IN THE HIGH COURT OF JUDICATURE AT BOMBAY
PANAJI BENCH, GOA

WRIT PETITION NO. 359 OF 2007

1. Prakash B. Sardessai
Residing at Madant,
Cortalim, Goa

2. Vishwesh Sardessai
S/o. Mr. Prakash B. Sardessai
Residing at Madant,
Cortalim, Goa **… Petitioners**

Versus

1. **The Secretary,**
Ministry of Health,
Government of Goa,
Secretariat, Porvorim, Goa.

2. **The Director,**
Directorate of Health Services,
Government of Goa,
Campal, Panaji, Goa.

3. **Goa Medical College & Hospital,**
through its Dean, with his office at
Bambolim, Ilhas, Goa.

4. **Goa Medical Council,** through its
Secretary, with its Office at
Bambolim, Ilhas, Goa.

5. **Medical Council of India**, with
office at New Delhi. **…Respondents**

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Keny, Amicus Curiae for the petitioners.
Mr. D.J. Pangam, Advocate General with Mr. Deep Shirodkar, Addl. Government Advocate for respondent nos. 1 and 2.

CORAM: G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ.
DATED: 06th October, 2023.

JUDGMENT: (Per G. S. Kulkarni, J.)

The judgment has been divided into following parts:

	Contents	Paragraphs Nos.
A	Preface	1 to 8
B	Petitioners' concerns	9 to 14
C	Affidavits and Commissioner's Report.	15 to 47
D	Discussion and Conclusion	48 to 78
E	Directions	79
F	Concluding Paragraphs	80 to 83

A PREFACE

1. We are reminded of the following inspirational words of Mahatma Gandhi, Father of our great nation -

> **"It is health which is real wealth, and not pieces of gold and silver."**

2. This petition filed in public interest raises issues of seminal importance in regard to the health care facilities at the Government hospitals, clinics and dispensaries in the State of Goa.

3. In dealing with the present petition, we are reminded of the observations as made by a Division Bench of this Court, in the case of

Rakesh Subhash Bhamare vs. State of Maharashtra[1], being a case which was dealing with the condition of public hospitals at Malegaon in Maharashtra. The Court observed that citizens have a legal and constitutional right to have basic medical facilities. It was observed that there is a legal obligation on the State/Municipal Corporation in their public character to provide public welfare hospitals, which are required to effectively function and cater to the medical and health needs of thousands of citizens who would depend on such hospitals. The Court observed that it was expected that the hospitals should have adequate doctors and staff in all branches, along with all the infrastructure necessary for its functioning, which would include everything from building to medical equipments, and any deficiency in that regard not only directly affected public health, but the fundamental rights of the citizens guaranteed under Article 21 of the Constitution. The Court also observed that any dereliction on this count is required to be dealt strictly, as non-performance on these counts directly infringes the citizens' rights guaranteed under Article 21 of the Constitution. One of the significant observation made by the Court was to the effect that public hospitals cannot become "dens of disease". The Court also observed that in achieving public health goals, there had to be a realistic effort to take all steps and that any cosmetic, superficial, and temporary measures are not a solution to the issues faced by the public

1 2016 SCC Online Bom 13097

health system. The observations made by the Court in this regard are wholly relevant to the case in hand which read thus:

> *"2. The citizens have a legal and a constitutional right to have basic medical facilities. It is thus, a legal obligation on the State/Municipal Corporation in their public character to provide public welfare hospitals which are required to effectively function and cater to the medical and health needs of thousands of citizens who would depend on such hospitals. It is expected that the hospitals have adequate doctors in all branches, staff and all the necessary infrastructure which would include all facets from building to medical equipments and all other necessary requirements for a hospital. In the event of deficiency in any of the factors, it would not be possible for the hospital to cater to the public need and benefits. This in turn would directly affect public health and the fundamental rights of the citizens guaranteed under Article 21 of the Constitution. It is well settled that the right to hygiene and safe environment is a requirement of Article 21 of the Constitution. Such hygiene and safe environment in public hospitals thus also becomes a necessary concomitant of Article 21 of the Constitution. Any failure to maintain such hygiene ought to be seriously viewed and dealt by the concerned authorities and on the failure at the hands of the authorities by the Court. In this progressive era of scientific and technological advancement it is expected that in all these public hospitals the authorities provide for the best technology and equipment for maintenance of health and hygiene. It is these public hospitals where there is a need for such upkeep and maintenance due to large number of people visiting these hospitals. It is a matter of great regret that though it is a common knowledge that the public hospitals are poorly maintained, lack hygiene and as also lack the fundamental requirements of adequate staff and infrastructure, barring few exceptions, we still shut our eyes at this. Is it an obligation of everyone may it be the elected representatives of the Municipal Body or the State Legislature or the executive authority in-charge of the Municipal body, the Government administration for that matter the concerned Guardian Minister of the State to ensure these basic needs of the citizens ? In this regard, there is definitely a public obligation/duty and accountability on their part to be performed.*
>
> *3. The question is are we going to shut our eyes to these public needs year after year and remain without any change? We are thus of the clear opinion that these are the issues where the concerned authorities need to act urgently and effectively. No neglect in regard to providing adequate medical facilities in public hospitals, maintenance of health and hygiene can be tolerated. Any dereliction on this count is required to be dealt strictly as non-performance on*

> *these counts, directly infringes the citizens' rights under Article 21 of the Constitution. Public hospitals cannot become dens/sources of disease. This is more so as it a matter of common knowledge that on a mass scale citizens in almost all large cities are victims of viral diseases and there is a large dependency on public hospitals. These fundamental facets cannot be overlooked/neglected when the moto is of progress and idealism. To achieve these objectives there has to be a realistic effort and all steps to be taken in that regard. Cosmetic, superficial and temporary measures are no good. The need for public hospitals is a need in perpetuity and there cannot be anything but, a permanent and a solid mechanism to make such facility realistic and effective. If the goal of the Government is to be pioneers in the country on several other fronts, can the State not achieve to be idealistic on this front? It is well said that health is wealth and the greatest wealth is health. Surely, we cannot think of population which is not in good health directly affecting the progress of the country*."

4. In the context in hand, a perusal of the record indicates that on the present proceedings, from time to time significant orders are passed by this Court touching various issues in regard to infrastructure facilities, doctors, staff, etc. in the Government hospitals/clinics. Such orders can be noted hereunder.

5. On 28th January, 2008, a co-ordinate Bench in its order recorded a statement as made by the learned Advocate General that the Government was considering to constitute a committee of a permanent nature to monitor the functioning of the major government hospitals in the State of Goa and make recommendations and suggestions to improve the infrastructure and functioning in these hospitals so as to make them patient-friendly.

6. In its subsequent order dated 19th March, 2008, the Court

categorically observed that the development of health care has now been treated as a fundamental obligation of the State inasmuch as Article 21 of the Constitution includes the right to health and the right to live with dignity. By such order, the Court appointed "Commissioners" to visit three main hospitals and at least two primary health centres at their discretion and make a report to the Court about their existing condition. Consequent thereto a report came to be submitted by the Commissioners. On such report being submitted, from time to time orders were passed in regard to the remedial steps being taken. In its order dated 30th June, 2009, the Court noted its concern also in regard to the supply of medicines in Government hospitals; medicines being supplied to the said hospitals free of cost, and despite such facility, the patients were required to purchase the same privately. A statement on behalf of the State Government as made by the learned Advocate General came to be recorded that the Government would make appropriate arrangements.

