IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 194 of 2021

1.The State of Jharkhand through the Secretary, Water Resources Department, Nepal House, P.O. and P.S. Dordanda, District Ranchi.

2.The Secretary, Water Resource Department, Nepal House, P.O. & P.S. – Doranda, District-Ranchi.

3.The Deputy Secretary, Water Resources Department, Government of Jharkhand, Nepal House, P.O. & P.S. – Doranda, District-Ranchi.

4.The Under Secretary, Water Resources Department, Government of Jharkhand, Nepal House, P.O. & P.S. – Doranda, District-Ranchi.

… … **Respondents/Appellants**

Versus

1.Binod Kumar Lal, son of Late Lakshmi Narayan Lal, resident of Flat No.1C, Sri Chandra Apartment, Aryapuri, near TV Tower, Rtu Road, P.O. Ranchi, P.S. Sukhdev Nagar, District Ranchi.

… **Petitioner/Respondent**

2.The Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, Project Building, H.E.C. Township, P.O. and P.S. Dhurwa, District Ranchi.

3.The Secretary, Finance Department, Government of Jharkhand, Project Building, H.E.C. Township, P.O. and P.S. Dhurwa, District Ranchi.

4.The Secretary, Health, Medical Education and Family Welfare Department, Nepal House, P.O. & P.S. – Doranda, District-Ranchi.

… **Proforma Respondents**

CORAM:HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant :Mrs.Vandana Singh, Sr. S.C. III
Mr. Ashwani Bhushan, AC to Sr.SC III

For the Respondents :Mr. Vikash Kumar, Advocate
Mr. PranavPrakash Mishra, Advocate

Order No.08/Dated10th August, 2023

Per Sujit Narayan Prasad, J:

1. The instant *intra-court* appeal, under Clause 10 of the Letters Patent, is directed against judgment/order dated 20.01.2021 passed by learned Single Judge in W.P. (S) No. 3331 of 2019, whereby and whereunder the decision as contained in letter dated 07.02.2017 and 09.04.2019, by which the expenditure incurred in the treatment of the daughter of the writ petitioner has been refused to be extended, have been quashed and set aside with direction upon the respondents-authorities to release the remaining amount of medical reimbursement and travelling allowance in favour of petitioner within a period of twelve weeks from the date of receipt/production of copy of the order.

2. Brief facts of the case, as per the pleadings made in writ petition, reads as under:

The petitioner was initially appointed as Secretariat Assistant in the office of the Divisional Commissioner, South Chotanagpur Division, Ranchi and thereafter promoted to the post of Section Officer in the office of the Chief Engineer, Water Resources Department, Ranchi on 01.07.2008. He was further promoted to the post of Under Secretary on 15.05.2012 and to the post of Deputy Secretary on 21.03.2015 in the Water Resources Department, Government of Jharkhand, Ranchi and to the post of Joint Secretary on 21.04.2016 in the Industry,

Mines and Geology Department, Government of Jharkhand, Ranchi. After attaining the age of superannuation, the petitioner retired from the said post on 30.04.2016.

3. It is the case of the petitioner that while he was posted as Section Officer in the office of the Chief Engineer, Water Resources Department, Ranchi, her daughter namely Ms. Vandana Lal faced eye vision problem and as such she was examined in the Eye Department of Rajendra Institute of Medical Sciences (RIMS), Ranchi on 28.07.2010 wherefrom she was referred for proper treatment either to All India Institute of Medical Sciences (AIIMS), New Delhi or at Shankar Netralaya, Chennai by the Medical Board of the State Government at RIMS, Ranchi.

