BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.05.2017

CORAM

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**
AND
THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.9691 of 2017
and
WMP(MD)No.7439 of 2017

Association of Health Care Providers India,
Tamilnadu Chapter,
Rep. by its Joint Secretary,
J.Adel,
S/o.P.James Thangam,
F-1, Vairam Vasantham Apartment,
Sambakulam, Madurai-625 007. .. Petitioner

vs.

1.The Secretary,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Director of Town and Country Planning,
Opposite to LIC, Chengalwarayan Building,
4th floor, 807, Anna Salai,
Chennai - 600 002.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Salai, Egmore,
Chennai - 600 008.

4.The Director,
Tamilnadu Fire & Rescue Services,
Greams Lane, Chennai - 600 006. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the Respondent to consider the petitioner representation dated 15.04.2017 and for consequential order restraining the respondents from taking any distinctive or coercive steps to lock, seal and demolish the private hospitals in the rural and semi Urban areas till the disposal of the representation dated 15.04.2017 by the

respondents.

For Petitioner : Mr.N.Anandakumar

For Respondents : Mr.V.R.Shanmuganathan (for R1, R2 and R4)
Special Government Pleader

ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

This writ petition has been filed for issuance of Writ of Mandamus, directing the Respondent to consider the petitioner's representation dated 15.04.2017 and for consequential order restraining the respondents from taking any distinctive or coercive steps to lock, seal and demolish the private hospitals in the rural and semi Urban areas till the disposal of the representation dated 15.04.2017 by the respondents.

2.The case of the petitioner is that he is the Joint Secretary of Association of Health Care Providers India, Tamilnadu Chapter and having office at No.F-1, Vairam Vasantham Apartment, Sambakulam, Madurai – 625 007.

3.This writ petition is filed in the interest of public at large. He has no personal interest in the matter nor the writ is to ventilate any personal grievance. He has also undertake to abide by any direction to this Court.

4.The petitioner, who is the Association of Health Care Providers India, Tamilnadu Chapter is working with all stakeholders including the Government Regulatory bodies, allied health care industry, consumer groups etc. to build capacity in the Indian Health Care system chiefly focusing on patient safety and affordability of health care services to one and all. The petitioner's Association by namely "Association of Health Care Providers India", Tamilnadu Chapter (to herein after called Association) represents for more than 175 hospitals in the State of Tamilnadu.

5.It is the further case of the writ petitioner Association is that in India, health is one of the basic needs a citizen would crave for and it is unfortunate to know that the country with more than a Billion population, spend the least in Healthcare expenditure when compared with America, Eruope and even in the Africa. The total health expenditure on GDP (Gross Domestic Production) in India is only 4%. But, the same in America is 14.4%, in Europe is 9.3% and in Africa is 6.5% and this source was given through India Country Report – 2013 statistical Appraisal issued by central statistics office, Ministry of Statistics Programme Implementation, Government of India and World Health Statistics 2012, Published by

WHO ICRA Research and analysis, within this 4% expenditure on Gross Domestic Production in Healthcare in India, only 1.38% is the Government expenditure on Gross Domestic Production in Health care and the rest is provided by Private Health care providers.

6.The writ petitioner also come forward by saying that there is also a huge shortage of Hospitals in the country. As per World Health Statistics 2010, India has only 9 Hospital Beds for a population of 10,000; in USA has 31 Hospital Beds per 10,000 population, in U.K. has 39 Hospital Beds per 10,000 population. Even Brazil has 24 Hospital beds per 10,000 population and China has 20 Hospital Beds per 10,000 population. Most of these existing Hospital beds in India are concentrated in large cities like Chennai and Coimbatore than smaller towns like Thanjavur and Pudukkottai.

7.The writ petitioner also states that 70% of India's Health care infrastructure is concentrated in only 20% cities which are urban. Rural towns like Thanjavur, Trichy, Pudukkottai and surrounding villages are neglected and people living in smaller towns do not get quality Health care facilities when compared to people living in bigger cities like Chennai. Every day due to lack of Health care facilities and Hospital beds, several thousands of people are dieing in smaller towns of India. The Association of Health care providers India is co-ordinating between Government and the Private Hospitals and as the Joint Secretary of the same, he happen to come across the difficulties faced by the private hospitals in villages and semi urban areas in the country. It is the further case of the writ petitioner is that the Association has received several complaints from medium and large private hospitals situate in various parts of Tamilnadu that the Government officials from local administration have been exerting tremendous pressure on them in the pretext to submit certain documents pertaining to building approval of the various hospitals.

