

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION Nos.4399, 17558, 17989, 17990, 17991, 17992,
17993, 17994, 17995, 17996, 17997, 17998, 17999, 18000, 18001,
18002, 18003, 18004 of 2016**

Date:19-5-2016

PIL No. 218 of 2016

Between:

Kona Raghupathi S/o late Sri Kona Prabhakar Rao
R/o Chillara Gollapalem
GBC Road, Bapatla, Guntur district

.....
Petitioner

and

The State of A.P.,
Rep by its Principal Secretary,
Health, Medical and Family Welfare Department,
Secretariat, Hyderabad and others

.....Respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

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COMMON ORDER: (Per the Hon'ble Sri Justice P.Naveen Rao)

In all these writ petitions filed in the form of Public Interest Litigation, petitioners are the members of the Andhra Pradesh Legislative Assembly and in the said capacity they were appointed as Chairpersons of Area Hospital Development Societies and Chairpersons of community health centers Development Societies and Members of Health Institutions/Hospitals Development Societies. In G.O.Ms.No.48, Health, Medical & Family Welfare (D1) Department, dated 13.05.2015, impugned herein, in supercession of earlier orders comprehensive guidelines are issued regarding powers, duties and responsibilities of Health Institutions/Hospitals Development Societies (for short Development Societies) and their composition. In view of these orders, the petitioners position as Chairpersons/ Members of Health Institutions/ Hospitals Development Societies is affected. Petitioners are primarily aggrieved by exclusion of elected public representatives from the composition of Development Societies.

2. Though these writ petitions are instituted as Public Interest Litigations, having regard to the fact that the impugned government orders directly affects petitioners' status as Chairpersons/ Members of Health Institutions/Hospitals Development Societies and petitioners' are vitally interested in the cause espoused by them, with consent of the learned counsel for the petitioners, the public interest litigations are converted as writ petitions and heard and disposed of by this common order.

3. The facts relevant for consideration of the issue are in narrow compass. Concerned with deficiencies in health delivery system,

government notified policy to streamline the system of health administration vide Government Order No 90 Dated 17.04.2003. By these orders, Government also constituted Health Institutions/Hospitals Development Societies. On further review of working of these Development Societies, revised policy was notified vide G.O.Ms.No.874 Health, Medical & Family Welfare (D1) Department, dated 27.12.2006. By these orders Government brought out changes in the composition of Development Societies. Now greater role is assigned to the elected public representatives at various levels in the hierarchy, starting from the Sarpanch at the village level to the Member of Parliament at the district level. The Zilla Parishad Chairperson was made the Chairperson of the teaching hospital development society and district headquarters hospital development society. The concerned MLA is made Chairperson of the area hospital development society and community health center and Member of other government Hospital/ Health Institution development societies. The President of Mandal Praja Parishad is made Chairman of the Primary health center development society. By virtue of the composition prescribed in G.O.Ms.No.874, petitioners in these writ petitions became Chairpersons of the development societies of the area hospital and community health center and as members of other Development Societies located in their Assembly constituencies.

In the Government Orders impugned in these writ petitions, the composition of various societies is now changed. The present arrangement completely excludes the role for the elected public representatives and in their place reputed NGOs/Philanthropists active in the region as selected by the concerned District Collector is made Chairperson to all the committees. In addition to change of composition, few other changes are also brought in regarding exercise of financial powers and carrying on day to day affairs by the societies.

4. Heard Sri Sivaraju Srinivas, Sri Ponavolu Sudhakara Reddy,

and Sri Sravan Kumar Naidana, learned counsels for petitioners and learned Advocate General for the State of Andhra Pradesh for respondents.

