HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
HON'BLE SMT JUSTICE ANIS

WRIT PETITION Nos.15704, 15706, 15717, 15721, 15729, 15733, 15735, 15937, 17789, 18015 & 26590 OF 2015

COMMON ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

All these writ petitions can be disposed of as common question of law has been urged before us.

We have heard Sri P. Suresh Reddy, learned Senior Counsel, Sri B. M. Patro and Sri M. Srikanth, learned counsel for the writ petitioners, the Government Pleader for Services for the State of Andhra Pradesh and Sri G. Bala Rangaiah, Standing Counsel for Andhra Pradesh Vaidya Vidhan Parishad.

The writ petitioners are all doctors possessing Post Graduate qualifications. They are all working as Civil Assistant Surgeons in one hospital or the other under the administrative control of the Director of Public Health, Government of Andhra Pradesh. Now, they are sought to be deputed to Andhra Pradesh Vaidya Vidhan Parishad for manning the posts of specialist doctors under the control of the said Vaidya Vidhan Parishad. It is this compulsory deputation of the services of the petitioners, without first obtaining their consent, which is objected. It is contended that the consent of the writ petitioners to work in various hospitals under the administrative control of the Andhra Pradesh Vaidya Vidhan Parishad is not obtained first and they are now posted to work in various hospitals. This according to the learned Senior Counsel, is contrary to the scheme of deputation and as well as the provision contained under F.R.110. It is contended that unless the consent of the employee is obtained, he may not be forced to serve a different master. The very concept of deputation means that a person serving in a particular cadre is sent out of the said cadre to serve a different employer. Learned Senior Counsel has placed reliance upon the

judgment rendered by Hon'ble Sri Justice D.A.Desai of the Gujarat High Court in ***Bhagwatiprasad Gordhandas Bhatt v. State of Gujarat***[1] in support of the above argument. Sri M. Srikanth and Sri B. M. Patro, learned counsel, have also adopted the same contention. However, Sri M. Srikanth would submit that the petitioner in W.P.No.26590 of 2015 was the only Gynaecologist attached to the hospital at Saluru and now upon an allegation that she was not regular in attending to the hospital duty, she has been subjected a transfer on deputation basis to Area Hospital, Parvathipuram. Consequently, the order of transfer is fraught with illegality. Upon an unsustainable allegation, the petitioner cannot be subjected to a transfer.

The learned Standing Counsel to Andhra Pradesh Vaidya Vidhan Parishad, Sri G. Bala Rangaiah, would submit that it is a fact that consent of the petitioners is not obtained before hand. In as much as it is required to do so, he would submit that the hospitals run by the Andhra Pradesh Vaidya Vidhan Parishad are all in fact erstwhile Government Institutions and they are now administered by a separate Commissionerate and therefore, for drawing the services of doctors, the Vaidya Vidhan Parishad is depending upon the Director of Public Health. The learned Government Pleader would submit that the petitioners have all been granted necessary options by way of participation in counselling process on 12th February, 2015. But, however, they have stayed away there from. Therefore, they cannot make a grievance out of the issue.

Article 47 of our Constitution forming part of Part-IV would require the State to make every endeavour to improve upon the standards of the living and of the health of the citizens. It should be the aim of every State to secure the best medical and health facilities, to cater to the varied requirements of the citizens. In the State of Andhra Pradesh, a three tire infrastructure was put in place. Wherever the Government was running a medical college, a general teaching hospital and as far as

possible certain other specialist teaching hospitals would be attached there to. They were all subsequently brought under the administrative control of a separate directorate called the Director of Medical Education. At the next rung, the District Headquarters Hospitals are established in all the districts. All those District Headquarters hospitals are also having the specialist doctors in their services. But, they do not belong to teaching cadre. To the extent possible, the specialist medical services are made available even in such District Headquarters Hospitals, so that all patients need not run to a General Hospital. In the next rung, the Primary Health Centres and Area Hospitals are run. A Primary Health Centre is essentially intended to provide the medical care at the first instance, so that the citizens can be provided the necessary medical attention at as nearer as the place as possible to them. Some of the Primary Health Centres were also provided with the necessary infrastructure for admission and treatment of some of the patients as inpatients. Similar is the feature with regard to the Area Hospitals. But, however, with a view to streamline the existing health delivery systems and with a view to support curative and preventive aspects, so that greater emphasis would be given for the intensive development of both the areas, the State legislature enacted the Andhra Pradesh Vaidya Vidhana Parishad Act, 1986, Act No.29 of 1986 (henceforth referred to as 'the Act'). Upon receipt of the assent of the Governor, it was published and brought into force with effect from 16th August 1986. As per Section 3 of the Act, the Government was empowered by a notification to constitute a Commisionerate called the Andhra Pradesh Vaidya Vidhana Parishad. Sub-section (2) thereof has clearly spelt out that the Commissonerate shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and also to enter into contracts in its own name, subject to the provisions of the Act and the rules made there under. The Commissionerate shall be liable to sue and be sued in its own name.

