and other hospitals at one time. But there has to be proper consideration with reasons to indicate as to why a particular facility or staff cannot be sanctioned in a particular Community Centre especially with regard to Community Health Centre, Kumbalangi. We note the pleadings and endeavour which has been made by the State and has been placed before

-:7:-

this Court by means of a counter affidavit. But in view of the submission of the learned counsel for the petitioner that Ext.P6 of 6/11/2008 was never varied subsequently nor is there any decision taken with regard to Community Health Centre regarding sanction of the strength, we are of the view that the writ petition deserves to be disposed of with direction to the State to take appropriate decision with regard to pending proposal for creation of posts and infrastructure and also review the said decision from time to time. The endeavour of the State is to see that the Government Order, Ext.P6, is implemented in its letter and spirit.

With these observations, the writ petition is disposed of. The State shall endeavour to consider with regard to pending proposal expeditiously and take a proper decision within a period of six months.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

05/10/2015

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PS to Judge