4. It is further case of the petitioner that for treatment of her daughter he has to visit many a times at Shankar Netralaya, Chennai. The petitioner took her daughter to Shankar Netralaya, Chennai for her better treatment from 10.08.2010 to 21.08.2010. The said treatment was followed by a second round of treatment from 17.10.2010 to 03.11.2010, after giving prior information to the Department, for which, approval was issued *post facto* vide letter dated 30.03.2011, wherein, it was indicated that travelling and medical allowances are payable. The third spell of treatment was done from 06.04.2011 to 08.04.2011; as also the fourth spell of treatment was done

from 15.09.2012 to 19.09.2012 and lastly fifth round of treatment was done from 04.09.2013 to 06.09.2013 in the Shankar Netralaya, Chennai, after giving proper information and taking permission from the concerned department. The petitioner has also annexed documents suggesting that the daughter of the petitioner was suffering from acute vision problem. It has been stated that at the end of each trip, the petitioner submitted the medical bills duly counter signed by the Department Head of Eye, Shankar Netralaya, Chennai and claimed for travelling and medical allowances for the same. The Water Resources Department, Government of Jharkhand, Ranchi vide letter dated 30.01.2014 approved the allowances of Rs.8,646/- only for travelling and medical allowances as *post facto* sanctioned. The rest amount as claimed by the petitioner has not been settled and it was rejected vide letters dated 07.02.2017 and 09.04.2019. Aggrieved thereof, the petitioner has approached this Court for quashing those rejection orders and for direction to the respondents for payment of medical bill and rest of the travelling allowances.

5. The State-respondent in the writ petition objected such prayer by putting reliance upon the government circular dated 15.09.2006 whereby and whereunder it has been decided that outdoor patients are not entitled for medical

reimbursement, however, they are entitled for travelling allowance only. Further reliance has been placed upon the judgment rendered by the Hon'ble Supreme Court in the case of ***State of Karnataka v. R. Vivekananda Swamy, reported in (2008) 5 SCC 328*** and submission has been made that the Hon'ble Supreme Court has held that in view of the rules, the payments are required to be made.

6. The learned Single Judge taking into consideration the rival submissions advanced on behalf of parties and by taking note of object to achieve the mandate of Article 21 of the Constitution of India, which imposes an obligation on the State to safeguard the right to life of every person, held that preservation of human life is since of paramount importance, quashed the impugned letters by which medical bill was refused to be reimbursed, against which the present *intra-court* appeal has been filed.

7. Mrs. Vandana Singh, learned Sr. S.C. III appearing for the appellants-State has submitted that the learned Single Judge has not appreciated the fact in right prospective even though the policy decision of the government is that medical reimbursement will be given only in case of indoor patient and not in the case of outdoor patient. It has been contended that admitted case herein is that daughter of the petitioner has never been given treatment in the capacity of indoor patient and as such in view of government policy the

travelling allowance was sanctioned but so far as the expenditure incurred on the medical treatment is concerned, the same has been rejected by considering the aforesaid policy decision but the learned Single Judge has not appreciated the aforesaid fact. Therefore, the impugned order passed by the learned Single suffers from infirmity and requires interference by this Court.

8. Mr. Vikash Kumar, learned counsel for the writ petitioner-respondent defending the order passed by learned Single Judge has submitted that the case of the daughter of the writ petitioner was placed before the duly constituted Medical Board, who has referred her either to AIIMS, Delhi or Shankar Netrayala, Chennai and in view thereof, petitioner rushed to Shankar Netratalaya for treatment of eye of her daughter, after getting proper permission from the competent authority and on return submitted bills. Further, Shankar Netralaya was enlisted in the list of hospitals which has been mentioned in policy decision of Health Department. Even otherwise also, as per mandate of Article 21 of the Constitution of India, the State has duty to safeguard the life of every citizen and here instead of safeguarding the life, it is the State who is coming in way of safeguarding the life of its citizen.

9. It has further been submitted that merely mentioning in the policy decision of the Health Department that

reimbursement of the medical bill will be done only in a case of 'outdoor patient' will not disentitle the petitioner for getting reimbursement as it is the competent authority of the State who has referred the case of the daughter of the petitioner to Shankar Netralaya after examining the daughter of the petitioner. Learned Single Judge taking into consideration these aspects of the matter since has quashed the impugned order of denial of reimbursement, which may not be interfered with.