7. Thereafter, by an order dated 3rd February, 2011, the Court recorded the stand of the State Government to start a new hospital on a public-private partnership basis, relying on the decision of the Supreme Court in case of ***State of Punjab & Ors. vs. Ram Lubhaya Baga and Ors.***[2]. We do not refer to several other orders, suffice it to observe that all orders passed by the Court are in relation to different contemporary issues

[2] 1998 (4) SCC 117

touching the Government hospitals, concerning the infrastructure facilities available in such hospitals.

8. On the above backdrop, when this Court heard the proceedings on 02nd December, 2022, the following order came to be passed:

> *"1. The Petition raises issues of seminal importance in regard to the availability of health care facilities at the Government hospitals, clinics and dispensaries in the State of Goa.*
>
> *2. We have heard the learned Amicus, Mr. Lotlikar, Senior Advocate as also, Ms. Sulekha Kamat, learned Additional Government Advocate.*
>
> *3. Considering the earlier orders passed in the present proceedings, we are of the opinion that it would be appropriate that the learned Amicus deliberates on the issue of concern, as discussed in the Court today with the learned Advocate General so that suggestions can be made for a permanent mechanism to be put in place.*
>
> *4. On the adjourned date of hearing, we would be inclined to consider the suggestions as may be placed on record so that we can pass appropriate orders to put a permanent effective mechanism in place. The endeavour would be that the citizens of Goa receive all the facilities pertaining to medical treatment in the Government hospitals, clinics and dispensaries. The areas of concern would be proper infrastructure, cleanliness and hygiene, adequate number of Doctors, medical staff, medical equipments, medicines, indoor and outdoor facilities and the like, to be made available so that no citizens suffer for want of medical aid.*
>
> *5. Stand over to 16 December 2022 (High on Board).*

B. Petitioners Concerns

9. On the above conspectus, we note the concerns of the petitioners. The petitioners have contended that Goa prides itself in being a "*numero uno*" (number one) State in the country with the highest per-capita income

and one of the most popular tourist destinations of the world. However, the State of Goa lacks behind in the health care facilities to its residents. Petitioner No.1 has given an example of how his son Balkrishna Sardessai suffered due to a lack of healthcare facilities after having met with an accident. This incident made the petitioner No.1, survey the conditions of the Government hospitals and clinics in the State of Goa. He has contended that at all relevant times, there are more than 100 nursing homes in the State of Goa, the majority of which are ill-equipped and badly maintained, and more often than not, they do not have the minimum infrastructural facilities which are required for proper treatment of patients. He also stated that hygiene conditions in these nursing homes are extremely poor and the majority of the nurses are neither properly trained nor qualified to be nurses.

10. The petitioners have stated that there are three major Government hospitals in the State of Goa, the largest being the Goa Medical College & Hospital at Bambolim, Asilo Hospital at Mapusa, and the Hospicio Hospital at Margao. It is stated that there are smaller public health centres at the taluka level. The petitioners have also contended that the facilities available at these hospitals and public health centres were awfully inadequate. The administration and management of these hospitals was undertaken in a most unscientific manner. There was a lack of

professionalism in the management of these hospitals, on which not only the residents of Goa but also the residents of the adjoining districts from the neighboring States were also dependent. It is the petitioners case that there was no political will to set up the things right. It is stated that eventually, the residents of Goa were required to depend on hospitals outside the State, particularly in Mumbai and Bangalore for specialized medical treatment, and many a time, deaths occurred in transit. In such context, the petitioners refer to the provisions of Article 41 of the Constitution of India, which provide that the State shall, within the limits of its economic capacity and development make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness and disablement. It is their contention that the State of Goa is enjoined to provide proper health care to the resident within the State of Goa.

11. The petitioners have set out various lacunas/deficiencies not only in regard to the health/medical infrastructure but also in regard to the shortage of doctors and the medical staff in different specialties. The need to set up well-equipped ultra-modern pathological laboratories at the Government hospitals and for providing complete infrastructure in different medical branches has also been emphasized. The petitioners have stressed upon the need to have ultra-modern equipments to be provided in

different branches like the Computed Tomography Scan (C.T. Scan) Machines, Magnetic Resonance Imaging (M.R.I.) Machines, Ultra-Modern Machines for Mammography, etc. They have also set out the need for providing super-speciality treatments in regard to neurological disorders, cardio-thoracic surgery, kidney transplantation, plastic surgery, radiotherapy, total replacement of joints, and for other major diseases/ illnesses and to effectively implement the 'Goa Mediclaim Scheme' dated 18th January, 2000.

12. The petitioners have contended that the Goa Medical College and Hospital at Bambolim has a huge medical complex with requisite space for establishing super-specialities and for which facilities were not available. It is their contention that far from showing any improvement, the medical facilities available at the Goa Medical College & Hospital are dwindling with every passing year, as a result, there is a glaring shortage of doctors who are trained as super-specialists in the majority of the disciplines at the Goa Medical College. It is their contention that the Government's apathy in not providing proper health care in Government hospitals was against the interest of a common man who could not afford private hospitals.

13. The petitioners have emphasized that it cannot be accepted that the State of Goa with all resources at its commands, is not in a position to provide facilities at its hospitals, like cardio-thoracic surgery, angiography,

and angioplasty, which privately run hospitals like Apollo Victor Hospital at Margao, Goa can provide. It is also their contention that every year the Government spends crores of rupees under the Goa Mediclaim Scheme and that the State is enjoined to provide comprehensive healthcare to the residents of Goa for making provision for financial assistance to avail facilities in super-specialities, by indefinitely continuing the scheme like the Goa Mediclaim Scheme.

14. It is on the above contentions, the petitioners have prayed for the following substantive reliefs in public interest:

> *"a) For a writ of mandamus, or any other appropriate order or direction, directing the respondents at sr. nos. 1, 2 and 3, to improve the standard of health care in the State of Goa, and the matter be monitored by this Hon'ble Court, so that the directions to the respondents at sr. nos. 4 and 5 that this Hon'ble Court may deem fit to give in the matter, are complied with.*
>
> *c) For a writ of mandamus, or any other appropriate order or direction in the nature of mandamus, commanding the respondent no. 1, to take steps for providing comprehensive medical care, including facilities for treatment in all fields of medical science and the so called super specialties, for which facilities are not available in Government run Hospitals, till date;*
>
> *d) For a writ of mandamus, or any other appropriate order or direction in the nature of mandamus, commanding the respondent no. 1 to ensure that the Government Hospitals viz. Goa Medical College & Hospital; Hospicio Hospital, Margao; and Asilo Hospital, Mapusa are staffed with adequate number of doctors, trained nurses and other staff, particularly belonging to Class-IV and to ensure proper maintenance of the hospital buildings, sanitary conditions, as well as the equipment available at these Hospitals, as also at the State run Public Health Centres.*
>
> *e) For a writ of mandamus, or any other appropriate order or direction in the nature of mandamus, commanding the respondent no. 1 to forthwith enact rules under the Goa Medical Council*

> *(Amendment) Act, 2005; and establish and appoint a competent authority to perform the functions of the Competent Authority under the said Act and to bring into effect licensing procedure contemplated under the said Act, for running of private hospitals and nursing homes in the State for Goa and also other provisions of the said Act."*

(C) Affidavits & Commissioner's Report

15. As this PIL is pending for almost sixteen years, the record is replete with affidavits filed by the parties on various issues which from time to time had arisen before the Court. Although, it may not be possible for us to deal with all such pleadings in detail, we would make an endeavour to broadly refer to the affidavits, relevant to the issues in hand.

16. A reply affidavit was filed on behalf of the Government of Mr. Dattaram G. Sardessai dated 28th November, 2007, in compliance *inter alia* of the order dated 27th August, 2007 passed by this Court indicating the status and improvements in regard to three Government hospitals situated at Panaji, Margao, and Mapusa under the heads – a) Adequacy of staff; b) Adequacy of medicine; c) Adequacy of equipment for surgery; d) Adequacy of aftercare and e) Adequacy of available beds. The status and improvements as undertaken by the Government hospital-wise are set out in the said affidavit.

