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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 27/07/2017****Judgment Delivered on : 26/09/2017****Writ Petition (PIL) No. 11 of 2016**

Bichem Pondi, S/o Erra Pondi, aged about 45, R/o Patnampara,
Nagar Palika Sukma, Police Station Sukma, Sukma - 494 111
(Chhattisgarh)

---- Petitioner**Versus**

1. Union of India, through The Secretary, Department of Health and Family Welfare, Government of India, Nirman Bhavan, Maulana Azad Road, New Delhi- 11
2. Chief Secretary, Government of Chhattisgarh, Mantralaya, Naya Raipur (Chhattisgarh)
3. Secretary, Department of Health, Government of Chhattisgarh, Mantralaya, Naya Raipur, Chhattisgarh
4. Chief Medical Health Officer, District Hospital Sukma, District Sukma (Chhattisgarh)

---- Respondents

For Petitioner	: Smt. Rajni Soren, Advocate
For Respondent/UOI	: Shri N.K. Vyas, Assistant Solicitor General
For Respondents/State	: Shri Avinash Singh, Panel Lawyer.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Order**Per Thottathil B. Radhakrishnan, Chief Justice**

1. This writ petition is filed as a Public Interest Litigation seeking different directions in relation to Public Health Centres and Community Health Centres in district Sukma.

2. Heard the learned counsel for the petitioner, learned Assistant Solicitor General and the learned counsel for the State Government.

3. The petitioner has pleaded that having regard to the need to control Maternal Mortality Ratio, the Infant Mortality Ratio and to bring the Government Medical Services Institutions in the district of Sukma to the requisite benchmarks in terms of the national goals as declared through the different policy documents, it is necessary that at least one MBBS Doctor is appointed in each Primary Health Centre and Specialists - Anesthetist, Public Health, Surgery, Medicine, Obstetrics and Gynecology, and Paediatrics, are appointed in each Community Health Centre in district Sukma and Specialists - Surgeon, Physician, Obstetrician, Gynecologist, Paediatrician, Orthopedic Surgeon, Ophthalmologist, Anesthetist, ENT Specialist and Dentist are appointed in Sukma District Hospital. Directions are sought for in that regard. A further direction to setup a blood bank at the Sukma District Hospital and blood storage facility at the Community Health Centres in that district is sought for. The petitioner also seeks a direction to ensure that Caesarean Section deliveries are conducted in Sukma District Hospital and at the Community Health Centres in that district. Directions to ensure distribution of free medicines to in-patients and out-patients in all the Public Health Facilities is also sought for.

4. The State Government has placed its submissions dated 11.05.2016 in which it stated that there are 16 Primary Health Centres in Sukma district in operation and MBBS Doctors are posted along with Rural Medical Assistants in 04 of those Primary Health Centres (Dornapal, Golapalli, Togpal and Chintalnaar). It is further submitted that the remaining 12 Public Health Centres are managed through Rural Medical

Assistants. The State Government has submitted a list of the sanctioned posts of Health Officers / Employees and such of those posts which are manned in Sukma district as on 01.05.2016. It is asserted by the State Government that free medicines are being provided in Sukma District Hospital and at the Community as well as Primary Health Centres in that district and that the State Government is trying its best to provide health facilities to public in general in district Sukma. Thereafter, on 13.06.2016, an application was filed by the State for taking documents on record. The State Government has placed alongwith it a copy of order dated 07.06.2016 issued by the Directorate of Health Services posting 36 Doctors in various districts of the State of Chhattisgarh, out of which, 03 Doctors have been posted in district Sukma. Document is produced to show that advertisements were published for walk-in-interview for engagement of Specialists and Doctors on contract basis. It is pleaded that such advertisements were issued twice in the daily newspapers. The State Government appears to indicate that there is no due response from qualified persons to those advertisements. The Directorate of Health Services is shown to have issued a letter dated 09.03.2016 to the Controller, Chhattisgarh Vyavsayik Pariksha Mandal, Raipur for the issuance of the advertisements for 2582 vacant posts of different supporting staffs in the State of Chhattisgarh. We have not elaborately examined that document to ascertain as to what are the posts or vacancies which would relate to sector of Health Management in Sukma district. The State Government has further placed on record the fact that a new building was inaugurated in April, 2016 for the District Hospital Sukma and that the said hospital has facilities with latest equipments, blood bank testing room, Elisa test room, blood bank, etc.