10. Heard learned counsel for the parties, perused the documents available on record as also the finding recorded by learned Single Judge.

11. This Court in order to appreciate the aforesaid argument vis-à-vis grievance of the writ petitioner, is of the view that following issues are required to be framed for adjudication of *lis*:

(i).Whether the so-called policy decision of the State dated 15.09.2006 issued under the Signature of Health, Medical Education and Family Welfare Department, Government of Jharkhand can be said to be a policy decision of the State Government taken in exercise of power conferred under Article 166(3) of the Constitution of India?

(ii).Whether the Health, Medical Education and Family Welfare Department is having competence to modify the decision taken by the Finance Department as contained in letter dated 29.01.2004, wherein decision of the medical reimbursement

has been taken by the Finance department which contains no difference in between the reimbursement of medical expenses occurred on outdoor patient and indoor patient?

(iii).Whether the aforesaid policy decision negating the claim merely on the ground that the concerned person has not been given the treatment in the capacity of indoor patient and discriminating the same only because the treatment is not required or given as an indoor patient, can such discrimination be allowed to be made?

(iv).Whether allowing the State Government to carve out distinction in between 'indoor patient' and 'outdoor patient' for medical reimbursement is not contrary to the mandate of Article 21 of the Constitution of India.

12. Since all the issues are inter-linked therefore, they are taken up together.

13. This Court is well aware of the fact that there should be least interference by the High Court under Article 226 of the Constitution of India so far as interference in the policy decision is concerned as per the judgment rendered in Federation of ***Railway Officers Association and Ors. vs. Union of India, (2003) 4 SCC 289*** wherein at paragraph-12, it has been held as follows:

> *"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court*

would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."

14. Reference may also be made to the judgment rendered in ***Directorate of Film Festivals and Ors. vs. Gaurav Ashwin Jain and Ors., (2007) 4 SCC 737***, wherein the Hon'ble Apex Court has been pleased to hold as under paragraph-16 which reads as under:

> *"16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review."*

15. Further, in ***Ugar Sugar Works Ltd. Vs. Delhi Administration and Ors., (2001) 3 SCC 635***, the Hon'ble Apex Court has been pleased to hold that "*The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness,*

arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy 11 L.P.A. No. 86 of 2018 cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint".

16. In ***Parisons Agrotech Private Limited and Anr. Vs. Union of India and Ors., (2015) 9 SCC 657***, the Hon'ble Apex Court has observed as under paragraph-14 which reads as under:

> *"14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the executive as the policy making is the domain of the executive and the decision in question has passed the test of the judicial review."*

17. In ***Jacob Puliyel vs Union of India and Others 2022 SCC OnLine SC 533*** wherein at paragraphs-21 & 23, it has been observed which reads as under:

> *"21. ... It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the*

policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary.

23. There is no doubt that this Court has held in more than one judgment that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since decisions on policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. However, this does not mean that courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record. In Delhi Development Authority (supra), this Court held that an executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review. It was further

held therein that the policy decision is subject to judicial review on the following grounds:

a) if it is unconstitutional;

b) if it is dehors the provisions of the Act and the regulations;

c) if the delegatee has acted beyond its power of delegation;

d) if the executive policy is contrary to the statutory or a larger policy.

18. Further, in ***Union of India and Others vs. Bharat Forge Ltd. and Another, 2022 SCC OnLine SC 1018***, the Hon'ble Apex Court at paragraph-20 has observed as under:

> *"20. This Court also laid down paragraph 46 as follows: "46. In Census Commr. v. R. Krishnamurthy [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796], a three-Judge Bench of this Court, after noting several decisions, held that (SCC p. 809, para 33) it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved and the courts can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded on ipse dixit offending the basic requirement of Article 14 of the Constitution. It further observed that in certain matters, as often said, there can be opinions but the court is not expected to sit as an appellate authority on an opinion."*

19. The aforesaid judgment suggests that in case policy decision suffers from arbitrariness, irrationality then it can well be interfered with.

