

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
&
THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

Thursday, the 23rd day of June 2022 / 2nd Ashadha, 1944
WP(C) NO. 11820 OF 2021

PETITIONER:

KERALA PRIVATE HOSPITALS ASSOCIATION HAVING ITS REGISTERED OFFICE AT
KPHA HEAD QUARTERS, ASHIR BHAVAN ROAD, KACHERIPPADY, ERNAKULAM,
KOCHI-682018, REPRESENTED BY ITS PRESIDENT, HUSSAIN KOYA THANGAL.

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. HEALTH AND FAMILY WELFARE (F) DEPARTMENT, REPRESENTED BY THE PRINCIPAL SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM-695001.
3. DIRECTOR GENERAL OF HEALTH SERVICES, DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM-695035.
4. STATE HEALTH AGENCY, REPRESENTED BY EXECUTIVE DIRECTOR, ARTECH MEENAKSHI PLAZA, 5TH AND 8TH FLOOR, OPP. GOVERNMENT WOMAN AND CHILD HOSPITAL, THYCAUD, THIRUVANANTHAPURAM-695014.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings pursuant to Exhibit P1 till the consideration of Exhibit P2 and P3 by the competent among the respondents, pending disposal of the above writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.K.ANAND, Advocate for the petitioners and of SENIOR GOVERNMENT PLEADER for Respondents, the court passed the following:

DEVAN RAMACHANDRAN
&
DR.KAUSER EDAPPAGATH, JJ.

R.P.No.379/2021 & WP(C)No.11820/2021

Dated this the 23rd day of June, 2022

O R D E R

DEVAN RAMACHANDRAN, J.

The Covid has yet not gone – it is still amongst us.

2. The nature and manner of the pandemic may have been altered, but its effects on citizens, particularly, in the post Covid scenario and complications therefrom, are as serious as afore and can ill afford any complacency.

3. Our health system, therefore, has to be still at the peak efficiency levels because, waves of the disease can strike without notice.

4. It is in this context that this Court is very concerned about a reported attack on a Nurse and Doctor at the Neendakara Taluk Hospital. We have been repeatedly ordering in these cases that every step and measure should be

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taken to avert such incidents, rather than an ex post facto investigation and punishment. Of course, when incidents happen, consequences have to follow, but unless stringent stipulations are made, such unfortunate events are likely to occur with regularity, which we cannot countenance.

5. On 09.09.2021, this Court had already recorded certain steps suggested by the Government. We are told by Sri.S.Kannan – learned Senior Government Pleader, that security personnel had been deployed even in the hospital in question, but that he was also attacked.

6. Sri.S.Gopakumaran Nair, learned Senior Counsel instructed by Sri.Sooraj Elanjikkal - learned Standing Counsel appearing for the Indian Medical Association (IMA), submitted that the medical and para-medical staff of every hospital – be that private or Government – are working with the constant apprehension of such attacks, especially when the atmosphere becomes surcharged and heated on account of the pressure of work. Illustratively, he said that the Nurse involved in these cases is a lady who was taken completely by surprise by some

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people who barged into the hospital and launched attack on her and the Doctor.

7. No doubt, the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 provide for very stringent provisions and punishments. However, as the present case demonstrates, it is not always the best deterrent.

8. We, therefore, have to think about placing hospitals, particularly in remote areas, under Police protectional cover, more in the evenings and nights, so that the Doctors and Nurses, can work without apprehension.

9. Before we close this order, we must also place on record an input that we received at the Bar that, sometimes healthcare personnel – perhaps on account of their pressure – don't treat patients and bystanders with the empathy that they deserve. Of course, this is a matter which the Associations, including the IMA, must ponder upon.

10. That said, the attack, which we are presently concerned about, does not appear to have happened on the

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spur of the moment and this concerns us. Of course, we hasten to add here that we are not reflecting upon the incident *per se*, since we are aware that there is an ongoing criminal investigation into it; and hence clarify that nothing we record herein shall affect the same in any manner.

11. To come back to the point, this Court certainly requires measures to be suggested by the stakeholders as to how the hospitals will have to be protected. Apart from the measures that have already been recorded by this Court in the order on 09.09.2021, we direct the competent Authorities to device a Plan of Action, so as to avert such incidents in future, rather than launch investigation after it happens.

12. The intent of this Court is to make sure that the healthcare personnel is able to function in the most efficient manner, without any extraneous pressure being brought upon them; and we are certain that the Government will also rise to the occasion in addressing our afore request.

13. We, therefore, adjourn this matter to be called on 22.07.2022; within which time, the learned Senior Government

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Pleader is requested to make available the information qua the number of posts of security personnel in hospitals, as also the Police Aid Posts which have already been sanctioned. He will also get instructions as to whether police presence, at least in the most sensitive areas like the one which is the cause of this order, can be put in place at the first instance and then extended to other places in due time.

14. We would also like the Government to inform us whether the present apparent situation, of allowing everybody to rush into hospitals, without any barrier, be controlled, except for the patients and their immediate bystanders/helpers, so that the healthcare workers will not be put to unnecessary pressure on account of the crowd often created.

15. The Government certainly can call for and obtain the inputs from the Doctors and their Associations, including IMA, so that they will be benefited by their inputs in this regard.

16. Before we part, we, however, direct all authorities

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to ensure that such incidents do not happen in future and that every measures to avert it be put in place.

Post on 22.07.2022.

H/o

Sd/-

DEVAN RAMACHANDRAN, JUDGE

RR/23.06.2022



Sd/-

DR.KAUSER EDAPPAGATH, JUDGE

APPENDIX OF WP(C) 11820/2021

- Exhibit P1** TRUE COPY OF THE GOVERNMENT ORDER NO. GO(RT) 1066/2021/H AND FWD DATED 10/05/2021.
- Exhibit P2** TRUE COPY OF THE SAID REPRESENTATION DATED 11/05/2021.
- Exhibit P3** TRUE COPY OF THE REPRESENTATION DATED 13/05/2021 ALONG WITH THE LIST OF MEDICATIONS AND INVESTIGATIONS THAT CAN BE PRACTICALLY INCLUDED IN THE PACKAGE AND THAT NEED TO BE ESSENTIALLY EXCLUDED IN THE SAID PACKAGE, PROPOSED BY THE ASSOCIATION.