8.In this regard, the officials of State machinery are conducting hectic checks on hospitals with high raise and multi-storied buildings across the State hospitals and have threatened them of dire consequences of lock and seal and demolishing the hospitals superstructure.

9.On receipt of the representation from various hospitals sent by the private hospitals to the petitioner Association, they perused the matter and found that the respondents are doing the same in pursuance of the order in WMP.No.471 of 2017 in W.P.No.30367 of 2015, on the file of the Principal Bench of this Court. He also states that more than 80% of the health care is provided by the private health care providers which comprises of small, medium and large hospitals and less than 20% of the hospitals are located in semi-urban and rural areas.

10.The writ petitioner Association also states that running the hospitals in semi-urban and rural areas are great public importance

and health care is matter of right for every citizen. The private hospitals in the semi-urban and rural areas are virtually pursuing the national goal of universal health care at the door steps. The functioning of the hospital in semi-urban and rural areas like Trichy, Tanjore, Madurai, Pudukottai, Sivagangai and other areas is vital to pursue the national goal of universal health care.

11.The writ petitioner also states that it is appropriate and correct on the part of the Town Planning authority to implement proper set back as prescribed by the guidelines of Town Planning authority in hospitals situated in Metropolitan City like Chennai and other big cities. But, the respondents are trying to implement the town planning rules including set back space in hospitals in the semi-urban and rural areas.

12.Considering the nature of the Health care, the Hon'ble Supreme Court of India in the case of ***Paschim Banga Khet Mazdoor Sanity v. State of West Bengal*** reported in ***1996 (4) SCC 37*** a direction was issued by the Hon'ble Supreme Court that the Hospitals at the District Level and Sub-Division Level are to be upgraded, so that serious cases can be treated and also directed the appropriate Government to increase level of specialized treatment of District Level and Semi-Division Level, the Hon'ble Supreme Court held as follows:

> "it is no doubt true that financial resources are needed for providing the facilities, but at the same time it cannot be ignored the constitutional obligation of state to provide adequate medical services to treatment whatever is necessary for this purpose has to be done."

13.As per the order of the Hon'ble Supreme Court of India in the above judgment cited supra, the medical facility has to be provided in nook and corner of the country and it can be done at multilevel and one of them is to encourage the private hospital to step in. The petitioner has apprehend that the decision of respondents to take action against the rural and semi-urban hospital will work exactly the opposite, instead of providing medical care to the rural people, it may deprive them of medical facilities.

14.There is a huge demand for hospital beds especially in semi-urban and rural areas and the enforcement of such a rule will only threaten the existence of the hospitals in the far flung rural areas. The petitioner Association also states that such a stringent rule would cause irreparable injury to the interest of the public living in rural areas who are mostly down-trodden and require affordable health care in the neighbourhood. The universal health care can be achieved only by roping in private health care providers in the rural and semi-urban areas rather than concentrating on the metropolitan areas.

15.The writ petitioner also states that the hospitals with

multi-storied buildings located in semi-urban and rural areas of Tamilnadu are a class by themselves and requires separate treatment in applying rules. Therefore, in the above circumstances, the writ petitioner Association has sent a representation on 15.04.2017 to the respondents with a request to regularize all hospitals with multi-storied buildings located in semi- urban and rural areas of Tamilnadu, since the writ petitioner states that it can be done by improving the safety standards in the existing hospitals.

16.The writ petitioner further states that on the guise of implementing the order in WMP.No.471 of 2017 in W.P.No.30367 of 2015 are moving forward to lock and seal the various hospitals in Tamilnadu and also threatening to demolish the same. The private health care providers in semi-urban and rural areas are the backbone of the health care system and if the respondents pursue further to lock and seal and demolish the various hospitals it would result in breakdown of health care system itself. Therefore, when the petitioner was sent the representation on 15.04.2017 received by the respondents, till date no action was taken. Therefore, they were approached this Court for the prayer for the issuance of a Writ of Mandamus, directing the Respondent to consider the petitioner representation dated 15.04.2017 and for consequential order restraining the respondents from taking any distinctive or coercive steps to lock, seal and demolish the private hospitals in the rural and semi Urban areas till the disposal of the representation dated 15.04.2017.