20. It requires to refer herein the right to life is fundamental right, the Hon'ble Apex Court in the case of ***Surjit Singh Vs. State of Punjab & Ors [(1996) 2 SCC 336]*** has been pleased to hold that right to life enshrined under Article 21 of the Constitution of India, fundamental

in nature, sacred, precious and inviolable. For ready reference paragraph 11 of judgment is quoted as under:

> ***11.*** *It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:*
>
> *17 Vinaa dehena kasyaapi canpurushaartho na vidyate Tasmaaddeham dhanam rakshetpunyakarmaani saadhayet*
>
> *Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.*
>
> *18 Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejje vanbhaadraani pashyati*
>
> *One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.*
>
> *20 Shariirarakshanopaayaah kriyante sarvadaa budhaih Necchanti cha punastyaagamapi kushthaadiroginah*
>
> *The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.*
>
> ***
>
> *22 Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati*
>
> *If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.*

21. The Article 21 of the Constitution of India imposes an obligation on the State to safeguard the right to save life of every citizen. The aforesaid aspect of the matter has been taken into consideration by the Hon'ble Apex Court in the judgment rendered in ***Association of Medical Superspeciality Aspirants & Residents & Ors Vs. Union of India & Ors [(2019) 8 SCC 607]***, wherein, the Hon'ble Apex Court has been pleased to hold that it is the duty of the State to secure health of its citizen as its primary duty. Right to health is integral to right to life and the Government has a constitutional obligation to provide health facilities. For ready reference, paragraph 22, 25 and 26 are quoted as under:

> ***"22.*** *Article 21 of the Constitution of India imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the Medical Officers employed therein are duty-bound to extend medical assistance for preserving human life. 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 guaranteed under Article 21 of the Constitution. [Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37, paras 9 & 16] Therefore, in a welfare State it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. [Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165 : 1987 SCC (Cri) 329]*
>
> ***25****.It is for the State to secure health to its citizens as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach*

of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities to employ best of talents and tone up its administration to give effective contribution, which is also the duty of the Government

26. *Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities [State of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83 : 1997 SCC (L&S) 294] . The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights [Francis Coralie Mullin v. State (UT of Delhi), (1981) 1 SCC 608 : 1981 SCC (Cri) 212] .”*

22. It is settled that policy decision if made by way of piece of beneficial measure is to be construed by taking it broad pedantic approach on the principle of purposive construction otherwise the very purpose of such policy decision will be redundant.

Reference in this regard be made to the judgment rendered in the case of State of ***N.K. Jain & Ors Vs. C.K. Shah& Ors. [(1991) 2 SCC 495],*** wherein it has been held

at paragraph 13 that ….*The legislative purpose must be noted and the statute must be read as a whole. In our view taking into consideration the object underlying the Act and on reading Sections 14 and 17 in full, it becomes clear that cancellation of the exemption granted does not amount to a penalty within the meaning of Section 14(2-A). As already noted these provisions which form part of the Act, which is a welfare legislation are meant to ensure the employees the continuance of the benefits of the provident fund. They should be interpreted in such a way so* that the purpose of the legislation is allowed to be achieved….".