Annexure R-2/6 shows that the Directorate of Health Services has confirmed the availability of infrastructure of 10 Ambulances.

5. In compliance of an order issued by this Court on 20.06.2016, the Principal Secretary, Department of Health and Family Welfare of the State Government has filed a compliance report dated 17.10.2016 producing certain documents and pleading, among other things, that 03 Specialists - a Paediatrician, a Gynecologist and a Pathologist - were appointed on contract basis in district Sukma. An Orthopedic Specialist was appointed in district Sukma on contract basis as per order dated 30.07.2015. Two Specialists were also transferred to district Sukma from among those in regular service. These are sought to be demonstrated through Annexures R-1 to R-4. However, the Principal Secretary's report shows that out of 06 appointments of Specialists so made, only one joined duty and as on the date of the said report dated 17.10.2016, only 02 out of the 19 sanctioned posts of the Specialists in district Sukma are filled, which include one Orthopedic and one Pathologist. This means that 17 sanctioned posts are lying vacant. 23 persons were covered by Annexure R-5 order issued on 03.08.2016, out of which 05 Medical Officers had joined duty at district Sukma. It is stated that as on 17.10.2016, 14 out of 24 of sanctioned posts of Medical Officers were filled up in that district, meaning thereby 10 sanctioned posts were lying vacant. Annexure R-6 is produced alongwith the report dated 17.10.2016 to show that 31 Staff Nurses were appointed. It is stated that all of them had joined and 37 out of 54 sanctioned posts of Staff Nurses are filled. This means that in district Sukma, as on 17.10.2016 there is a shortage of 17 Staff Nurses. The further pleadings in that report and Annexure R-7 would show that some of the regularly appointed Government Doctors are being proceeded against for not joining in Sukma and there are some litigations pending in that regard as

well. Annexure R-9 is placed on record to show the summary of allotment and expenditure of the medicines.

6. Annexure R-8 is a communication by which the Deputy Drugs Controller, Central Drugs Standard Control Organization, West Zone under the Directorate General of Health Services, Government of India had directed the Drugs Controller of Food and Drug Administration, Raipur to carry out a joint inspection of the District Hospital Sukma in connection with the application for license for blood bank. Since it was noted that there was apparent lethargy in that matter, this Court issued an order on 14.07.2017 requiring the Additional Advocate General and the Assistant Solicitor General to obtain instructions from the officer concerned as to what action was taken in furtherance of that communication. Action followed. The learned counsel for the petitioner has placed written submissions dated 27.07.2017 stating among other things, that the blood bank at Sukma is functional at present and this comes as a huge relief to the people of the area, especially to patients of sickle cell anemia and pregnant women, who had to earlier travel to Jagdalpur for blood transfusions. It is further submitted that the respondents be directed to ensure that the blood storage facilities be available at Chindgarh and Konta Community Health Centres.

7. As pointed out by the learned counsel for the petitioner, the State Government has to make continuous efforts to fill up all the vacancies of Doctors, in district Sukma, having regard to the severe shortage which is, to some extent, not attributable to the lack of qualified persons, but the non-availability of qualified hands, who are prepared to work in that area. The learned counsel for the petitioner has further pointed out that the vacancy position of Staff Nurses and Auxiliary Nurse Midwives has to be

