THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.10158 of 2017

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

The petitioner seeks a Writ of mandamus from this Court to declare GO Ms. No. 9 dated 30.1.2017, issued by the 1st respondent with regards integration of sanitation, pest control, patient care and security services in Government Hospitals which are different and distinct services, as arbitrary, illegal, unjustified and in violation of Articles 14, 19(1)(g) and 21 of the Constitution of India. A consequential direction is sought to set aside the tender Notice dated 25.2.2017, issued by the 2nd respondent, for providing integrated hospital facility and management services in hospitals in the Hyderabad District of the State of Telangana.

The petitioner's contention, in short, is that sanitation and security services are two different and distinct services, and cannot be combined; sanitation is a works contract whereas security service is a labour contract for which minimum wages are payable; the 2nd respondent-Corporation and the Committee, without considering the said aspect, had mechanically accepted the suggestion for integration which was wholly arbitrary and unjustified, since these two services were totally different and had nothing to do with each other; and, without amending the Sanitation Policy, 2010, action was now being taken to integrate the sanitation and security services, and to provide for the method and manner for calling tenders without obtaining prior orders from the Government of Telangana in this regard.

The petitioner has been providing security services to respondent Nos. 4 and 5 on outsourcing basis as per GO Ms. No.544 dated 29.10.1999 and GO Rt No. 4271 dated 1.11.2008. The Government of Andhra Pradesh formulated the Sanitation Policy, 2010 in GO Ms. No.99 dated 5.5.2010 which required the 2nd respondent-Corporation to select implementing agencies for each District, and adopt an open and transparent tender process. Thereafter the Government of Andhra Pradesh issued Memo dated 2.5.2013 requesting the 2nd respondent-Corporation to undertake a critical review to accelerate the evolution of issues involved in implementation of the current sanitation policy. The Managing Director of the 2nd respondent-Corporation, vide letter dated 24.5.2013, entrusted the study, of the new sanitation policy, to the Centre for Innovation in Public Systems (CIPS) at the Administrative Staff College of India (ASCI), Hyderabad. CIPS, by its letter dated 16.8.2015, made suggestions for the improvement of the sanitation system by duly integrating the sanitation and security services. Thereafter, a meeting was held between the Principal Secretary, Medical Education, the Principal Secretary, Health and others, and it was resolved that the security and sanitation services be integrated, and a consortium/joint venture be permitted to participate in the tender process.

It is evident, from the letter addressed by the Director, CIPS dated 16.8.2013 to the Managing Director of the 2nd respondent-Corporation, that a study, of the new Sanitation Policy, was entrusted to CIPS at the Administrative Staff College of India; the Director, CIPS had inspected the Gandhi Hospital, Secunderabad, the District Hospital, King Koti, the Primary Health Centre at Dandumailaram in Ranga Reddy District, and the Child Neo-natal Care Centre at Ibrahimpatnam; they had contacted the Superintendent, Maternity Hospital, Petlaburz in connection with the study of the new sanitation policy; after a detailed study, they had identified a few major problems in the implementation of the new sanitation policy such as (1) timely payments were not made to the agencies; (2) diversion of manpower to patient assistance; (3) non-availability of water in some hospitals; (4) no controlling system on visitors' inflow; (5) there was no co-ordination between the sanitation agencies and the security agencies in the hospitals etc. CIPS observed that, due to improper coordination, a number of incidents had occurred, including theft of new born babies; there was no control on the attendants in the hospitals leading to unhygienic conditions; the Government was facing a lot of criticism from the public due to these untoward incidents and the unsatisfactory conditions in the hospital premises; there was no proper security plan or an evacuation/emergency action plan; the hospitals also did not have 24 hour security and CCTV coverage in the areas of the hospital; appropriate security personnel were not available at the entry and exit points of the hospitals; there was no security for the hospital equipment and material; and there was no close monitoring of the material used, on account of lack of coordination between the sanitation and security agencies.