23. Further, the Hon'ble Apex Court in the case of ***Edukanti Kistamma (Dead) through LRs & Ors Vs. S. Venketareddy (dead) through LRs. & Ors [(2010) 1 SCC 756],*** at paragraph 26 held as under:

> *"**26.** ……. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose……"*

24. Likewise, the Hon'ble Apex Court in the case of ***Executive Engineer, Southern Electricity Supply***

Company of Orissa Limited (Southco) & Anr. Vs. Sri Seetaram Rice Mill [(2012) 2 SCC 108], at paragraph 46 and 49 has been pleased to hold as under:

> ***46.*** *"Purposive construction" is certainly a cardinal principle of interpretation. Equally true is that no rule of interpretation should either be overstated or overextended. Without being overextended or overstated, this rule of interpretation can be applied to the present case. It points to the conclusion that an interpretation which would attain the object and purpose of the Act has to be given precedence over any other interpretation which may not further the cause of the statute. The development of law is particularly liberated both from literal and blinkered interpretation, though to a limited extent.*
>
> ***49.*** *Once the court decides that it has to take a purposive construction as opposed to textual construction, then the legislative purpose sought to be achieved by such an interpretation has to be kept in mind. …".*

25. The Hon'ble Apex Court in the case of ***Shailesh Dhairawan Vs. Mohan Balkrishna Lulla [(2016) 3 SCC 619],*** has been pleased to hold that *"…The principle of purposive interpretation' or purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realize the goal that the legal text is designed to realize*."

26. Similar view has been taken by Hon'ble Apex Court on the issue of purposive construction in the judgment rendered in ***K.N. Nazar Vs. Mathew K. Jacob & Ors***

[(2020) 14 SCC 126], wherein paragraph 13, it has been held as under:

> ***13.****While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. [Indian Performing Rights Society Ltd. v. Sanjay Dalia, (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55] It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction [Shivram A. Shiroor v. Radhabai Shantram Kowshik, (1984) 1 SCC 588] . It was observed in Shivram A. Shiroor v. Radhabai Shantram Kowshik [Shivram A. Shiroor v. Radhabai Shantram Kowshik, (1984) 1 SCC 588] that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council [Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council, 2008 HCA 48 : (2008) 237 CLR 285] , Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly.*

27. This Court in the facts of the given case is to examine on the basis of aforesaid position of law coupled with the fact that as per that as to whether the so-called decision dated 15.09.2006 can be said to be policy decision of the State Government of it is consistent decision of the Finance Department or it is independent decision of the Health department so far as the denial of the medical reimbursement of the outdoor patient is concerned.

28. The first consideration is the reliance which has been placed by learned State counsel on the so-called circular dated 15.09.2006 as contained in Memo No.

354(10) issued by the Health, Medical Education and Family Welfare Department, Government of Jharkhand which is said to be clarification of the decision taken by the Department of Finance dated 29.01.2004.

29. Here, it would be apt to note that the Rules of Executive business, in exercise of power conferred under Article 166 (3) of the Constitution of India, confers power upon the State to make out rules for business for smoothing functioning of the government.

30. Accordingly, the State of Jharkhand also formulated the Rules of Executive Business bifurcating the business which is to be conducted by one or the other department of the State of Jharkhand. The business which has been allocated to the Finance Department of the State Government is with regard to the issues of finance having its implication upon the state exchequer. The State of Jharkhand, by taking into consideration the principle as laid down under Article 21 under Part III of the Constitution of India which confers right upon the citizen of India to impose an obligation upon the State to safeguard the right to life of every person, through its Finance Department has come out with a policy decision as contained in letter dated 29.01.2004 whereby and whereunder decision was taken for reimbursement of the

expenditure incurred on the treatment of the public servant or his/her dependents.

31. The aforesaid policy decision dated 29.01.2004 is having no bifurcation in reimbursing the expenditure incurred in treatment to be given to indoor patient or outdoor patient.

32. However, in the said policy decision there was no reference of any hospitals for getting treatment so as to reimbursement can be done if treatment is being done in that hospital.