17. There is an additional affidavit filed on behalf of the Government dated 12th March, 2008 of Mr. Dattaram G. Sardessai in compliance with

the order dated 20th January, 2008 which is *inter alia* in regard to the constitution of a committee of a permanent nature to monitor the functioning of the major Government Hospitals in Goa; to make suggestions to improve the infrastructure and working in these hospitals; and in regard to the setting up of a Grievance Cell consisting of senior most doctors of the concerned hospital, social workers, etc. The affidavit also sets out the details of the doctors to patients ratio and the extent to which the Government is prepared to augment the existing staff strength of nurses, ward boys, Class IV employees, etc. including doctors, and the time frame within which the Government would take steps to make appointments of the doctors and other employees. The affidavit, *inter alia* records that the Government has constituted a Hospital Visiting Committee for the hospitals at the Goa Medical College, under the chairmanship of the local Member of the Legislative Assembly (MLA). It is stated that the Committee consists of prominent professionals and social personalities. The Medical Superintendent is appointed as the Member Secretary of the said "Hospital Visiting Committee". It is stated that the Committee meets every two months and submits its recommendations. The Committee visits the hospitals periodically, and as and when it is necessary. The suggestions as made by the Committee are stated to be implemented by the concerned hospital as also by the Government. The

affidavit further records that the Government has also appointed the Medical Superintendent as Public Grievance Officer for Goa Medical College and Hospital and Medical Superintendents of the District Hospitals, namely, Asilo Hospital, Mapusa, and Hospicio Hospital, Margao as Public Grievance Officers of the said hospitals. Any complaints received by these officers are processed and the required action is taken in the minimum possible time. It is stated that the Goa Medical College and Hospital, Bambolim, maintains the doctor-to-patient ratio as recommended by the National Medical Commission being a teaching hospital, as maintaining such ratio is a mandatory requirement under the rules of the National Medical Commission(NMC). As also, the nurse-to-patient ratio is maintained as recommended by the Nursing Council of India. The affidavit also records that steps are taken to set up super-speciality facilities at the Goa Medical College under a public-private partnership. It is also stated that the Government has also set up a 450 bed medical block at the Goa Medical College.

18. Insofar as the health centres are concerned, it is stated that the Government was contemplating upgrading the health centres with better infrastructure facilities.

19. There is an additional affidavit filed on behalf of the Government dated 12th March, 2008 of Mr. Dattaram G. Sardessai in compliance with

the order dated 20th January, 2008 which is *inter alia* in regard to the constitution of a committee of a permanent nature to monitor the functioning of the major Government Hospitals in Goa; to make suggestions to improve the infrastructure and working in these hospitals; and in regard to the setting up of a Grievance Cell consisting of senior most doctors of the concerned hospital, social workers, etc. The affidavit also sets out the details of the doctors to patients ratio and the extent to which the Government is prepared to augment the existing staff strength of nurses, ward boys, Class IV employees, etc. including doctors, and the time frame within which the Government would take steps to make appointments of the doctors and other employees. The affidavit, *inter alia* records that the Government has constituted a Hospital Visiting Committee for the hospitals at the Goa Medical College, under the chairmanship of the local Member of the Legislative Assembly (MLA). It is stated that the Committee consists of prominent professionals and social personalities. The Medical Superintendent is appointed as the Member Secretary of the said "Hospital Visiting Committee". It is stated that the Committee meets every two months and submits its recommendations. The Committee visits the hospitals periodically, and as and when it is necessary. The suggestions as made by the Committee are stated to be implemented by the concerned hospital as also by the Government. The

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20. Insofar as the health centres are concerned, it is stated that the Government has provided sufficient manpower. It is stated that the Government has also purchased state-of-art mobile vans to be taken to the doorstep of rural areas to help needy patients. The affidavit further records that the Government has constituted an Advisory Council to advice the

Ministry of Health, Government of Goa, in which eminent doctors from Goa and from other States have been appointed on the Advisory Committee, the main function of which is to advise the Health Department. The following is stated to be the scope of responsibility of the Advisory Council:

> "1. Review and develop the accredited standards for Health Care institutions in the private as well as Governmental sectors.
>
> 2. Set up an implementation plan for the standards and enforce them.
>
> 3. Provide to the owners of the Health CareInstitutions with the necessary technical support to implement the developed standards.
>
> 4. Establish a comprehensive plan to control and Monitor the service provisions by Health Care Institutions.
>
> 5. Review the situations of the small diagnostic centres located at clinics and medical centres.
>
> 6. Study the possibility of applying the ISO or otherhealthcare specific standards in a phased manner tothe Healthcare Institutions in the State.
>
> 7. Establish a comprehensive system to evaluate the practicing physicians and technicians in an ongoing basis.
>
> 8. Establish proposals for imposing of an obligatory hours of continuous Medical Education for the physician and technicians as a requirement apart of the license renewal.
>
> 9. Identifying indicators to measure performance at the Health Care Institutions.
>
> 10. Efforts to establish the feasibility of having a state based "State of Art" Diagnostic facility encompassing Medical Laboratories and Diagnostic Radiy.
>
> 11. Develop controlling standard over the Medical Laboratories and Diagnostic Radiology and the periodical maintenance mechanism and regular checking.

12. Focus on programmers directed towards "Women and Child" Health.

13. Explore relationship with centres of excellence world wide to enhance educational well as training programs for students in Medical as. well as allied fields.

14. Create suitable avenues for the State to be recognized as a promoter for Health Care Tourism on a commercial as well as ethical footprint.

15. Advice the scope for an analysis team/company that would carryout a survey as well as need analysis for the implementation of Healthcare improvement and enhancement programmers.

16. To suggests amendments to the Public Health Act, 1985 and help in formulating a Health policy and Public Health Care Map for Government of Goa and to help in providing guidance to improve health care/infrastructure and better facilities in Goa.

21. The affidavit further states that the Advisory Committee had held meetings and based on various discussions, suggestions and advises tendered by Advisory Committee, the Government had taken a decision on different issues. It is stated that the Government would also set up a Fully Automated Integrated Biochemistry And Immunochemistry Random Access Analyzer and a Fully Automatic Five-part Hematology Counter. Further the Government has also appointed Honorary Consultant Anesthetist, Honorary Consultant Surgery, Consultant Urologist, and Consultant Anaesthesiologist, as also action to fill up various vacant posts has been taken.

22. Learned *Amicus Curiae* has drawn our attention to a detailed

report of the Commissioner dated 23rd June, 2008 of the learned Commissioners Mr. J.E.CoelhoPereira, Mr. Saresh Lotlikar, and Mr. Carlos Alvares Ferreira, Advocates. The observations in the report begin with the following opening words:

> "*That all is not well with the Health Care Management at the Goa Medical College and Hospital."*

23. The report deals with the several shortcomings in regard to the Goa Medical College, Bambolim Goa. Some of the significant observations as set out in the report are required to be noted:

(i) The general cleanliness at the hospital was deplorable. The interior of the building was not painted, which includes corridors, the wards, the ICU, and the Private wards and they were dirty and stained with moss.

(ii) The private ward of the hospital was in worse condition. The photographs were annexed.

(iii) The oxygen supply equipment in the private wards was not functional. The Central Oxygen system had broken down.

(iv) The Medical Superintendent informed that nothing was being done to repair the private ward of the hospital.