The Director, CIPS also stated that the existing system in the neighbouring States had been verified; it was seen that the Tamil Nadu Government had invited tenders duly integrating the Sanitation and Security Services for better delivery; and after reviewing the present Sanitation and Security System in Government Hospitals, it was strongly recommended to integrate the sanitation and security services for the Government Hospitals in Andhra Pradesh. CIPS made certain suggestions which, among others, was to invite tenders duly integrating the sanitation and security services for better functioning of the system; mechanical cleaning conditions to be incorporated; number of workers to be specified; sub-letting of the contract to be deleted; maintenance of separate sanitation workers (inside intensive care unit/labour room/operation theatres); training the sanitation workers etc. The letter concludes stating that integration of sanitation and security functions would make the said services viable at various hospitals, including those in remote and inaccessible areas; and this would also introduce accountability on the part of one agency for both the functions.

It is no doubt true that the study conducted by CIPS, and the recommendations made by them, was for integration of sanitation and security functions alone, and did not include patient care services.

Based on the recommendations of CIPS, a new sanitation policy was framed, integrating sanitation and security services, in the year 2013 for a period of three years, and the same was approved by the Government vide GO Ms. No. 37 dated 27.11.2014 duly ratifying the action taken by the 2nd respondent-Corporation in calling for tenders and entrusting the work to various agencies. Thereafter, the sanitation policy of the 2nd respondent and Tamil Nadu etc., were studied by the Heads of Departments, including Medical, Health & Family Welfare Department, Telangana State under the Chairmanship of the Principal Secretary to the Government. The participants in the meeting held on 2.4.2016, at the Indian Institute of Family Welfare, Vengalrao Nagar, Hyderabad, were of the view that providing supportive services for patient care in hospitals would result in better and efficient delivery of services; the existing policy should be modified to ensure better services in health facilities; during the course of implementation of the ongoing sanitation policy, certain other short-falls like non-specification of equipment to be used, types of consumables to be used, performance evaluation etc., were identified; and, therefore, the existing policy, ie the policy of sanitation and security services, should be revised and an "Integrated Hospital Facility Management Services", that incorporated the patient care services component with the previously existing components of sanitation, pest control and security services, should be framed. Thereafter, G.O. Ms. No.9 dated 30.1.2017 was issued by the Government of Telangana. The said GO details the scope of patient care services to include the following:-

(1) Helping patients in transport in wheel chairs, trolleys etc., across different patient care areas such as patient arrival areas, out-patient blocks, operation theatres, wards, ICUS, labour rooms, imaging areas etc.,

(2) Taking laboratory test samples to laboratories and getting reports from the laboratories and imaging areas.

(3) Changing of diapers, placing of bed pans, urinary pans, disposal of bio-medical waste to the appropriate bins of bio-medical waste.

(4) Unforeseen manual jobs related to patient care from time to time.

After careful examination of the matter, and the proposal submitted by the 2nd respondent vide letters dated 25.6.2016, 23.8.2016 and 30.11.2016, the State Government approved the policy regarding Integrated Hospital Facility Management Services for improving patient care services in Government Hospitals in the State. A major revision, to improve the services, was prescribed under the said GO, and all District Collectors, Director of Medical Education, Hyderabad etc., were directed to take necessary action. They were also requested to re-deploy the existing staff for implementation of the present policy.

GO Ms. No. 9 dated 30.1.2017, issued by the Government of Telangana by order and in the name of the Governor of Telangana, is a policy decision of the State Government revising the earlier policy which was confined only to sanitation and security services. The State Government has, in its wisdom, considered it appropriate to also provide for the patient care services component, in addition to the previously existing components of sanitation, pest control and security services, under the Head "Integrated Hospital Facility Management Services".

Public authorities must have liberty and freedom in framing policies. While the discretion is not absolute, unqualified, unfettered or uncanalised, and the judiciary has control over all executive actions, Courts are ill-equipped to deal with these matters. In such matters of policy, decisions are taken by the government keeping in view several factors, and it is not possible for the Courts to consider competing claims and conflicting interests, and conclude which way the balance tilts. There are no objective, justiciable or manageable standards to judge the issues nor can such questions be decided on *a priori* considerations. (**Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal**[1]).

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. The Court must resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices. If the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority." (**Sterling Computers Ltd v. M & N Publications Ltd**[2]; **Administrative Law, Prof. Wade**).