33. The State of Jharkhand through Health Department vide letter dated 15.09.2006 has come out with another policy decision wherein on the basis of policy decision by State through its Finance Department dated 29.01.2004 the list of hospitals have been earmarked as under paragraph 2. For ready reference the same is quoted as under:

i. अखिलभारतीयआयुर्विज्ञानसंस्थान, नईदिल्ली
ii. क्रिश्चनमेडिकलकॉलेज, भेल्लोर
iii. पी०जी०आई०, चण्डीगढ़
iv. एस०जी०पी०जी०आई०, लखनऊ
v. टी०एम०एच०, मुम्बई
vi. शंकर नेत्रालय, चेन्नई
vii. अपोलो अस्पताल इरबा, राँची (हृदय रोग एवं गुर्दा रोग के लिए)
viii. मेहरबाई टाटा मेमोरियलअस्पताल, जमशेदपुर (कैंसरचिकित्साहेतु)

34. Under paragraph 6 of the said policy decision it has been stipulated that medical reimbursement will only be

admissible in case of indoor patient. However, in the policy decision of the Finance Department of the State of Jharkhand there was no reference of any hospital as has been taken by the Health Department as under paragraph 2 as under so-called decision dated 15.09.2006 there is no bifurcation of the expenditure incurred in the treatment restricting it only to the indoor patient.

35. First of all it is to be seen that what is the meaning of policy decision and once the business has been allocated in between the one or the other department then whether the Health Department of the State have competency to make out a rule by clarifying the policy decision of the Finance Department of the State.

36. Further the policy decision so taken under Article 166 (3) of the Constitution of India will be said to be policy decision in the eye of law as per democratic set up of the government if any policy decision has been taken by the State i.e., in the name of Governor of the State then it will be said that the same has been taken by the Cabinet and only then such decision will be said to be a policy decision of the State Government since we are living in the collective system of government where there is no power conferred to any individual to take any decision said to be policy decision.

Reference in this regard be made to the judgment rendered in ***Samsher Singh vs State of Punjab & Anr. [(1974) 2 SCC 831)*** wherein it has been held that in individual capacity, even the president/prime minister/chief minister is not competent to take any decision in the collective system of government.

37. This Court is now proceeding to examine that letter dated 15.09.2006 issued under the signature of Secretary, Health, Medical Education and Family Welfare Department can be said to be a policy decision issued under Article 166(3) of the Constitution of India.

38. Admittedly we cannot held it to be a policy decision issued under Article 166(3) of the Constitution of India since it has been issued under the seal and signature of Secretary, Health, Medical Education and Family Welfare Department without making any reference that what is the view of the State since it appears from bare perusal of said policy decision that there is no reference as to whether the State Government has concurred or not.

39. The policy decision dated 29.01.2004 since has been issued by the Finance Department and as per the Rules of Executive Business enshrined in exercise of Article 166(3) of the Constitution of India therefore it will be construed whatever policy decision as has been taken by the Finance Department of the State, the same will be in

exercise of power conferred under Article 166(3) of the Constitution of India and in that view of the matter we are of the view that the circular dated 29.01.2004 will be construed to be a policy decision in exercise of power conferred under Article 166(3) of the Constitution of India in view of the fact that the Finance Department has been allocated with power under Rules of Executive Business to take a decision so far as financial implication upon the State is concerned.

40. The circular of the State Government issued through the Finance Department dated 29.01.2004, therefore, according to our considered view will be said to be applicable for the purpose of reimbursement of the expenditure incurred on treatment.

41. Therefore, since policy decision dated 29.01.2004 speaks that the public servant or its dependent are entitled for reimbursement of the expenditure incurred on the medical treatment irrespective of making any distinction whether the treatment is by way of 'indoor' or 'outdoor'.

42. It appears from the aforesaid policy decision wherein only requirement has been shown to be that there must be recommendation of the medical board/council. Further the said policy decision also refers therein that the concerned respective administrative department will decide the aforesaid entitlement by taking decision in this regard

of the nature of disease and the hospitals and if such hospital/disease is in the list of recommended list of hospital/disease then the administrative department will sent it before the Health Department basis upon which the sanction will be granted.