(v) The conditions of the private rooms were unhygienic and not conducive to a healthy environment for the patients. The toilets of the private rooms were in deplorable condition. The taps and

sanitary fittings were found in a state of despair, leaving aside the fungus on the walls.

(vi) The equipment in the ICU and the ICCU were not in working condition, mainly, the oxygen supply equipment.

(vii) The conditions of the general wards were worse.

(viii) The conditions of the Gynecology ward were chaotic.

(ix) The mattresses on the bed were torn. The bed linen was also in bad condition.

(x) The condition in the Labour Room was also objectionable. The conditions of the toilets and the hygiene in the toilets were equally bad.

(xi) The ambulances are not functioning, though brought for the trauma unit.

24. Similarly, the Report of the Commissioner on Asilo Hospital, Mapusa does not record a satisfactory position. It is recorded that in reality, the Asilo Hospital, Mapusa does not function as a District Hospital. Though the buildings are old, the state of maintenance is bad. The internal walls had a lot of moss gathered due to humidity. The situation in the Pediatric Ward was alarming. There was no linen on the beds. The toilets were in a poor state of maintenance and the tiles of the toilets were soiled. The ceiling fans were not working, the window panes were broken and the

patients were complaining of sleepless nights due to mosquitoes. It was found that the hospital beds were empty, except for a few patients in the Ophthalmology Department of Cataract Operation and a few patients admitted to the Maternity Ward. There were also vacancies for doctors and there is a shortage of staff and requisitions for filling up of the said posts have been made.

25. The Commissioners also reported on the condition of Hospicio Hospital in Margao. In regard to this hospital, several shortcomings were noticed, which were quite similar to the conditions as in the Goa Medical College, Bambolim as also the Asilo Hospital, Mapusa. It was also observed that only one doctor was attending the casualty department who was working from 9.00 a.m. to 4.00 p.m. and attending 80 to 90 patients. In the Maternity Ward, the number of patients admitted was large and some of the beds were joined to accommodate two patients. It is just beyond imagination as to how this could be done.

26. There is also a report from Primary Health Center, Candolim and it was a satisfactory report. The Commissioner also placed on record the reports of Ponda Health Center and Canacona Health Center.

27. On the above backdrop, another affidavit dated 22nd September, 2008 of Mr. Dattaram G. Sardessai is filed on behalf of the State

Government, dealing with various issues on the observations made by the Commissioners in their report stating that a new District Hospital at Mapusa was under construction, which is expected to be operational by the end of the year. Further that a new 450 bedded District Hospital at Margao and a new Primary Health Center at Chinchinim was being constructed. Also a Primary Health Center at Bicholim, Candolim, and Tisk Usgao was stated to be in the process of being upgraded. The affidavit also records the achievements of the Goa Medical College and the steps taken by the Directorate of Health Services. It is stated that considering the complaints received from all the quarters regarding the unhygienic condition of various hospitals, sweeping and swabbing of various hospitals have been outsourced as also security to all important health units has been provided. The affidavit is a detailed affidavit setting out all the steps taken to deal with the observations as made in the report.

28. There is a rejoinder affidavit filed by the petitioner setting out several deficiencies in the hospitals and the health centres.

29. Mr. Dattaram Sardessai on behalf of the Government placed on record another affidavit dated 30th June, 2009 setting out the following schemes being implemented by the Government, for the improvement of health care facilities:

i) Mediclaim Scheme
ii) Universal Screening of New Birth Babies.
iii) Treatment of cerebral palsy and skeletal birth defects.
iv) EMRI Services.
v) Vector borne disease control programme.
vi) Vaccination of M.M.R. vaccine and Rubella to infants and adolescent girls respectively.
vii) Eye care programme
viii) Family welfare
ix) Janani Suraksha Yojana
x) Mobile clinics for providing treatment to poor rural patient.

Such affidavit also deals *inter alia* with the facilities like the blood bank, Pathology Laboratory, Biochemistry Section, Radiology, C.T. Scan, X-Ray, Ultra Sound, and Female Ward in respect of each of the hospitals.

30. On behalf of the Government, Mr. Dattaram Sardessai has placed on record another affidavit dated 20th July, 2010 in regard to the status of the newly constructed hospital at Mapusa and the facilities to be made operational in the said hospital. There is another affidavit dated 12th August, 2010 on the same issue.

31. Further affidavit dated 16th September, 2010 on behalf of the Government was filed in pursuance of the directions of this Court vide its order dated 16th August, 2010 in regard to the current status of the District Hospital at Mapusa.

32. Further there is a report dated 16th September, 2010 of Mr. Ryan Menezes, who was appointed as a Commissioner by an order dated 16th August, 2010, to visit the new District Hospital at Mapusa. It appears

from the various affidavits filed and placed on record in the years 2010 and 2011 that this Court was monitoring, setting up, and commissioning a new hospital at Mapusa.

33. The petitioner has also placed on record his rejoinder affidavit of October, 2011 disputing several contentions as urged on behalf of the Government.

34. Another affidavit dated 13th December, 2011 of Mr. Dattaram Sardessai is filed in response to the affidavit filed by the petitioner in regard to the Hospicio Hospital at Margao.

35. There is a further report of the learned Court Commissioner Mr. Saresh D. Lotlikar dated 18th June, 2012 of his visit to Goa Medical College & Hospital on 5th May, 2012. The report depicts a dismal situation on several facets regarding the said hospital. There is another report of Mr. Saresh D. Lotlikar dated 18th March, 2013 on the visit to the three major hospitals in Goa, setting out a satisfactory situation on certain facets as noticed in the earlier report.

36. On behalf of the State Government, Mr. Dattaram Sardessai filed a further affidavit dated 17th June, 2014, which is an affidavit in reply to the report filed by the *amicus curiae* in regard to the inspection conducted at Goa Medical College, the District Hospital at Mapusa and the District

Hospital at Margao. The affidavit states that the Dialysis Unit is being run on a contract basis, which was outsourced to a private agency and it was proposed to the Government to relocate the patients undergoing dialysis with private hospitals, where dialysis facilities were available under the Mediclaim scheme.

37. There is an affidavit filed by the Secretary (Health), Public Health Department Secretariat, Porvorim setting out various complaints received by the Government and steps taken by the Government of Goa to improve the conditions of the hospitals at the health centres. The affidavit has also dealt with the issue of shortage of medicines being looked into.

38. There is also an affidavit of the Additional Secretary (Health), Public Health Department Secretariat setting out concrete steps being taken to ensure that there is no shortage of medicines at the Goa Health Centres. There is also an affidavit dated 23rd September, 2015 of Mr. Anthony J. D'souza, Joint Secretary (Health), Public Health Department Secretariat, Porvorim filed in pursuance of the order dated 22nd June, 2015 whereby the Government was called upon to file an appropriate affidavit disclosing the steps taken by the Government after examining the grievances as recorded by the *amicus curiae* and the remedial measures proposed to be taken. The affidavit is a detailed affidavit setting out the compliance of the deficiencies *inter alia* including in regard to the

appointment of the medical staff as also doctors and paramedical manpower.

39. There is a further affidavit of Mr. Anthony D'souza, Joint Secretary (Health), Public Health Department Secretariat, Porvorim dated 4th January, 2016 in compliance with the directions of this Court dated 23rd September, 2015 whereby the Government was called upon to place on record a Compliance Report. Mr. Anthony D'souza filed a further affidavit dated 8th February, 2016 placing on record the status in regard to the infrastructure of the Hospicio Hospital at Margao, in regard to the supply of medicines, in respect for the case papers being made paperless, and in respect of framing of Antibiotic Policy for the State of Goa, for the Goa Medical College, Bambolim.