The Court must, while adjudging the constitutional validity of an executive policy, grant a certain measure of freedom or 'play in the joints' to the Executive. Mere errors of the government are not subject to judicial review. It is only its palpably arbitrary exercise which can be declared void. The Court cannot strike down a policy decision taken by the Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. (**Dhampur Sugar (Kashipur) Ltd.**[1]; **Metropolis Theater Co. v. State of Chicago**[3]; **State of M.P. v. Nandlal Jaiswal**[4]). The Government is entitled to make pragmatic adjustments and policy decisions as may be necessary or called for under the prevalent peculiar circumstances. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more

[1] (2007) 8 SCC 418
[2] AIR 1996 SC 51
[3] 57 l Ed 730: 228 US 61 (1912)
[4] (1986) 4 SCC 566

scientific or logical. A policy decision can be interfered with by the Court only if such a decision is shown to be patently arbitrary, discriminatory or malafide. (**Ram Singh Vijay Pal Singh v. State of U.P.**[5]; **Netai Bag v. State of W.B.**[6]; **Nandlal Jaiswal**[4]).

It is not for the Courts to examine the relative merits of different policies, and consider whether a wiser or better one can be evolved. Nor are Courts inclined to strike down a policy merely because it is urged that a different policy would have been fairer or wiser or more scientific or more logical. (**BALCO Employees' Union (Regd.) v. Union of India**[7]). It is not in the domain of the Court to embark upon the unchartered oceans of public policy. The fact that a policy may be troubled by crudities, inequities, uncertainties or the possibility of abuse cannot form the basis for striking it down. (**Natural Resources Allocation, In Re, Special Reference No.1 OF 2012**[8]; **R.K. Garg v. Union of India**[9]). The judiciary cannot engage in an exercise of comparative analysis of the fairness, logical or scientific basis, or the wisdom of a policy. The wisdom and advisability of policies are, ordinarily, not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or is arbitrary or irrational or an abuse of power. (**Natural Resources Allocation, In Re, Special Reference No.1 of 2012**[8]; **The State of M.P. v. Narmada Bachao Andolan**[10]). The Court is not the forum where conflicting policy claims may be debated, as it is only required to adjudicate the legality of a measure which has little to do with the relative merits of different theories. (**Natural Resources Allocation, In Re, Special Reference No.1 of 2012**[8]; **Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India**[11]).

This Court would not ordinarily examine, in judicial review proceedings under Article 226 of the Constitution of India, policy choices

[5] (2007) 6 SCC 44
[6] (2000) 8 SCC 262
[7] (2002) 2 SCC 333
[8] (2012) 10 SCC 1
[9] (1981) 4 SCC 675
[10] (2011) 7 SCC 639
[11] (1970) 1 SCC 248

of the Executive. Policy is not static but is dynamic. (**T.N. Education Deptt. Ministerial & General Subordinate Services Assn. v. State of T.N.**[12]). The Court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes the fundamental rights guaranteed by the Constitution of India or any other statutory right. (**Premium Granites v. State of Tamilnadu**[13]). It is not within the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether a better public policy can be evolved. The Court cannot examine the relative merits of different policies, and strike it down merely on ground that another policy would have been fairer and better. (**Villianur Iyarkkai Padukappu Maiyam v. Union of India**[14]).

If the policy cannot be faulted on grounds of malafides, unreasonableness, arbitrariness or unfairness, the mere fact that it would hurt business interests does not justify invalidating the policy. Courts should not express their opinion whether, at a particular point of time or in a particular situation, any such policy should have been adopted or not. It is best left to the discretion of the State. (**Ugar Sugar Works Ltd. v. Delhi Admn.**[15]). No direction can be given or expected from the Court regarding the "correctness" of an executive policy unless, while implementing such policies, there is infringement or violation of any Constitutional or statutory provision. (**Ugar Sugar Works Ltd.**[15]). The Court would not substitute its opinion for that of the policy makers, and would defer to the wisdom of those who are entrusted with the task of framing policies. (**Centre for Public Interest Litigation v. Union of India**[16]).