17.We heard Mr.N.Anandakumar, learned counsel appearing for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1, 2 and 4.

18.It is admitted fact that the writ petitioner is the Association by namely Association of Health Care Providers India, Tamilnadu Chapter residing at F-1, Vairam Vasantham Apartment, Sambakulam, Madurai. The writ petitioner has filed the writ petition in the interest of public at large. It is the case of the writ petitioner is that they have received several complaints from medium and larger private hospitals in Tamilnadu that Government officials from the Local Administration have been exerting excessive pressure on them to submit certain documents pertaining to Building approvals. The respondents also been conducted severe checks on hospitals with high rise or multi-storeyed buildings across Tamilnadu Hospitals have been threatened of dire consequences of lock and seal and demolishment from the authorities concerned, since the said act was taken place after the dismissal of the petition in WMP.No.471 of 2017 in W.P.No.30367 of 2015.

19.It is also further case of the writ petitioner that more than 80% of the health care needs in Tamilnadu are provided by the private health care providers which comprises of the medium and larger hospitals and less than 20% of these hospitals are located in semi-urban and rural villages. The writ petitioner also states that

the impact of having a multi-storeyed building with no proper set back as prescribed by the guideliness of the Town Planning Authority in a hospital in a city like Chennai. But, there would not be any significant impact of stressing for the need for set back in a hospital in a semi-urban or rural village like Madurai, Trichy or Thanjavur. Already the huge demand in hospital beds in especially, the semi-urban and rural areas, the enforcement of such rules will only threaten the existence of hospitals in these areas as such stringent rules would cause irreparable injury to the interest of the public living in rural areas. It is also states that running hospitals in semi-urban and rural areas is of great public importance and health care is a right care for every citizen. Therefore, the petitioner Association filed the present writ petition. Even though, when the petitioner sent a representation on 15.04.2017, there was no action taken by the respondents. Therefore, the writ petitioner seeks direction to the respondents to consider their case in the interest of public at large and pass appropriate orders and further prayer by restraining the respondents from taking any distinctive or coercive steps to lock, seal and demolish the private hospitals in the rural and semi Urban areas till the disposal of the representation dated 15.04.2017.

20.The writ petitioner, who is the Association, sought for the relief to regularize all hospitals with multi-storied buildings located in semi-urban and rural areas of Tamilnadu, since the writ petitioner states that it can be done by improving the safety standards in the existing hospitals. Per contra, the learned Special Government Pleader appearing for the respondents 1, 2 and 4 states that as per the request made by the writ petitioner Association through representation dated 15.04.2017, they will consider their request.

21.This writ petition has been filed by the petitioner Association with public interest. Though the representation was sent on 15.04.2017, it is bounded duty of the respondents should pass appropriate orders on their representation for the welfare of the people in Tamilnadu. But, no action was taken for the reason best known to them.

22.Though the writ petition has been filed only to consider their representation dated 15.04.2017 and till such time, no coercive action to be taken by the respondents against the hospitals in rural and semi urban areas. Therefore, the writ petitioner Association prayed in the writ petition can be granted, since no prejudice would be caused to the respondents.

23.Accordingly, we are inclined to pass the following orders:

(a) the respondents are hereby directed to consider the petitioner's representation dated 15.04.2017 by giving a personal hearing to the petitioner and after inspecting and arriving at the extension of violation of the hospitals, till such time, the respondents should not

take any coercive action against the hospitals in rural and semi-urban areas.

(b) While considering the petitioner's representation dated 15.04.2017, the respondents should keep in mind the goal laid by the Hon'ble Supreme Court in the case of Paschim Banga Khet Mazdoor Samity v. State of West Bengal reported in (1996) 4 SCC 37, since it should be made sure that rural and semi urban areas should have access to all medical services.

(c) the respondents are hereby directed to take effective steps immediately on the petitioner's representation dated 15.04.2017 as early as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Director of Town and Country Planning,
Opposite to LIC, Chengalwarayan Building,
4th floor, 807, Anna Salai,
Chennai - 600 002.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Salai, Egmore,
Chennai - 600 008.

4.The Director,
Tamilnadu Fire and Rescue Services,
Greams Lane, Chennai - 600 006.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.57404
+1cc to Mr.N.ANANDA KUMAR Advocate in SR. No.57221
VS
JS/SKN.RSK/SAR.4/13.07.2017/7P-7C