40. There is a further affidavit dated 3rd July, 2016 filed on behalf of the Government of Mr. Sudhir Mahajan, Secretary (Health) to place on record the status of the infrastructure works at the District Hospital in South Goa filed in pursuance of the directions of this Court in its order dated 6th June, 2016.

41. On behalf of the State Government Mr. Sudhir Mahajan, Secretary (Health), Public Health Department Secretariat, Porvorim has filed further affidavit dated 12th June, 2017 disclosing the concrete measures being

taken to ensure the functioning and proper maintenance of the District Hospital at Margao as well as the facilities to be improved and provided at the Goa Medical College, Bambolim. The affidavit also annexes the National Treatment Guidelines for Antimicrobial Use in infectious diseases in regard to the Antibiotic Policy being adopted by National Centre for Disease Control.

42. There is also an affidavit of Mr. Sunil Masurkar, Additional Secretary (Health), Public Health Department Secretariat, Porvorim in pursuance of the directions of this Court in its order dated 14th August, 2017 placing on record the progress bar chart showing the complete segment of work including various units and wings, in regard to the Hospicio Hospital at Margoa.

43. Also there is a compliance affidavit dated 15th January, 2018 of Mr. Sunil Masurkar, Additional Secretary (Health) in pursuance of the order of this Court dated 20th December, 2017 commenting on the report of the Commissioners dated 27th September, 2017 in regard to shortcomings as noticed. Mr. Sunil Masurkar has filed another affidavit dated 31st July, 2018 in pursuance of the order dated 17th July, 2018 passed by this Court in regard to the steps being taken to undertake several works at Hospicio Hospital at Margao.

44. About four years from the earlier affidavit filed on behalf of the State Government, Dr. Jose D'Sa, Director of Health Services has filed an affidavit dated 27th January, 2021 to place on record the status as regards the construction and commissioning of the new District Hospital, South Goa at Margao providing for male and female COVID-19 wards along with the ICU and ITU of 9 beds each. The affidavit records about several other facilities including Radiology, Dietary Services and Laboratory Services, etc. which have been made operational.

45. Learned *amicus curiae* has placed on record a note setting out the poor conditions of the District Hospital at Margao and in regard to the ineffective steps being taken by the State Government to improve the conditions at the said hospital. Such note also comments on the inadequate medical and paramedical staff.

46. An additional affidavit of Dr. Siona A. Gomes, Deputy Director (Medical) disputing the contentions as urged by learned *amicus curiae* in his report.

47. In pursuance of another order dated 02nd December, 2022, a report dated 16th December, 2022 of the Director of Health Services is placed on record *inter alia* contending that the State Government is committed to providing good healthcare facilities to its citizens and in the

last few years, the State has expanded its medical infrastructure. It is stated that the improvement and expansion of medical facilities and infrastructure is a continuous process and the same is given priority and attention by the Government. The report also comments on Government Hospitals and Centres in the State, Free Medical Treatment, Procurement of medicines and equipments, Adequacy of Doctors and staff, Computerization of records and various schemes that have been implemented by the State Government.

D. Discussion and Conclusion

48. At the outset, we may observe that this PIL as on date is about 16 years old. There are about twenty four affidavits on record. There are also reports of the learned Commissioners. In our opinion, what is portrayed from such voluminous material on record, is that although it has been a long story of continuous effort, to achieve the basic minimum to improve the conditions of the hospitals and health centres on all aspects including the infrastructure facilities, it was required to be pushed/monitored under the orders of the Court, so as to persuade the State Government to bring such achievements. It was too much of a struggle on these issues, with diminutive achievements. This is not acceptable. Mere symptomatic measures are certainly not sufficient for an ideal public health care system, to be provided by the Government.

49. As seen from the above discussion, the issues in the present case revolve around the 'right to health', which includes the State Government providing medical facilities to the residents of Goa, which are adequate and befitting their legitimate expectation of an appropriate medical treatment being made available. It is quite clear that providing of health services would include the availability of hospitals, health centres with proper infrastructure, hygiene, medical equipments, and medicines and most importantly the availability of doctors who are experts in different branches of medicine, expert and dedicated nurses and the para-medical staff available to treat the patients.

50. On the international front on the citizen's right to health, the legal position relates back to the year 1948 when the United Nations General Assembly (**UNGA**) proclaimed and adopted the Universal Declaration of Human Rights (**UDHR**). Such declaration articulated rights and freedom to which, every human being was equally and inalienably entitled. Such declaration was adopted on 10th December, 1948. In the context of the issues in hand, Articles 3 and 25 of the Universal Declaration of Human Rights are required to be noted, which read thus:-

> "***Article 3***:- *Everyone had the right to life, liberty and the security of person.*
>
> .....
>
> ***Article 25***:- *Everyone has the right to a standard living adequate*

> *for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstance beyond his control.*"

51. Thus, under the UDHR 'Right to Life' has been recognized as an independent right under Article 3. Further, under Article 25, right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care, and necessary social services, and the right to security *inter alia* in regard to unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstance beyond his control, are significant rights forming part of Universal Declaration of Human Rights (UDHR).

52. We, the people of India, gave to ourselves the Constitution on 26th November, 1949, which was a period little short of one year from the Universal Declaration of Human Rights, in which the right to health of citizens was prominently recognized and stands incorporated under various articles.

53. The provisions of Directive Principles of State Policy, that are relevant in the context of the 'Right to Health' being recognized by the Constitution of India are required to be noted. Article 38 provides to promote the welfare of the people *inter alia* as the preamble envisages. It is one of the solemn articles, the fulfillment of which would lead us to an

ideal nation. Article 39 (e) *inter alia* provides that the health and strength of workers, men, and women, and the tender age of children are not abused. Article 39 (f) provides that children are given opportunities and facilities to develop in a healthy manner. Article 41 *inter alia* provides for public assistance in cases of unemployment, old age, sickness, and disablement. Article 47 provides for the duty of the State to raise the level of nutrition and the standard of living and to improve public health. The said provisions of the Constitution read thus:-

> *"Article 38. State to secure a social order for the promotion of welfare of the people.*
> *(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*
>
> *(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.*
>
> *Article 39 Certain Principles of Policy to be followed by the State.*
> *.. … .. .. ..*
> *… .. ..*
>
> *(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;*
>
> *(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*
>
> *Article 41. Right to work, to education and to public assistance in certain cases.*
> *The State shall, within the limits of its economic capacity and*

> *development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.*
>
> ***Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.***
>
> *The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."*

54. In our country, the societal needs on healthcare are immense requiring the Governments to play a major role in providing healthcare facilities. This for variety of reasons which may be poverty, lack of healthcare facilities in rural/tribal areas, the overburdened hospitals in urban areas, requiring long queues even for a outdoor consultation. The position is not different for indoor treatment, surgeries, etc. There can be no two opinions that there is no dearth of talent to have expert doctors and medical staff in our country, provided they have an inclination for public service and the terms and conditions are attractive which include robust working environment. However, as to why there exists in perpetuity, a shortage of such manpower is a serious issue to be pondered. Lack of availability of doctors for Government hospitals and healthcare systems is an issue which has haunted the administrators all over and at all relevant times. The pious hope from the lesson every country has possibly learnt from the Covid-19 pandemic is to have more doctors, healthcare personnels for which we require good medical institutions, so that lakhs of

talented students, who aspire to be doctors and to be medical professionals, are given an opportunity to serve the healthcare requirements of our country which has such large population. It is seen that the recent steps being taken to open new medical college is a vision for future. The need would be to have robust medical colleges who "create" talented and committed doctors and not institutions which manufacture doctors. Thus, in variety of circumstances the issues in regard to healthcare being paramount and touching the very existence of human kind have reached Courts.