5.1 Sri Sivaraju Srinivas, learned counsel for petitioners, submitted that orders impugned in the writ petitions are liable to be set aside on the sole ground of lack of application of mind. He would submit that the composition of societies as prescribed in G.O.No.874 would show healthy balance between the elected representatives of the assembly and local bodies and Government officials. The elected representatives have vital responsibility in delivering health care to all the people living in the concerned constituency represented by them. They played effective role in enforcing better health administration and ensuring proper medical care to all the people. He would take the example of Bapatla MLA/ petitioner in WP (PIL)No. 218 of 2015 to emphasize the role an MLA can play to improve health and hygiene. As Chairperson of Bapatla hospital development society, the local MLA has taken up several initiatives, such as improving the hygienic conditions and maintenance of the hospital by cleaning the hospital and surrounding areas spending huge amount from personal sources; got a police outpost established to ensure security; provided two air conditioned mortuary boxes, ceiling fans and cement benches; and created avenues for income generation in the form of provision of canteen, cycle and two wheeler stands, which generated substantial amount, which in turn being utilized for various activities of the hospital. All this would not have been possible if local MLA was not Chairperson of Bapatla hospital development committee. He further submitted that the very purpose of constituting hospital development societies was meant to increase the accountability of the officers. On account of the present composition, there can be no check on the activities by the authorities and the health care administration would paralyze.

5.2. He would submit that the guidelines prescribed in the impugned GO are arbitrary, vague and violates mandate of Article 14 of the Constitution of India. The guidelines do not contain provision regarding crucial aspects to enable proper health delivery system. The primary object behind the impugned Government Order is to remove the public representatives, particularly those representing the opposition parties from such important public activity and in their place to induct workers of the party in power under the guise of the NGOs/ Philanthropists. Thus, impugned Government Order is not in the larger public interest, but is intended to curry favors to the workers of the party in power.

5.3. He would submit that on three crucial aspects, the guidelines are improperly drafted and would have serious consequences in health delivery system. Earlier system of entrusting maintenance of the hospitals for providing uninterrupted service through APHMIDC or any other engineering department is dispensed with and cumbersome procedure is prescribed. The impugned GO dispensed with entering into annual maintenance contracts. This would result in lack of maintenance of expensive hospital equipment and the equipment would become dysfunctional sooner or later without regular maintenance. Earlier G.O. envisaged purchase of essential drugs, consumables and medicines in emergencies. This is now taken away. As a result, incase of emergency, if drugs or consumables are not available, the society cannot undertake purchase of medicines and consumables, consequently the patients will have to suffer and same can have deleterious effect on the life of the patient in a given situation. Thus, it would be counterproductive if the impugned GO is sustained, when those serious deficiencies are staring at the health delivery system.

5.4. He would further submit that the GO envisages NGO as Chairperson. The NGO is not an individual and, therefore cannot be

the chairperson. This would show lack of application of mind in formulating the guidelines and composition of the societies which lends credence to the contentions of the petitioners that the exercise has been taken up only to remove the elected public representatives belonging to opposition parties from holding the positions in the Development Societies and to deny them the opportunity to serve the public of their constituencies.

5.5. Learned counsel Sri Sudhakar Reddy, in addition to the submission made by the learned counsel Sri Sivaraju Srinivas, submitted that it is wholly illegal to remove the elected public representatives from the composition of the hospital development societies. In democracy, the public representatives have to play vital role in various development activities of the concerned constituency and public health is the primary concern of any elected representative. Thus, denying role to MLAs in hospital development and community health care is anti-democratic and will have deleterious effect in health delivery system.

5.6. Though learned counsel and learned Advocate General also made extensive submissions on scope of Article 243(G), Article 243(W) and Section 161 of the Panchayat Raj Act, we restrain from expressing any opinion on that issue, as in the instant writ petitions, petitioners are Members of Legislative Assembly and are aggrieved by changes brought out by the impugned Government Order on the composition of the Development Societies, dispensing them as Chairpersons/ Members of the Development Societies, as the case may be.

6.1. Learned Advocate General would submit that on detailed review of the functioning of the existing societies, it was noticed that due to their busy schedule and various other activities, the members of the legislative assembly and other public representatives were not able to

devote much of the time to the Development Societies. It is noticed from the review of functioning of Development Societies from the year 2010 to 2015 that in most of the health centers/ hospitals/ colleges, the meetings of the societies were hardly held twice in a year even though the meetings were to be held regularly and at least once in a quarter of the year and as frequently as may be necessary. Since the society meetings were not held regularly, undue delay caused in taking decisions or in making payments. It was also noticed that though the financial powers were vested in the HDS Development Society, money could not be spent even for minor works/ repairs since the meetings were not regularly held. This has seriously paralyzed health delivery system. It was also noticed that due to pressure exerted by the local politicians/ party cadres, one sided decisions were taken without giving scope for meaningful discussions on various issues faced by the hospitals. The government also noticed that poor community involvement was leading to public apathy. It was felt that involvement of NGOs would be more appropriate to streamline the health delivery system. He would submit that on detailed review of the functioning of Development societies, the Government issued orders in G.O.Ms.No.48, dated 13.05.2015