It is neither desirable nor advisable for the Court to direct or sermonise the Government to adopt a particular policy which it deems fit

[12] (1980) 3 SCC 97
[13] (1994) 2 SCC 691
[14] (2009) 7 SCC 561
[15] (2001) 3 SCC 635
[16] (2000) 8 SCC 606

or proper, as it does not have effective means to decide which alternative, out of the many competing ones, is the best in the circumstances. (**State of Jharkhand v. Ashok Kumar Dangi**[17]). In respect of public policies of the Government, the Court should not become the authority to accord approval. When two or more options or views are possible, and after considering them the Government takes a policy decision, it is then not the function of the Court to examine the matter afresh or sit in appeal over such a policy decision. (**Narmada Bachao Andolan**[10]; **BALCO Employees' Union (Regd.)**[7]). While the Court may even review the policy of the executive if it is clearly demonstrated that such policy is contrary to any statutory provision or the Constitution, it cannot consider the relative merits of different policies and decide for itself whether a wiser or a better policy can be evolved. (**Statewide Recognized (RTA) Agents Welfare Association v. Govt. of A.P.**[18]).

If a decision has been taken in a bonafide manner, although not strictly following the norms laid down by Courts, such decisions are upheld on the principle that Courts, while judging the validity of executive policy decisions, must grant certain measure of freedom or ***"play in the joints"*** to the Executive. (**Sterling Computers Ltd.**[2]). The Government has, while taking a policy decision, the right to 'trial and error' as long as both trial and error are bonafide and within the limits of authority. (**BALCO Employees' Union (Regd.)**[7]; **Netai Bag**[6]; **Ram Singh Vijay Pal Singh**[5]). The Court would not strike down a policy merely because there is a variation. Consistency is not always a virtue. What is important is to know whether irrational and extraneous factors foul. (**Tamil Nadu Education Deptt. Ministerial & General Subordinate Services Assn.**[12]). There can be no quarrel if a policy is revised. The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa. (**Tamil**

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[17] (2011) 13 SCC 383
[18] 2003(3) ALD 212 (DB)

Nadu Education Deptt. Ministerial & General Subordinate Services Assn.[12]). Reform must begin somewhere if it has to begin at all and, therefore, the administrator who has complex problems to solve must be allowed the freedom to proceed tentatively, step by step. (**State of Jammu and Kashmir v. Triloki Nath Khosa**[19]).

It is not for the Court to examine the merits or demerits of a policy. (**Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**[20]). The Court would not substitute its opinion for that of the Executive as to what policy would best serve the object, or sit in judgment over the wisdom and effectiveness or otherwise of the policy merely on the ground that, in the view of the Court, the impugned policy will not help to serve the object. As long as the body, entrusted with the task of framing the policy, acts within the scope of the authority conferred on it, in the sense that the policy made by it has a rational nexus with the object, the Court would not concern itself with the wisdom or efficaciousness of such a policy. It is exclusively within the province of the Executive to determine, as a matter of policy, what measures would have to be incorporated in the policy for the efficacious achievement of the objects. It may be a wise policy which will effectuate the purpose, or it may lack effectiveness calling for its revision and improvement. Any drawbacks in the policy will not render it ultra-vires and the Court would not strike it down on the ground that, in its opinion, it is not a wise or prudent policy. (**Paritosh Bhupeshkumar Sheth** [20]).

Courts should be slow to interfere and must leave policy decisions to those who are more familiar with such problems than the Courts generally can be. (**State of T.N. v. K. Shyam Sunder**[21]; **University of Mysore v. C.D. Govinda Rao**[22]; **Neelima Misra v. Harinder Kaur**

[19] (1974) 1 SCC 19
[20] (1984) 4 SCC 27
[21] (2011) 8 SCC 737
[22] AIR 1965 SC 491

Paintal[23]; **Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity**[24]; **Basavaiah (Dr.) v. Dr. H.L. Ramesh**[25] and **State of H.P. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh**[26]). The Courts are not qualified to set their independent judgment in such matters against that of the chosen State authorities. (**Federal Power Commission v. Hope Gas Co.**[27]; **Railroad Commission of Texas v. Rowan & Nichols Oil Company**[28]). Expertise in public matters is necessary before one may engage in the making, or in the criticism, of a policy. Courts do not possess the expertise and are, consequently, incompetent to pass judgment on the appropriateness or the adequacy of a particular policy. (**Dhampur Sugar (Kashipur) Ltd.**[1]; **Liberty Oil Mills v. Union of India**[29]; **Federal Power Commission**[27]). Matters of policy must necessarily be left to those with the necessary expertise as they often are matters of prediction of ultimate results on which even experts can seriously err and, doubtlessly, differ. (**Natural Resources Allocation, In Re, Special Reference No.1 of 2012**[8]; **BALCO Employees' Union (Regd.)**[7]; **Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India**[30]; **M/s. Prag Ice Oil Mills v. Union of India**[31]).