55. Some of the decisions of the Supreme Court which consider Article 21 and other relevant Articles of the Constitution in the context of right to health are required to be noted. In ***Parmanand Katara vs. Union of India***[3], the Supreme Court held that Article 21 of the Constitution casts an obligation on the State to preserve life. Such observation of the Supreme Court has a significant bearing on the obligations which the State would be required to comply under the Constitution to preserve human life, which would include making available every kind of medical treatment necessary for human survival.

56. In ***Consumer Education & Research Centre v. Union of India*** [4] considering the provisions of Articles 21, 38, 39(e), 41, 43 48-A, and 300

[3] (1989) 4 SCC 286

[4] (1995) 3 SCC 42

of the Constitution in the context of the right to health and medical aid to workers during service and fundamental right, the Court considered the right to life, its meaning and scope to hold that the jurisprudence of person hood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to live his livelihood to sustain the dignity of a person and to live a life with dignity and equality. It was observed that the expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life which has much wider meaning which included the right to livelihood, better standard of life, hygienic conditions in workplace and leisure.

57. In ***Paschim Banga Khet Mazdoor Samity vs. State of West Bengal***[5], the Supreme Court held that Article 21 imposes an obligation on the State to safeguard the right to life of every person. It was observed that the preservation of human life is of paramount importance. The Supreme Court also held that the Government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life and any failure on the part of a Government hospital to provide timely medical treatment to a person in

[5] (1996) 4 SCC 37

need of such treatment results in violation of his right to life guaranteed under Article 21.

58. In ***State of Punjab vs. Mohinder Singh Chawla***[6], the Supreme Court reiterated that Government has a constitutional obligation to provide health facilities as the right to health is integral to the right to life as Article 21 of the Constitution would envisage.

59. Health is held as an important facet of the right to life guaranteed under Article 21 of the Constitution and it is an obligation of the State to ensure good health to the citizens as held in ***Indian Council of Legal Aid vs Union Of India***[7].

60. Article 21 of the Indian Constitution is an immensely significant and a celebrated provision of the Constitution, forming part of the fundamental rights. It has been described to be a "luminary provision" occupying a place of pride in the Constitution. In several decisions of the Supreme Court, it has been held that the right to life means more than survival or animal existence. It includes the right to live with human dignity. Life and personal liberty are held to be inalienable to human existence which existed even before the admission of the constitution. It is, therefore, held that the Constitution cannot be said to be the sole

6 (1997) 2 SCC 83

7 (2000) 10 SCC 542.

repository of these natural law rights[8].

61. Thus, the position in law on the right to health and medical facilities being recognized as a fundamental right under Article 21 of the Constitution, read with the provisions of the Directive Principles of State Policy, as discerned from the decisions of the Supreme Court is as under:

> (i) Article 21 of the Constitution casts an obligation on the State to preserve life.
>
> (ii) Life as assured under Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life which has much wider meaning which includes the right to livelihood, better standard of life, hygienic conditions in workplace and leisure.
>
> (iii) Failure on the part of a Government Hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life. The Government hospitals run by the State and the medical officers employed therein are duty-bound to provide medical treatment for preserving human life and that failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.
>
> (iv) The Government has a constitutional obligation to provide health facilities as the right to health is integral to the right to life as Article 21 of the Constitution would envisage.

[8] Dr. Justice D.Y. Chandrachud in his Lordship's opinion in Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. (2017) 10 SCC 1.

(v) Health is held as an important facet of the right to life guaranteed under Article 21 of the Constitution and it is an obligation of the State to ensure good health to the citizens as held in **Indian Council of Legal Aid Vs. Union of India** (supra).

62. We may also usefully refer to the orders passed by the Division Bench of this Court in ***Rakesh Subhash Bhamare vs. State of Maharashtra & Ors.*** (supra). The Division Bench by an order dated 24th October, 2016 constituted a committee comprising elected Members of Parliament (MPs) to bring about an improvement to the public hospitals in Malegaon, District Nasik. The operative order is required to be noted which reads thus:-

"O R D E R

(i) A Committee comprising of the Elected member of the Parliament, the Revenue Commissioner, the Commissioner of the Municipal Corporation and one Elected Corporator to be nominated by the Municipal Corporation be constituted within a period of two weeks from today. The petitioner would be permitted to assist the Committee and attend all the meetings of the Committee.

(ii) It would be the obligation of the Committee to see that all the issues as regards appointment of staff, maintenance and hygiene of the public hospitals, supply of medicine etc and other issues concerning the hospital are examined, pursued and addressed.

(iii) It would also be the obligation of the Committee to consider any grievances of the citizens in respect of the functioning of the public hospitals.

(iv) The Committee shall visit these hospitals as and when necessary and in any case once in two months and submit appropriate report on all the issues to the State Government. The Municipal Corporation shall place on record of this Court all such reports."

63. On the above conspectus, in so far as the facts of the present case are concerned, it is evident that during the long journey of this petition, various orders were passed by the Court from time to time to bring about an improvement on the availability of medical facilities/infrastructure in three Government hospitals at Panaji, Mapusa and Margao and the health centres situated at other different places in the State of Goa. It is not in dispute that during the pendency of this petition a new district hospital in South Goa was constructed and commissioned about two years back, as also that the Court was monitoring all three public hospitals, community health centres, urban health centres, primary health centres, and health and wellness centres and from time to time orders were passed by the Court on different issues.

64. The learned Advocate General has placed on record several Minutes of the Meetings of the Governing Body of Hospital Management Society (Asilo Hospital) to contend that the governing body of the hospital is meeting from time to time and is taking effective steps in regard to the maintaining of the hospital so that effective medical facilities are provided to the patients.

65. In so far as the Goa Medical College and Hospital is concerned, the learned Advocate General submitted that as per the norms of the National Medical Commission (for short '**NMC**'), the facilities are required to be

provided including maintaining the doctors-to-patients ratio as the hospital is a full-fledged hospital as also catering to the medical students of Goa Medical College. It is submitted that from time-to-time measures are taken to ensure that all the essential parameters are met with and maintained to cater to a large segment of the population receiving treatment at Goa Medical College. The learned Advocate General has also drawn our attention to the recent enactment namely 'The Goa Clinical Establishments (Registration and Regulation) Act, 2019' which has been provided for the registration and regulation of clinical establishments in the State of Goa and matters connected therewith or incidental thereto. The submission of the learned Advocate General is that such legislation has been brought into force, to provide for the registration and regulation of clinical establishments in the State of Goa and for matters connected therewith or incidental thereto.

66. In pursuance of the order dated 28th January, 2008 passed by this Court and as stated in the affidavit of Mr. Dattaram Sardessai, Joint Secretary (Health) Government of Goa, dated 12th March, 2008, the Government of Goa constituted a "Hospital Visiting Committee" under the chairmanship of local Member of the Legislative Assembly (MLA). The Committee consists of prominent professionals and social personalities. The Medical Superintendent is the Member Secretary of the

Committee. It was stated that the Committee meets every two months and submits its recommendations. This committee also visits the hospital periodically as and when required. The suggestions given by the committee are implemented by the institution and the Government. It is also stated that the Medical Superintendent was appointed as a Public Grievances Officer for Goa Medical College and Hospitals. Any complaint received by his office is processed and necessary action is taken in the minimum possible time also the reports are stated to be submitted to the Government from time to time. Apart from this, as seen from the said affidavit, the Government has constituted an Advisory Council to the Ministry of Health, Government of Goa in which eminent doctors from Goa and other States have been appointed, and the main function of which is stated to be to advise the Health Department of the State of Goa. Order dated 09th August, 2007 constituting the said Committee, is placed on record by the said affidavit of Mr. Dattaram Sardessai.