Sub-section (5) of Section 3 delineated the functions to be discharged by the Commissionerate therein. Principally amongst them, it was the function of the Commissionerate to formulate and implement the schemes for the comprehensive development of the dispensaries and hospitals. It is also the function of the Commissionerate to construct and maintain dispensaries and non-teaching hospitals and maintenance of cleanliness therein. It was provided with necessary power to acquire, maintain and allocate quality equipment to various dispensaries and hospitals. Thus, the functions of running important non-teaching hospitals, at the District Headquarters or at other place, has been assigned as the principal task to this Commissionerate. Section 9 empowered the Commissionerate to levy fees or other charges from such person or class of persons making use of the services of dispensary or hospital in accordance with such regulations as may be prescribed. It has also entrusted the task of defraying operating expenses for ensuring better upkeep and hygienic conditions of the hospital. Section 10, which dealt with the funds of the Commissionerate, has specified that the Commissonerate shall have its own funds consisting of the grants from the Government voted by the Legislative Assembly of the State towards grants of the Commissionerate and also those grants which are received from the Central Government. Subsection (3) of Section 10 empowered the Commiossionerate to spend such sums as deemed fit by it for performing its functions entrusted to it under the Act. Section 11 of the Act has made it clear that the control and management of all dispensaries, non-teaching hospitals, except such hospitals which are primarily dealing with implementation of National Health Programs like T.B. control, Leprosy control, which are owned by the State Government, shall stand transferred to and vest in the Commissionerate and shall function under the administrative control of the Commissionerate. It was also further made clear that all the properties, assets and liabilities, rights and obligations in relation to such dispensaries and non-teaching hospitals and all obligations of the

Government in relation to them shall devolve upon the Commissionerate. Section 15 of the Act provides the Government, with the approval of the legislative assembly of the State, to make from time to time subventions to the Commissionerate for performing the functions under the Act on such terms and conditions as the Government may determine. Similarly, Sub-section (2) of Section 15 enables the Government to advance loans to the Commissionerate for the purpose of the Act. Section 15, while enabling Commissionerate to borrow from time to time, but, however, hedged the said power with a specific condition that such borrowings are borrowable only with the previous sanction of the Government. Section 19, which dealt with Accounts and Audit of the Commissionerate, specified that the accounts of the Commissionerate shall be audited by such persons as may be appointed by the Government and any expenditure incurred in connection with such audit shall be payable by the Commissionerate to the Government. Section 21 clearly vested the State Government to give such guidance and directions to the Commissionerate on questions of policy relating to State purposes or in case of any emergency, to guide the Commissionerate in discharge of its functions. Section 22 empowered the Government to cause inspection to be made by such person or such persons as it may direct of the affairs or property of the Commissionerate, its buildings, laboratories, libraries, equipment maintained by the dispensaries and hospitals and medical institutions and also cause an enquiry to be made into the matters connected with the Commissionerate. Thus, the scheme of the Act clearly discloses the pervasive control of the State Government, over the affairs of the Commissionerate, notwithstanding that the Commissionererate has came to be recognised to be a body corporate having perpetual succession. In short the Act has given a formal shape to the direction of the policy of the State to provide for quality medicare to its citizens and therefore put in place a body corporate with enough freedom sans

governmental happenings to carry on its functions and operations. That is the reason why the hitherto existing governmental infrastructure has been transferred and vested in such a Directorate.

In the above background, if we were to examine Fundamental Rule 110, which forms part of Chapter XII dealing with Foreign Service, a clear picture emerges. F.R.110(a) to the extent, which is relevant for re-enquiry reads as under:

> *No Government Servant may be transferred to foreign service against his will:*
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> *Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of a body, whether incorporated or not, which is wholly or substantially owned or controlled by the Government.*

Therefore, it emerges that wherever a Government Servant has to be transferred to Foreign Service, his consent is required to be obtained. The rationale behind any such principle is that a contract of employment is put in place, the movement the Government Servant accepts his employment in a particular department of the Government concerned. In other words a relationship of master and servant is thus put in place between the department concerned and the individual. Each department can organise the posts available in it into various cadres and categories. Each department therefore functions as a water tight compartment for regulating the conditions of employment therein and the employees. In so far as any other department is concerned, it may be forming part of the same Government, but nonetheless, it becomes a distinct and separate unit of employment itself. Consequently, one department becomes a foreign department to an employee borne on the cadre of another department irrespective of the fact whether both the departments are the units of the same Government or not. Anyone, who is required to serve outside his regular cadre, such an attempt would amount to sending him on Foreign Service terms. This far, there is no difficulty. The contention canvassed on behalf of the writ petitioners is