Due respect should be given to the wisdom of those who are entrusted with the task of framing policies. (**Centre for Public Interest Litigation**[16]). Courts would, ordinarily, exercise restraint, and refrain from interfering with policy decisions of the Government, save violation of Part-III of the Constitution of India, including Articles 14 and 19(1)(g) thereof. Courts do not normally interfere with the policy decisions of the Government. The wisdom in a policy decision of the Government is not justiciable unless it is capricious, arbitrary, whimsical so as to offend Article 14 of the Constitution or any statutory or constitutional provision.

[23] AIR 1990 SC 1402
[24] AIR 2010 SC 1285
[25] (2010) 8 SCC 372
[26] (2011) 6 SCC 597
[27] 320 US 591, 602 (1944)
[28] 311 US 570-577, 85 L. ed. 358,362
[29] (1984) 3 SCC 465
[30] (1992) 2 SCC 343
[31] (1978) 3 SCC 459

The only thing to be seen by the Court, when a policy decision is assailed, is whether the policy in question is arbitrary or violative of any mandatory provisions of law. Unless the policy decision is inconsistent with the Constitution or the laws, the Court must exercise jurisdiction with circumspection. (**Leaap Forwarders (P) Ltd. v. Commissioner of Central Excise and Customs, Guntur**[32]; **Tata Iron and Steel Co. Ltd. v. Union of India**[33]; **Bennett Coleman & Co. v. Union of India**[34]). Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. Excessive interference by the judiciary in the functions of the executive is not proper. In view of the inherent complexities involved in modern society, some free play must be given to the Executive. (**Transport and Dock Workers Union v. Mumbai Port Trust**[35]; **Missouri, Kansas and Texas Railway Co. v. May**[36]; **Aravali Golf Club v. Chander Hass**[37]).

The scope of judicial review of an executive policy is limited. The court cannot impinge upon the judgment of the executive as to the priorities. (**State of H.P. v. Umed Ram Sharma**[38]). A policy decision can be interfered with by the Court only if such decision is shown to be patently arbitrary, discriminatory or malafide (**Nandlal Jaiswal**[4]) or unreasonable. The concept of 'reasonableness' defies definition. The functional and conceptual implication of the term 'reasonableness' is that it is essentially another word used for public policy. (**Om Prakash v. State Of Uttar Pradesh**[39]; **Friedmann**: '**Legal Theory, 4th Ed., at pages 83-85**'). Unless the policy or action is inconsistent with the Constitution and the laws or is arbitrary or irrational or is an abuse of power, the Court will not interfere. (**Federation of Railway Officers Association v. Union of India**[40]). As it is not even the petitioner's case that the policy decision of the State Government, in G.O.Ms.No.9 dated 30.01.2017, is

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[32] 2001 (3) ALD 216 (DB)
[33] AIR 1996 SC 2462
[34] (1972) 2 SCC 788
[35] (2011) 2 SCC 575
[36] 48 L Ed 971
[37] (2008) 1 SCC 683
[38] (1986) 2 SCC 68
[39] (2004) 3 SCC 402
[40] (2003) 4 SCC 289

contrary to any statutory provision, interference by this Court would be justified only if the impugned G.O violates the petitioner's fundamental rights either under Article 19(1)(g) or Article 14 of the Constitution of India.