67. It needs to be stated that the situation which was prevailing as on the date of filing of this petition which was on 23rd July, 2007 has certainly undergone a material change and more particularly in view of the orders passed by this Court from time to time and the compliances as called for under such orders from the State Government. The learned amicus, however, has brought to our notice that there were patients requiring open

heart surgeries who were required to wait at the Goa Medical College to perform surgeries and the surgeries were required to be rescheduled for minor issues like central air-conditioning in the Cardiac Operation Theatre (OT) having failed to function post-maintenance work carried out by Goa State Infrastructure Development Corporation ("GSIDC"). This, according to him, caused serious inconvenience to the patients who remained on fasting while being prepared for surgeries. If this is correct, this should never happen.

68. On such backdrop, we may observe that it is undoubtedly a Constitutional obligation on the part of the State Government to provide medical facilities on all counts to the residents of Goa. This would include an obligation to ensure the availability of hospitals wherein the patients can receive indoor and outdoor medical treatment; to provide for Health Centres in different parts of the State like community health centres, urban health centres, primary health centres, as also health and wellness centres.

69. Goa Medical College and Hospital at Bambolim, which is stated to have a new 550 bedded super-speciality block, and the other two district hospitals namely North Goa District Hospital at Mapusa and South Goa District Hospital at Margaon needs to function effectively. Since October 2021, the new South Goa District Hospital, which is stated to have a 500-bed capacity is now fully functional in place of the old Hospicio Hospital.

This hospital also needs to be maintained effectively, so that treatment is available to all the patients approaching such hospitals.

70. Considering that the right to health is part of the fundamental rights guaranteed under Article 21 of the Constitution of India, there cannot be any neglect, shortcoming, or deficiency of any nature whatsoever when it comes to any medical treatment necessary for the preservation of the health rights. Any inaction on the part of the State Government would amount to infringement of the right to life guaranteed to a person under Article 21 of the Constitution. In the event of any such inaction / deficiency, the State would be accountable and liable to compensate persons who may have suffered for want of availability of appropriate medical treatment on any count. Any non-availability of the treatment facilities would amount to the denial of fundamental rights guaranteed under Article 21 of the Constitution and any breach of the fundamental rights would certainly provide for a remedy to such a person to demand compensation for such infringement.

71. In such context, the issues which may require continuous introspection by the Government are:-

(1) As to why the Government hospitals and health centres ought not to be ideal for treatment of all illnesses.

(2) As to why the Government hospitals and health centres

should be lacking in latest equipments and other health infrastructures when so much of budgetary resources are being allocated.

(3) As to why super-speciality treatment on all illnesses be not made available in Government hospitals.

(4) As to why the basic needs of cleanliness and hygiene are not possible to be achieved.

(5) As to why qualified nurses and paramedical staff be not made available in Government hospitals.

(6) As to why patients who cannot afford treatment at private hospitals should not get the deserved medical treatment in Government hospitals.

(7) Whether by not providing cleanliness, hygiene and healthcare facilities in Government hospitals, an inferior standard of medical treatment is being foisted on a class of patients; Whether or not this would amount to a direct affront to the fundamental rights guaranteed under Article 21 of the Constitution.

72. We may observe that it can never be a motto of any Government that only the establishments which generate revenue like airports, etc. or Government/public offices and/or prominent premises and the like can only be impeccably maintained and not important places like the hospitals

and healthcare centres, which would cater to the health of we the citizens. Whether the funds being allocated for the health budget is appropriate, and whether timely revision of such budgetary requirements is being ernstly considered and decided are also significant aspects. As to why an attempt to invite private participation in the management and maintenance of the Government hospitals, on all counts, resorting to methods *inter alia* like Corporate Social Responsibility (CSR) in the health sector, without the Government requiring to shell out funds for the same be not explored, is also one of the issues, which needs to be seriously pondered. There is an urgent need to alleviate the Government hospitals and healthcare centres from being places of disrepair, dens of bad hygiene, filth being factors, which would make a person more sick and frightened on such issues. This is certainly not desirable.

73. The upshot of the above discussion would require us to conclude that it would be incumbent on the State Government to maintain the Government hospitals, and dispensaries and cater to the medical needs/health of the person residents of Goa. Such facilities are required to be made available at all material times and in perpetuity. It is not sufficient that the infrastructure and staffing requirements is a one-time affair. Appointment to the post of medical officers, appointment of experts in different branches of medicine including in relation to any super-speciality,

ought to be made from time to time. There cannot be a situation that the posts would fall vacant and appointments are not made. Hence, making appointments ought to be a continuous process, and no patient should suffer for want of doctors and other supporting staff being not available in the hospitals and the Government dispensaries. It is also of immense significance that each of the Government hospitals as also the Government dispensaries should have stock of all essentials / emergency and life saving drugs and other medical material. A list of such medicines which shall always be made available, at all material times, is also required to be displayed on a notice board specially provided, as also placed on the website of the health department. There is also a necessity to make special provisions for expecting mothers and for new born children in the hospitals and health care centres. An endeavour for providing ambulance services, mobile pathology labs, mobile dispensaries undertaking routine visits, more particularly, in the rural parts of Goa, should be made available, and information in that regard shall be made available in every village. The infrastructure and the maintenance of the hospitals, health care centres requirements need to be reviewed from time to time. Specialized staff is required to be appointed/outsourced for maintaining the hygiene in these hospitals/public health centres, as public hospitals cannot be a source of disease and infection. In our opinion, it would be a

direct violation of the fundamental rights guaranteed under Article 21 of the Constitution, if the State fails to provide clean and hygienic conditions in the hospitals, dispensaries and health centres, which would include clean beds with linens, hygienic washrooms, toilets, cleanliness of the wards, time to time painting and maintenance of the walls and floors and their daily/routine cleaning, servicing of all the medical equipments and other necessary materials and equipments including of beds, adequate provision for blankets, linen, oxygen facilities, air conditioning facilities, alternate electricity supply by generators, latest equipments and facilities in the ICU, hygiene of the ICU, hygiene of the operation theaters, hygiene of the OPD areas, hygienic germs free/filtered drinking water facilities, cleaning of overhead water tanks, canteen facilities, restaurants in the hospital premises, hygienic corridors, surroundings, provision of disposal of hospital waste as per rules, clean of waiting rooms for the relatives of patients having overnight rest facilities with special rooms for women and children, senior citizens and disabled persons, adequate parking facilities, provision for ambulances 24 x 7 and other necessary requirements and above all, at all material times availability of Doctors and medical staff in all faculties. Unless appropriate compliances in this regard are achieved, it cannot be said that hospitals are functioning in an ideal manner and as per the legitimate expectations the patients would have in cherishing their

fundamental rights in this regard as guaranteed by the Constitution. Further, the State ought to implement all the health welfare schemes, may it be of the Central Government or of the State Government, in their letter and spirit.

74. There is another vital aspect. It is mostly seen that the patient visiting the Government hospitals are not guided properly to avail the services being offered. Hence, appropriate personnel to effectively guide the patients and their relatives needs to be put in place. Merely persons sitting behind the counters, is no good, as the patients who are in distress and agony need to be prevented from endlessly wandering at different places to approach the appropriate department. Such persons need to be sensitive to human needs and the delicate requirements of the patients who can be anybody like children, women or senior citizens, and disabled persons. Effective Electronic indicators at different places would also serve the need. Maximum use of technology should be the object.