6.2 Learned Advocate General would submit that present composition would ensure balance representation of the government officials and civil society. According to the learned Advocate General, Government is of the firm view that the NGOs/philanthropists can devote better time for proper functioning of the societies and in the earlier composition there was no direct involvement of the stake holders. There was apprehension in the minds of the people that Government was not providing health care delivery system properly though Government devoted much of its resources for the provision of health care to the people. He would therefore submit that there was no illegality or irregularity in notifying revised policy. It was issued in valid exercise of power.

6.3 He would submit that it is always open to Government to review the functioning of any system of governance and to bring about the changes as and when necessary. Primary concern of the Government is that health delivery system should function in a systematic manner so that all the funds earmarked for health delivery system are properly utilized and the end users benefit from the schemes formulated by the Government. He would submit that on analysis of the working of existing societies, the Government has thought it fit to introduce a new system of functioning of the societies. Even before the system is put in place and its functioning is assessed, petitioners have challenged the same expressing several apprehensions of its functioning. According to the learned Advocate General, it is premature to go into the issue of effective functioning of the development societies even before they start working.

6.4 He would further submit that what is under challenge is a policy decision of the Government and scope of the writ Court under Article 226 of the Constitution is very limited in such matters. It is not the case of the petitioners that Government does not have the power to formulate such guidelines or change the composition of the societies. In exercise of its executive power, Government is competent to come out with new policy initiatives in health care.

7. Primary concern of every Government is to ensure availability of proper health care facilities to millions of people and with this objective, chain of Government Hospitals and Health Institutions are established covering nook and corner of the State. The hierarchical structure of health delivery system starts with primary health centers at the grass root level, community health centers, area hospitals, district headquarters hospitals, teaching hospitals, AYUSH medical colleges, hospitals, and dispensaries. Through these centers/ hospitals, Government extends health care to the poor and needy people.

8. Establishment of centers/hospitals is one aspect and their proper administration is more serious issue. Mere provision of modern equipments, building and other infrastructure, employing competent medical officers and technical persons is not sufficient unless those facilities are put to proper use and services of available personnel are properly channeled. On a review of functioning of the hospitals, Government thought it more appropriate to constitute development societies in each of the medical colleges/health institutions/ hospitals, who can effectively ensure proper functioning of these institutions. To this effect, Government issued orders in G.O.Ms.No.90, dated 17.04.2003. In the annexure appended to this GO, composition of development societies at various levels was indicated. A cursory reading of the annexure would show that the District Collector was made Chairman for the college development societies and district headquarters hospital development societies, Local MLAs/Mayors/Zilla Parishad Chairman/ Member of Parliament, three representatives selected from Janmabhoomi group/self-help groups/NGOs/social workers/ prominent citizens were made members of the Development Society. No elected representative was included in college development society. The concerned MLA is made Chairman of the Area Hospitals/Community health centers. For primary health center / Upper primary health center, the President of Mandal Praja Parishad is made Chairman and for Health Sub Centre Development Society, Sarpanch of the village is made chairman. On review of functioning of the existing system and in supersession of earlier orders, Government issued revised orders in G.O.No.874, dated 27.12.2006. Insofar as teaching hospital development society and district headquarters hospital development society are concerned, the ZP Chairperson is made as chairperson instead of the District Collector and District Collector is relegated to status of co-chairperson. Otherwise the composition of the societies as originally envisaged remains the same. It appears societies for sub health centers are

dispensed with. The functioning of the societies is further reviewed and in supersession of G.O. 874, revised comprehensive orders are issued in G.O.No.48, dated 13.05.2015. Some functional changes are brought out in exercise of duties and responsibilities by the Development Society. Drastic changes are brought about in the composition of the development societies. The elected public representatives are completely taken away from the composition. The reputed NGOs/ Philanthropists active in the region are brought in as chairperson and members of the respective development societies.