On the question whether the policy of the Government, enunciated in G.O.Ms. No.9 dated 30.01.2017, violates the petitioner's fundamental rights under Article 19(1)(g) of the Constitution of India, it must be borne in mind that, under Clause (1) (g) of Article 19, every citizen has the freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interests of public welfare and the other grounds mentioned in clause (6) of Article 19. (**Saghir v. State of U.P.**[41]; **Krishnan Kakkanth v. Govt. of Kerala**[42]). Fundamental rights, guaranteed under Article 19 of the Constitution, are not absolute, but are subject to reasonable restrictions to be imposed against enjoyment of such rights. Such reasonable restrictions seek to strike a balance between the freedom guaranteed by any of the clauses under Article 19(1) and the social control permitted by clauses (2) to (6) of Article 19. The reasonableness of the restriction is to be determined in an objective manner, and from the standpoint of the interests of general public, and not from the standpoint of the interests of the persons upon whom the restriction are imposed or upon abstract considerations. A restriction cannot be said to be unreasonable merely because, in a given case, it operates harshly. (**Mohd. Hanif v. State of Bihar**[43]; **Krishnan Kakkanth**[42]).

In determining the infringement of the right guaranteed under Article 19(1), the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into the judicial

[41] AIR 1954 SC 728 = 1955 (1) SCR 707
[42] (1997) 9 SCC 495
[43] AIR 1958 SC 731

verdict. (**Laxmi Khandsari v. State of U.P.**[44]; **Treveli v. State of Gujarat**[45]; **Herekchand Ratanchand Banthia v. Union of India**[46]; **Krishnan Kakkanth**[42]). Canalisation of a particular business even in favour of specified individuals is reasonable where vital interests of the community are concerned. (**Parbhani Transport Coop. Society Ltd v. Regional Transport Authority**[47]; **Shree Meenakshi Mills Ltd. v. Union of India**[48]; **Lala Hari Chand Sarda v. Mizo District Council**[49]; and **Krishnan Kakkanth**[42]).

Although a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist that the Government or any other individual should carry on business with him. The government, or the individual concerned, has the right to enter into contract with a particular person or to determine person or persons with whom he or it will deal. (**Krishnan Kakkanth**[42]). The Constitution does not recognise franchise or rights to business which are dependent on grants by the State or business affected by public interest. (**Saghir**[41]; **Krishnan Kakkanth**[42]). No person can claim a fundamental right to carry on business with the government, and all that he can claim is that, in competing for the contract, he should not be unfairly treated and discriminated to the detriment of public interest. (**Association of Registration Plates v. Union of India**[50]; **Erusian Equipment & Chemicals Ltd. v. State of W.B.**[51]). As the petitioners cannot insist that the Government should carry on business with them, or should entrust separate agencies with each of the services relating to security, sanitation, pest control and patient care, the action of the Government in combining all these services, and in entrusting them to one agency, does not violate the petitioners fundamental rights under Article 19(1)(g) of the

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[44] AIR 1981 SC 873
[45] AIR 1968 SC 1323
[46] AIR 1970 SC 1453
[47] AIR 1960 SC 801
[48] (1974) 1 SCC 468
[49] AIR 1967 SC 829 = 1967(1) SCR 1012
[50] (2005) 1 SCC 679
[51] (1975) 1 SCC 70

Constitution of India. The challenge to the validity of the impugned tender notification, and to G.O.Ms. No.9 dated 30.01.2017, on this ground necessitates rejection.

The only other question which necessitates examination is whether the policy framed under G.O.Ms. No.9 dated 30.01.2017 is in violation of Article 14 of the Constitution of India. It is only if the classification of services, and the action of the Government in combining patient care services with the existing services, is held invalid can the respondents be held to have violated Article 14. Before examining whether G.O.Ms.No.9 dated 30.01.2017 violates Article 14, it is necessary to first consider the tests prescribed for a valid classification under Article 14 of the Constitution of India. In order to pass the test of a permissible classification under Article 14 two conditions must be fulfilled, namely, (*i*) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (*ii*) the differentia must have a rational relation to the object sought to be achieved. In order to accept a classification as permissible, and not hit by Article 14, the measure in question will have to pass these twin tests. (**Dimapati Sadasiva Reddi, Vice-Chancellor, Osmania University v. Chancellor**[52]; **Budhan Choudhry v. State of Bihar**[53]; **Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar**[54]). The classification may be founded on different basis. What is necessary is that there must be a nexus between the basis of classification and the object of the policy under consideration. (**State of Maharashtra v. Indian Hotel & Restaurants Assn.**[55]; **Budhan Choudhry**[53]).