addressed by the State Government Officials to ensure that the vacancies are promptly filled up; else that would adversely affect the health challenges including emergencies that may occur in relation to the people of district Sukma. She has also made certain references to what has been quoted in the written submissions from a survey stated to have been conducted by certain institutions which are named in the written submissions without disclosing their status in law. The submissions of the learned counsel for the petitioner made on the basis of that is to the effect that the situation in district Sukma cannot be treated as not conducive to persons who are prepared to work in that area, particularly when such persons come from tribal and rural background. It is her further submission that an initiative of Motorcycle Ambulance has been started in Narayanpur, which has different situational similarities to the context of Sukma and therefore, it would be worthwhile to consider whether such activity can be carried in Sukma region as well. The learned counsel for the petitioner has also made reference to Medicines Sans Frontiers (MSF) / Doctors Without Borders, which according to her, is an international independent medical humanitarian organization that delivers emergency aid to people affected by armed conflict, epidemics, exclusion from health care and natural disasters. It is stated that the said organization was awarded the Nobel Peace Prize in 1999 and had been running a 15 bedded Mother and Child Health Care at Bijapur till recently and that it continues to conduct mobile clinics in the interior areas of Bijapur. Learned counsel for the petitioner, therefore, submits that the respondents may be directed to consider obtaining the involvement of organizations like MSF in district Sukma to provide health services to the people, who according to the petitioner, have been cut off because of the conflict in the area.

8. Instances of conflict may call for requisite measures to control and curb hostility to ensure prosperity. The need of any measure in that regard and the modality and measure of any such measure, are matters of governance. The question whether a particular area has been cut off from the regular stream of national life is not a matter for judicial determination through a Public Interest Litigation of the nature in hand. All the institutions of national life ought to stand guided by the fundamental principle of unity and integrity of the Nation. It would not be conducive, within the format of the Constitution, for us to presume to the contrary. It would be inadvisable for us to proceed with, in judicial process, on the assumption that any part of Sukma is cut off from Governmental access on account of any challenge that could be attributed to factors which are matters to be addressed, regulated and controlled by the Governments.

9. Even on the face of challenges, the Government is duty bound to find out ways and means to ensure that the requisite measures of welfare reaches the people along the length and breadth of a country governed by its Constitution and the laws. We cannot also assume that the deficit in services is attributable only to any local condition of access. It cannot be ignored that there are many who grow up in life, from challenged circumstances, by getting educated and thus proceed through the higher echelons of economic and social empowerment, but tend to, a large extent, drift away from their Fundamental Duties in terms of Part-IVA of the Constitution of India and their primary duties as human beings in the social context of any society which has people in need of health care and other supports. Access to information and education leading to conferment of qualifications and resultant authorization to practice professions in terms of the laws of the land appear to show that those

persons who get empowered with such qualification and authority, by and large, aim only at their material comforts and well being, evincing their innate desire to graze in urban pastures. In a Nation which is a democratic polity, its citizenry is in itself an institution of national life. The principles of policy of governance of this Nation spread out as the Directive Principles of State Policy in Part IV of the Constitution, therefore should stand guiding the citizens as well. Sub-serving common good and preventing common detriment are part of the constitutional policies. They are essentially constitutional values founded on the universal human values of harmony and common brotherhood transcending the diversities. Adherence and promotion of such values are part of the Fundamental Duties of every citizen of India, referable, in particular, to Clauses (c), (d), (e), (f) and (h) of Article 51A of the Constitution. Such duty also inheres in the Fundamental Duties referable to Clause (b), (i) and (j) of that Article. Governance of a welfare State requires the commitment of citizens and their obedience to the laws; else the measures of welfare would fail.

10. In the result, this writ petition is ordered directing the State Government authorities to take all requisite steps to ensure that due facilities are made available through the District Hospital Sukma as well as Community Health Centres and Primary Health Centres in that district by providing requisite Doctors, Nurses, Auxiliary Nurse Midwives and other requisite manpower. The State Government authorities shall pursue necessary steps to fill up the vacancies either by utilizing the services of persons in service or by appointing persons on contract basis. It is further directed that requisite Blood Banks shall be provided to support the facilities as are required in that district. The availability of blood transfusion facilities, blood storage facilities and free supply of medicines shall be appropriately maintained. It is directed that provisions for

Caesarean Section deliveries and other surgical interventions as may be called for shall be provided in such manner as may be accessible in case of need and emergency. The respondents will also consider the feasibility of any non-governmental organization of Doctors and/or paramedics which are prepared to support the health service sector in district Sukma, however that their credentials and credibility as well as the situational feasibility, inability and the like are matters for assessment by the Governments concerned.

11. Security amount, if any, deposited by the petitioner be refunded to him.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE

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