75. In having said on so many aspects, we may sound administrative, however, the dismal situation as prevailing in the Government hospitals and healthcare systems, certainly compels us to touch every aspect of the system which has a direct bearing on the fundamental rights guaranteed under Articles 14 and 21 of the Constitution read with the other provisions as noted by us. We are of the firm opinion that non-fulfillment of any

aspect of what has been observed by us above, would bring about a serious consequence in relation to human health, which is paramount. We would have failed in our constitutional duty if we were not to put ourselves in the shoes of a common man of insufficient means in assessing the sad reality on such issues, which has compelled us to make the observations.

76. We are also however not oblivious to the basic duty of those who would avail treatment at the Government hospitals and health care centres. They need to be ideal citizens. They need to strictly follow the cleanliness and hygiene norms and not indulge in acts which in any manner would spoil, damage or destroy any of the public properties in the hospital, by any ill-use and/or disturb the working of the hospitals/health centres by indulging into any illegal acts.

77. We would not be fully satisfied with the mere functioning of a Hospital Visiting Committee as constituted by the Government of Goa and as set out in the affidavit of Dattaram Sardessai, Joint Secretary (Health) Government of Goa, dated 12th March, 2008 as also mere Advisory Council as stated in paragraph 6 of the said affidavit. We require something more which is to bring about an ideal situation for all times to come, in regard to impeccable medical services being provided by these hospitals and public health centres, which should be not less than any private hospital. Where there is a will, there is a way. Why should

Government Hospitals be not maintained, its hygiene should not be improved and why the treatment to the patients be not of the highest standard, should be the prime issue bothering the stakeholders every minute. We are sure that if there is a desire in the persons who man these hospitals to maintain them, as they maintain their homes, that day is not too far that the whole country would look at Goa in regard to the medical facilities and its hospitals, being the role models. This for the reason that providing health services as noted above is paramount to the societal health. It is solely the responsibility of the State Government that no person suffers for want of proper medical aid and treatment.

78. We are thus of the opinion that the State Government constitutes/ maintains a permanent committee as also observed by this Court in its order dated 28th January, 2008, which would monitor the functioning of the major Government Hospitals in Goa as also the health centres of all types and make time to time suggestions to improve infrastructure and working of the hospitals. A Grievance Cell in each of the hospitals be also maintained which can attend to the complaints on any issue in regard to the functioning/facilities of the hospitals and the health centres.

E. Directions

79. In the light of the above discussion, we dispose of this petition by issuing the following directions:-

(i) It would be incumbent for the State Government to maintain the Government hospitals, health centres and dispensaries in the manner as observed in paragraph 73 and further in the light of our observations as made in paragraphs 68 to 77 of this judgment. This more particularly with special emphasis on the following:

a) That the State shall introduce and maintain a systematic mechanism of continuous supply of medicines to all the hospitals and health care centres.

b) That no posts of Medical Officers, Nurses and other para-medical staff should remain vacant as also the requirement for enhancing the number of posts be reviewed from time to time depending on the contemporary needs and requirements.

c) At all material times, necessary medical equipments in proper state of repair in the Operation Theatres, OPD rooms and Wards be made available and maintained in proper state of repair.

d) The Head of the Department shall be provided powers to utilize an appropriate budget made available to him at his disposal, so that none of the patients suffer for want of finance in procurement of essential requirements like medicines (special medicines) including to secure urgent maintenance of equipments and other urgent essential requirements at his discretion.

e) Specialized facilities be created and maintained for poor, senior citizens, persons with disabilities, women and children.

f) All information in regard to the medical services / treatments and specialities being offered by the Government Hospitals, names of the Specialist

Doctors; Medical Officers; Details in regard to OPD facilities; availability of the number of beds, etc. be made available on an "Electronic Dashboard" as also by way of a dedicated "Website" and a "Mobile App" created for such purpose.

(g) A computerised database in regard to the different categories of illness / diseases being treated in particular hospitals and health centres be maintained only for the hospital records for the purpose of enhancing the requirement of community medicine.

(ii) The State shall implement all the health welfare schemes of the Central Government as also of the State Government and make an endeavour to extend the benefits of the same to all eligible persons. In such regard, instant information be provided by establishing a special Cell at the entry of the hospitals and/or health centres.

(iii) Apart from the existing Committees and the Advisory Council, the State of Goa is directed to permanently constitute a committee headed by the Secretary (Health) State of Goa, Director of Health Services, the Collector of each of the two districts, one Social Worker from a reputed and recognized N.G.O. concerned with health welfare. Such Committee shall oversee and address all issues in regard to the appointment of staff, providing for infrastructure facilities, provision for medicines, maintenance of hygiene of the public hospitals and all other issues touching the management and administration of the hospitals and health care centres in the light of our observations. The Committee shall hold

meetings every month.

(iv) The Director of health services shall be the Secretary of the Committee who shall receive complaints / grievances from the citizens in respect of the management and administration of the hospitals and the issues concerning treatment and facilities in such Government hospitals and place the same for consideration of the Committee in its first meeting after such complaints / grievances are received and take appropriate decision thereon and communicate the same to the complainant.

(v) The Committee as constituted shall visit all the Government Hospitals and Health Centres from time to time and in any event once in three months. The visits of the Committee be minuted and the observations be recorded and listed on the official website of the Health Department of the State Government.

(vi) Minutes of the meetings of such Committee be maintained and made available as and when necessary. Important decisions be posted on the website and made known to the public in the best possible manner.

(vii) In the event the Committee as constituted in clause (iii) above, fails to address the grievances of the persons who have made complaints / representations for a period of more than 2 months, the persons who are so aggrieved shall be entitled to make a representation in that regard to the Member Secretary, State Legal Authority (SLA), High Court of Bombay at Goa, annexing therewith a copy of

their such original complaint. The Member Secretary, State Legal Authority, shall consider such representation who shall move the Court in appropriate proceedings to seek orders in regard to non-compliance of the present orders passed by this Court and/or in regard to the deficiencies in the medical treatment and facilities, etc. and/or on violation of any rights of the citizens guaranteed under Articles 14 and 21 of the Constitution read with directive principles of the State policy, on issues of medical treatment and health care.

F. Concluding Paragraphs

80. To conclude, we may quote the words of the Greek Scholar Francois Rabelais: -

> "*without health, life is not life; it is only a state of langour and suffering - an image of death.*"

These telling words need to continuously guide those who are at the helm of affairs not only at the level of the Government but also those who are involved in every bit of their duty and responsibility towards the sick and needy, who are compelled to approach the government hospitals and health centres. There is no duty as solemn as treating the sick. It is on the shoulders of such persons, depend the health of the nation. For those knocking the doors for medical treatment, they are angles who would shower on the sick, a healthy recovery, good health and ultimately a good living.

81. Before we conclude we appreciate the efforts of the petitioners to bring before the Court an issue of immense public importance. By their efforts, thousands of patients have stood benefited and also would continue to benefit in the future. We also express our appreciation to the time to time steps taken by the Government of Goa and its officials to improve the state of public health. We also appreciate the herculean efforts taken by Mr. Saresh D. Lotlikar, learned Senior Advocate appointed as the *amicus curiae*, who with his resolute commitment and dedication has assisted the Court for about 16 years in the present proceedings. We also appreciate the Commissioners Mr. J. E. Coelho Pereira and Mr. Carlos Ferreira Alvares and Mr. Rayan Menezes, Advocates who have provided valuable assistance to the Court in bringing on record the dismal condition of the Government hospitals. The efforts of all the Court officers would ever remain dedicated to the welfare, well being of those receiving treatment in the Government Hospitals and Health Care Centres in Goa. We express our deep gratitude to them.

82. At the ultimate parting we hope that the sunshine on the issues as discussed by us, glows brighter and brighter, every passing day.

83. We dispose of the petition in the above terms. No costs.

[BHARAT P. DESHPANDE, J.] [G.S. KULKARNI, J.]