Article 14 forbids class legislation, and not a reasonable classification. Persons similarly situated must be similarly treated. Where, however, the persons are not similarly situated, there is no prohibition to treat them separately, provided of course there is a

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[52] AIR 1967 SC 1305
[53] (1955) 1 SCR 1045
[54] (1959) SCR 279
[55] (2013) 8 SCC 519

reasonable nexus between the basis of the classification and the object sought to be achieved. (**K. Muthusamy v. Government of Tamilnadu**[56]). Every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution. Discrimination means an unjust and unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and unfavourable bias, an unfair classification. (**Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Coop. Hs. Society**[57]; **Narmada Bachao Andolan**[10]; **Madhu Kishwar v. State of Bihar**[58]).

A valid classification based on a just objective is truly a valid discrimination. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. Legalistically, the test for a valid classification may be summarized as a distinction, based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. (**Kallakkurichi Taluk Retired Officials Assn. v. State of T.N.**[59]). Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group, and such differential attributes must bear a just and rational relation to the object sought to be achieved. (**Indian Hotel & Restaurants Assn.**[55]; **Triloki Nath Khosa**[19]).

In order to establish that the protection of the equality clause has been denied to them, it is not enough for the petitioners to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. It is for the petitioners to show that the classification is unreasonable and bears no rational

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[56] LAWS -TLMAD 2003-0-582: MANU/TN/0192/2003
[57] (2013) 5 SCC 427
[58] (1996) 5 SCC 125
[59] (2013) 2 SCC 772

nexus with its purported object. (**Triloki Nath Khosa**[19]). The person assailing the classification "carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences, (**Shri Sitaram Sugar Co. Ltd. v. Union of India**[60]; **Federal Power Commission**[27]), or that there has been a clear transgression of the constitutional principles. (**Ram Krishna Dalmia**[54]; **Gauri Shanker v. Union of India**[61]).

Where a party seeks to impeach the validity of a classification on the ground that they offend Article 14, the burden is on him to plead and prove the infirmity, to set out facts necessary to sustain the plea of discrimination, and to adduce "cogent and convincing evidence" to prove those facts for "there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification". Unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show, by pleading and placing the necessary material before the Court, that the said classification is unreasonable and is violative of Article 14 of the Constitution. (**Triloki Nath Khosa**[19]; **G.D. Kelkar v. Chief Controller of Imports and Exports**[62]).

Before examining whether the petitioner has discharged the burden of establishing that the classification of services, under G.O.Ms.No.9 dated 30.01.2017, violates Article 14 of the Constitution of India, it is also necessary to note that there is a presumption that the governmental action is reasonable and in public interest, and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is heavy and should be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are

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[60] (1990) 3 SCC 223
[61] (1994) 6 SCC 349
[62] AIR 1967 SC 839

large number of considerations which necessarily weigh with the Government in taking action. (**Villianur Iyarkkai Padukappu Maiyam**[14]). The doctrine of reasonable classification recognises that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated. The question is: what does this ambiguous and crucial phrase "similarly situated" mean? The test which has been evolved for this purpose is that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others, and that differentia must have a rational relation to the object sought to be achieved. (**Mohd. Shujat Ali v. Union of India**[63]).

The "Integrated Hospital Facility Management Services" (which would include sanitation, pest control, security and patient care services) is distinct from the earlier combined services which was confined to sanitation, pest control and security services, and did not include patient care services. It is only if this classification is held not to have a reasonable nexus to the object sought to be achieved, would it violate Article 14 of the Constitution of India. As is evident from GO Ms. No. 9 dated 30.1.2017, the object sought to be achieved is to provide sanitation, pest control, security and patient care services to the inmates of Government Hospitals. Patient care services are detailed in GO Ms. No. 9 dated 30.1.2017 to include transporting hospital patients in wheel chairs, taking laboratory test samples and obtaining reports, changing diapers, placing of bed pans, urinary pans, and disposing of bio-medical waste. The State Government has, in its wisdom, decided to entrust all these services to one agency not only to hold them accountable in all the aforesaid areas, but also to ensure that better patient care services are provided in Government Hospitals, apart from improving security

[63] AIR 1974 SC 1631

services, and in providing improved pest control and sanitation services thereat. It is no part of the respondent's burden to justify the classification or to establish its constitutionality (**Triloki Nath Khosa**[19]). It is evident that the petitioner has failed to discharge the onus of establishing that the classification, in the present case, violates Article 14.