43. It is thus evident that policy decision dated 29.01.2004 has only delegated the power to the extent for taking decision by the Health Department for earmarking the disease and the name of the hospital where if the treatment will be taken reimbursement will be admissible.

44. The policy decision dated 15.09.2006, therefore, has taken decision under paragraph 2 earmarking the different hospital as quoted and referred hereinabove and as such the same according to our considered view will be said to be consistent with the policy decision issued by the State Government through the finance department, the nodal department under 'Rules of Executive Business' and hence so far as the said earmarking of the hospital is concerned the same will be construed to be taken in pursuance to the delegation of power under the policy decision dated 29.01.2004.

45. But so far as the decision taken in clause 6, whereby and whereunder the decision has been taken for reimbursement of the expenditure incurred in course of treatment if taken by way of outdoor patient then the

concerned public servant or its dependent will not be entitled for the reimbursement of said expenditure incurred in course of medical treatment. Since the aforesaid stipulation is not there in the policy decision dated 29.01.2004 and there is no delegation of power to that effect by the Finance Department as in the manner as has been delegated for earmarking the name of the hospital for getting treatment.

46. Therefore, the said part of the order where the distinction has been carved out by making inadmissibility of reimbursement incurred on the treatment in the capacity of outdoor patient according to out considered view is construed to be without jurisdiction being inconsistent with the policy decision of the Finance Department wherein the Finance Department has not delegated power to take decision by the Health Department in view of allocation of business under the 'Rules of Executive Business' the Finance Department since is a nodal department. There is no conferment of power by the Finance Department to the Health Department for carving out distinction in between 'indoor patient' or outdoor patient', the same is being considered to be without jurisdiction.

47. It is not in dispute that the policy decision taken on 29.01.2004 by the Finance Department of the State

Government is by taking into consideration the mandate of Article 21 of the Constitution of India since such decision has been taken in order to give benefit to be given by employers to the employees for medical expenses incurred by employees.

48. Thus, it is evident that the State Government in the light of consideration of mandate under Article 21 of the Constitution of India has come up with the policy decision on 29.01.2004 so as to provide benefit of medical reimbursement.

49. The Hon'ble Apex Court in the case of ***State of Punjab & Ors Vs. Mohinder Singh Chawla & Ors 1997 2 SCC 83*** has taken note of the fact of carving out distinction in making reimbursement in the case of 'indoor patient' and 'outdoor patient' has been pleased to observe that a case where indoor patient facility is not available in specialized hospital and the patient has to stay in the hotel while undergoing treatment during the required period certified by the doctor necessarily expenses incurred would be integral part of the expenses incurred towards treatment.

For ready reference, the extract of paragraph 4 is quoted as under:

> ***4.*** *It is contended for the appellant-State that the Government have taken decision, as a policy in the Resolution dated 25-1-1991 made in Letter No. 7/7/85/5HBV/2498, that the*

reimbursement of expenses on account of diet, stay of attendant and stay of patient in hotel/hospital will not be allowed. Permission given was subject to the above resolution and, therefore, the High Court was not right in directing the Government to bear the expenses for the stay in the hotel/hospital contrary to para (vii) of the Resolution of the Government. We find no force in the contention. ***It is an admitted position that when specialised treatment was not available in the hospitals maintained by the State of Punjab, permission and approval having been given by the Medical Board to the respondent to have the treatment in the approved hospitals and having referred him to the AIIMS for specialised treatment where he was admitted, necessarily, the expenses incurred towards room rent for stay in the hospital as an in-patient are an integral part of the expenses incurred for the said treatment. Take, for instance, a case where an in-patient facility is not available in a specialised hospital and the patient has to stay in a hotel while undergoing the treatment, during the required period, as certified by the doctor, necessarily, the expenses incurred would be an integral part of the expenditure incurred towards treatment. It is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an in-patient.*"

[Emphasis supplied]

50. The Health Department however has earmarked list of the hospitals in the policy decision dated 15.09.2006. However, since the right to life is a fundamental right and it is the accountability of the State to provide basic amenities for securing health then there is no reason why to earmark the name of the hospital so as to compel the person concerned to get treatment from particular hospital and not from the hospital of their choice.