precisely this. But, however, the proviso added to sub-rule (a) of F.R.110 brings about a different situation. This clearly spelt out that sub-rule (a), which puts an embargo upon transfer of a Government Servant to a Foreign Service against his will speaks that it shall have no application to the transfer of a Government Servant to the service of a body, whether incorporated or not, which is wholly or substantially owned or controlled by the Government. Now, in the instant case, Andhra Pradesh Vaidya Vidhan Parishad though is a body corporate, but wholly controlled and regulated by the Government of Andhra Pradesh. We have already noticed the various provisions of the Act, which in one voice speak of the control exercisable by the Government of Andhra Pradesh over the affairs carried out by the Vaidya Vidhan Parishad. Hence, we are of the opinion that the entire exercise, which is the subject matter of the present *lis* is regulated not by the main provision of F.R.110(a) but by the proviso contained therein. Therefore, the transfer of the post graduates working under the administrative control of the Director, Public Health, to serve the Andhra Pradesh Vaidya Vidhan Parishad need not necessarily proceed with their consent. It is purely a transfer akin to the one, which is liable to be ordered within the same service, to which they belong. We have therefore no hesitation to hold that the action of the respondents seeking to transfer the petitioners from various dispensaries and hospitals, which are under the control of the Director of Public Health, to those hospitals which are under the control of the Andhra Pradesh Vaidya Vidhan Parishad, is the same as a transfer within the same cadre and any such transfer is purely an incidence of service. The terms of the employment have ensured for the transferability of the doctors from place to place. Transferability is a pure incidence and term of the contract of employment. Power is vested in the employer to effect unilateral transfers. The consent of the employee, before hand, is not required to be obtained. The employee concerned has no say in the matter and applicability of principles of natural justice is also excluded. Because an order of transfer on

administrative grounds is purely an executive fiat and function of the State, it does not effect vitally or adversely the interests of the individual concerned or the conditions of his service and in particular with regard to the status, payment of wages and allowances, they remain in tact and they will undergo no change based on such transfer. May be quantity of allowances may vary from place to place depending upon the nature of the conditions prevailing at the new place, where one is transferred. That also is purely an incidence of service. Such allowances are essentially paid to the Government Servants to offset the expenditure, which they are likely to incur from place to place. Hence, the variance in the quantum of allowances is provided in that regard.

Most importantly, when we have noticed that it is the constitutional aim and obligation of the State to provide for quality medical care and health of the citizens, the Post Graduate doctors, such as writ petitioners, cannot resist the efforts of the State to put their services to optimum utilisation. A Post Graduate doctor in contrast to a Graduate doctor is better equipped, at any rate, theoretically, to deal with a variety of health care concerns of the citizens. He will be far more effectively dealing with the critical care to be handed down to the citizens. Therefore, if the State has made a genuine endeavour to scout for such talented doctors and then make an attempt to utilise their services at various hospitals, which are made over to be controlled administratively by the Vaidya Vidhan Parishad, a body corporate, no exception need be drawn thereto. The attempt of the State is to advance and further the constitutional goal, nay be the obligation of the state. As a public servant and also as a responsible citizen and being a servant of the State of Andhra Pradesh, the writ petitioners cannot legitimately resist the attempt of the State to secure better medicare facilities to its citizen under the control of the Andhra Pradesh Vaidya Vidhan Parishad. We have, therefore, no hesitation whatsoever to reject the contentions canvassed by the leaned counsel for the petitioners.

But, however, one nagging issue which Sri M. Srikanth has brought out is that the writ petitioner in W.P.No.26590 of 2015 would submit that the writ petitioner is a Gynaecologist in the hospital at Saluru and her services have came for appreciation for attending to the maximum number of deliveries at the hospital. It is the assertion of the petitioner that she is the only Gynaecologist attached to that hospital. Now, based upon some comment said to have passed on by a public representative, an allegation has been thrown against her that she was irregular to her duties while we decline to interdict a transfer order of the writ petitioner even in this case, but, however, we direct the District Administration to undertake an immediate enquiry into the so called allegations said to have been thrown by a public representative and in case the allegation made by the public representative is far from true or unfounded, appropriate remedial measures should be taken. Public Representatives cannot manipulate the governmental systems for achieving their personal agenda. Let this exercise be completed within a maximum period of three months from the date of receipt of this order.

All the writ petitions otherwise stand dismissed. No order as to costs.

The miscellaneous petitions, if any, pending in the Writ Petitions, shall stand closed.

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JUSTICE NOOTY RAMAMOHANA RAO

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JUSTICE ANIS

Date: 01.09.2015
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[1] 1976 LawSuit (Guj) 61