It must also be borne in mind that the complaint, of violation of Article 14 of the Constitution, cannot be judged by adopting a doctrinaire approach. It is not prudent or pragmatic to insist on a mathematically accurate classification covering diverse situations and all possible contingencies in view of the inherent complexities involved. (**State of Karnataka v. Mangalore University Non-Teaching Employees Association**[64]). Classification, to be valid under Article 14, need not necessarily fall within an exact or a scientific formula for exclusion or inclusion of persons or things. There is no requirement of mathematical exactness for determining the validity, as long as it is not *palpably* arbitrary. (**Indian Hotel & Restaurants Assn.**[55]; **Ram Krishna Dalmia**[54]; **Welfare Association, A.R.P. v. Ranjit P.Gohili**[65]; **Shashikant Laxman Kale v. Union of India**[66]).

The Execute enjoys considerable latitude, and exercises its power of classification enriched by its experience and taking into consideration myriad circumstances. (**Ombalika Das v. Hulisa Shaw**[67]). Precision and arithmetical accuracy will not exist in any categorisation, and such precision and accuracy is not what Article 14 contemplates. As long as the broad features of the categorisation are identifiable and distinguishable, and the categorisation is reasonably connected with the object targeted, Article 14 does not forbid such a course of action. (**Subramanian Swamy v. Raju**[68]; **Murthy Match Works v. CCE**[69]; **Roop**

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[64] (2002) 3 SCC 302
[65] (2003) 9 SCC 358
[66] (1990) 4 SCC 366
[67] (2002) 4 SCC 539
[68] (2014) 8 SCC 390

Chand Adlakha v. DDA[70]; **Kartar Singh v. State of Punjab**[71]; **Basheer v. State of Kerala**[72]; **State of Madhya Pradesh v. Gopal D. Tirthani**[73]**;** **B. Manmad Reddy v. Chandra Prakash Reddy**[74] and **Transport and Dock Workers Union v. Mumbai Port Trust**[75]).

This Court would not sit in appeal over executive judgment to find out whether, on a comparative evaluation of the rival theories touching upon the wisdom of the policy, the theory advocated by the petitioners is to be preferred. Classification is primarily for the authority charged with the duty of framing the criteria and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld. (**Triloki Nath Khosa**[19]). The test ought not to be what would be a 'better' basis for the categorization for that would introduce subjectivity in the process. The test is whether categorization, on the basis adopted, results in hostile discrimination and adoption of the criteria has no reasonable nexus with the object sought to be achieved. (**Samaj Parivartana Samudaya v. State of Karnataka**[76]). It is only where the decision is shown to be based on extraneous or irrelevant considerations or is actuated by malafides or is irrational and perverse or is manifestly wrong that the Court would reach out its lethal arm and strike down the decision. (**Mohd. Shujat Ali**[63]). On the earlier policy, integrating security and sanitation services in the year 2013, being reviewed, it was found necessary that patient care services should also be integrated with those services, and that the "Integrated Hospital Facility Management Services" should be entrusted to one agency to ensure accountability and synergy in operations.

We are satisfied that the policy decision of the State Government, in issuing GO Ms. No. 9 dated 30.1.2017, does not violate Article 14 of

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69 (1974) 4 SCC 428
70 1989 Suppl. (1) SCC 116
71 (1994) 3 SCC 569
72 (2004) 3 SCC 609
73 (2003) 7 SCC 83
74 (2010) 3 SCC 314
75 (2011) 2 SCC 575
76 (2013) 8 SCC 154

the Constitution of India. We see no reason, therefore, to interfere with the said policy decision of the State Government, or the consequential tender notification issued by the 2nd respondent-Corporation.

The writ petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

3rd April, 2017

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.10158 of 2017

Date: 3.4.2017

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