51. The issue of compelling the person concerned for getting treatment as per the list of hospital decided by the government has also been considered by the Hon'ble Apex Court in the case of ***Shiva Kant Jha Vs. Union of India [(2018) 16 SCC 187***], wherein answering the issue 'Can it be said that taking treatment in speciality hospital by itself would deprive a person to claim reimbursement solely on the ground that the said hospital is not included in the government order, it has been answered that the right to medical claim cannot be denied merely because the name of the hospital is not included in the government order. For ready reference paragraph 17 is quoted as under:

> ***"17.*** *It is a settled legal position that the government employee during his lifetime or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner*

in which the ailment should be treated. Speciality hospitals are established for treatment of specified ailments and services of doctors specialised in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in speciality hospital by itself would deprive a person to claim reimbursement solely on the ground that the said hospital is not included in the government order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the government order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by doctors/hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court."

52. However, in the given facts of the case it is not in dispute that the daughter of the writ petitioner was treated in the hospital other than the list of hospital, as is referred in the decision of the Health Department, and as such this Court is not delving upon the said issue since the same is not the issue for consideration in the instant appeal rather the only issue is why discrimination has been made only on the ground that the daughter of writ petitioner was treated as outdoor patient.

53. This Court on the basis of applicability of principle of purposive construction and by taking into consideration the policy decision of the State Government dated 29.01.2004 issued by the Finance Department of the State

of Jharkhand, by taking into consideration the mandate of Article 21 of the Constitution of India, making out the policy for reimbursement of expenditure incurred on the medical treatment and denying the said benefit only on the ground that the treatment was taken in the capacity of outdoor patient cannot be said to be proper and rationale.

54. The question of inducting a patient as 'indoor' or 'outdoor' depends upon the decision of the experts i.e., the doctors of the concerned hospital and if the doctors have taken decision for giving treatment without admitting the patient in the hospital as 'indoor patient' and in such circumstances denying the expenditure incurred by way of only because treatment was given in the capacity of 'outdoor patient', the same cannot be justified and will not be proper for the reason that if there will be distinction in between the expenditure to be incurred in the capacity of 'indoor patient' or the 'outdoor patient' same cannot be said to be based upon reasonable classification.

55. The policy decision of the State is only to see that there must be reference by the Medical Board/Council.

56. The same is not in dispute since herein the duly constituted board of RIMS has referred the daughter of the writ petitioner for medical treatment.

57. Herein in the facts of the case exact issue is that on the basis of reference made by the medical board the

daughter of the writ petitioner had been given treatment five times, each and every time, the permission was there of the competent authority. The travelling expenses incurred on the said medical treatment has been reimbursed but expenditure incurred on the treatment has been denied only on the ground that the daughter of the petitioner was not admitted as 'indoor patient' rather she was given treatment as 'outdoor patient' based upon the said policy decision of the health department. Since the said policy decision of the health department is based upon the policy decision of the finance department, the nodal department dated 29.01.2004, wherein there is no conferment of power upon the health department to carve out distinction in between the expenditure incurred as 'indoor patient' or 'outdoor patient'.

58. The claim has been rejected, by carving out distinction in 'indoor' and 'outdoor' patient as such the writ petition was filed. The learned Single Judge, after taking into consideration the mandate of Article 21 of the Constitution of India and in order to achieve its object has interfered with the impugned order. As such interference shown by learned Single Judge with impugned decision of administrative authority, according to our considered view, cannot be said to suffer from an error based upon the reasons and discussion made hereinabove.

59. Accordingly, the instant appeal fails and is dismissed.

60. Pending, Interlocutory Application, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)

Alankar/-

A.F.R.