9. We have given our anxious consideration to the contentions urged by the learned counsel for petitioners with reference to lack of application of mind, arbitrary exercise of power and exercise of power in violation of the mandate of Article 14. It is seen from averments in the counter affidavit and material on record that detailed exercise was undertaken, before revising the earlier order. Sufficient justification is shown for bringing about the changes in the composition of development societies while reversing the earlier policy decision. It cannot be said that there was no application of mind and that no exercise was undertaken before the policy was changed. We see no merit in the contention that change of certain clauses in the functioning of the development societies cripples the health delivery system. On close scrutiny of terms of present Government Order, it is seen that the orders do cover all aspects of health administration. Even assuming that if there are some difficulties in the day to day functioning of a hospital/health institution, it is always open to concerned authority to bring to the notice of the Government. Government Order cannot be nullified on that ground. It is not the case of the petitioners that Government is not competent to formulate policy as notified vide the impugned Government Order. The impugned policy does not suffer from vice of arbitrariness. We are of the opinion that order is issued in valid exercise of power and authority. The order impugned can

neither by classified as capricious nor uninformed by reasons.

10. It is settled principle of law that in policy matters, the scope of judicial review is very limited. Ordinarily writ Court cannot interfere in policies formulated by the Government. Health delivery system is one of the primary objectives of Government in power. How the health delivery system can be implemented should be best left to the Government. Court cannot go into the details of the policy formulations as sought to be contended by the learned counsel for petitioners. Ordinarily, writ Court, in exercise of power of judicial review under article 226 of the Constitution does not go into formulation of policies by the Government. It is for the Government, in valid exercise of executive power to decide which policy suits the needs of the public.

Having found that the earlier system was not working in achieving the objectives of the Government in the sphere of public health, it has to put in place new system. These writ petitions are instituted soon after the issuance of the Government orders and even before ink dried on the orders. Government is not allowed to give effect to its decision and analyze its functioning. Government must be given ample opportunity to experiment in formulating and implementing its policies. Judicial intervention in such matters only cripples the administration and would impact the very functioning of the Government. When the Government in power has option to make a particular policy, the writ court cannot interdict such policy initiative or to hold that there may be a better policy than the one is formulated. There may be two opinions on desirability of MLA as chairman / member of development society.

Court cannot sit as an appellate forum and to give opinion on one of them. It would amount to trenching into the functioning of the executive. Court can interfere in policy matters if the same violates the Constitution of India or one made without power or jurisdiction. No case is made out on these parameters.

11. At this stage, it is worthwhile to note the observations of the

Supreme Court in **Census Commissioner and others v.**

R.Krishnamurthy^[1]. Supreme Court observed as under:

“1. The present appeal depicts and, in a way, sculpts the non-acceptance of conceptual limitation in every human sphere including that of adjudication. No adjudicator or a Judge can conceive the idea that the sky is the limit or for that matter there is no barrier or fetters in one's individual perception, for judicial vision should not be allowed to be imprisoned and have the potentiality to cover celestial zones. Be it ingeminated, refrain and restrain are the essential virtues in the arena of adjudication because they guard as sentinel so that virtuousness is constantly sustained. Not for nothing, centuries back *Francis Bacon* had to say thus:

Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue..... Let the judges also remember that Solomon's throne was supported by lions on both sides: let them be lions, but yet lions under the throne.

....
....

25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue Notification regarding the manner in which the census has to be carried out and the Central Government has issued Notifications, and the competent authority has issued directions. It is not within the domain of the Court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the Executive. If a policy decision or a Notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the Notification was not under assail and the same is in consonance with the Act, it is really

unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.”

12. It is appropriate to notice that petitioners are MLAs representing their respective Assembly constituencies. In the day to day functioning of Government, the MLAs are involved at various stages. It is always open to MLAs to raise issues regarding public health in various forums whenever short comings are noticed in the functioning of health delivery system established and for this purpose they need not actively associate in day to day functioning of the development societies. As Members of Legislative Assembly, the petitioners do have better forum to raise issues and to discuss thread-bear all issues concerning public health. They can always bring to the notice of Government, the officials working at the District level and the state level and question their functioning and make them answerable to public on their short comings in providing medical and health facilities.

13. We therefore see no merit in the contentions urged on behalf of petitioners. Accordingly, all the writ petitions are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Miscellaneous petitions if any pending stand closed.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date:19-5-2016
Kkm/tvk

[\[1\]](#) (2015) 2 SCC 796