

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 55 of 2024****FOR APPROVAL AND SIGNATURE:*****HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL******and******HONOURABLE MR. JUSTICE PRANAV TRIVEDI***

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| Approved for Reporting | Yes | No |
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SHRI JAGDISH BHAILALBHAI PATEL

Versus

UNION OF INDIA &amp; ORS.

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Appearance:

MR. HUSAIN T. TRIVEDI(14084) for the Applicant(s) No. 1

MS DIPMALA S DESAI(6596) for the Applicant(s) No. 1

MS HETAL PATEL ASSISTANT GOVERNMENT PLEADER for the Opponent(s) No. 2

MR SACHIN D VASAVADA(3342) for the Opponent(s) No. 3

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***CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL******and******HONOURABLE MR. JUSTICE PRANAV TRIVEDI*****Date : 09/12/2024****ORAL JUDGMENT*****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)***

Heard Ms. Deepmala S. Desai, learned advocate appearing for the petitioner and perused the record. Mr. Sachin D. Vasavada, learned advocate has put in appearance on behalf of respondent nos. 3 to 5, namely the Employees' State Insurance Corporation (ESIC).

2. The present petition has been filed with the the prayers as follows :-

*“(b) The Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to the respondents to provide the Insured persons with adequate medical facilities under the ESI Act and the rules framed thereunder to ensure that they are not deprived of their right to health and medical care.*

*(C) The Hon'ble Court may be pleased to issue order or direction to provide Mobile Dispensary Vans in the necessary affected areas of Vadodara District immediately till adequate medical facilities as per provisions of ESI Act are not provided.*

*d) The Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to the respondents to pay the Insured persons compensation for the loss and suffering caused to them due to the denial of medical facilities under the ESI Act.”*

2.1. As per the statement made in the writ petition, the petitioner claims to be a social worker, working for the cause of the workers covered by the Employees' State Insurance Act, 1948. It is stated that the petitioner has raised various issues/complaints on Employees State Insurance Corporation (ESIC) and Employees' State Insurance Scheme (ESIS) and other labour related issues for many years and has served as Advisory Committee Member of the ESI Dispensary as well as ESI Hospital, Gotri, Vadodara for several years in the past at different points of time. The further statement is that the petitioner is Director of People's Training and Research Centre, a

non-profit registered organization under the Public Charitable Trust Act established in the year 1992, working on occupational health and safety. Earlier also, one writ petition in the nature of Public Interest Litigation being Special Civil Application No. 2415 of 1995 was filed by the petitioner as a representative of 'Vyavsayik Swasthay Surakasha Mandal', which was disposed of vide order dated 02.11.2009.

2.2. A perusal of the order dated 02.11.2009 passed in the aforesaid writ petition appended at page '50' of the paper book indicates that in the said writ petition, the prayer was to declare the Government Resolution dated 01.12.1994 as illegal and to direct the authorities to continue the ESIS Dispensary which was closed down. However, the said writ petition has been disposed of as infructuous due to subsequent development taken place with the passage of time.

3. Be that as it may, the issues raised in the present writ petition is about strict implementation of Section 56 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "ESI Act"), which mandates the Corporation to provide medical benefits to the insured persons. Sections 56, 58, 59A and, 59B are relevant to be noted herein-under.

**"56. Medical benefit----**(1) *An insured person or (where such*

*medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.*

*(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.*

*(3) A person shall be entitled to medical benefit during any <sup>2</sup>[period] for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit <sup>3</sup>[or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations]:*

*Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations:*

*<sup>4</sup>[Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement:*

*<sup>5</sup>[Provided also that an insured person, who has attained the age of superannuation, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government].*

*Explanation : In this section, "superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment.]*

**58. Provision of medical treatment by State Government--**(1) The State Government shall provide for

*insured persons and (where such benefit is extended to their families) their families in the State reasonable medical, surgical and obstetric treatment:*

*Provided that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.*

*(2) Where the incidence of sickness benefit payment to insured persons in any State is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them:*

*Provided that the Corporation may in any case waive the recovery of the whole of any part of the share which is to be borne by the State Government.*

*(3) The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines and staff ) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the State Government.*

*(4) In default of agreement between the Corporation and any State Government as aforesaid the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that government, shall be determined by an arbitrator (who shall be or shall have been a Judge of the <sup>1</sup>[High Court] <sup>2</sup>[of a State] appointed by the Chief Justice of India (and the award of the arbitrator shall be binding on the Corporation and the State Government.*

<sup>1</sup>(5) *[The State Government may, in addition to the Corporation under this Act, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury;*

*Provided that any reference to the State Government in the Act shall also include reference to the organisation as and when such organisation is established by the State Government.]*

<sup>1</sup>(6) *The organisation referred to in sub-section (5) shall have such structure and discharge functions, exercise powers and undertake such activities as may be prescribed.]*

<sup>4</sup>**[59A. Provision of medical benefit by the Corporation in lieu of State Government ----** (1) *Notwithstanding anything contained in any other provision of this Act, the Corporation may, in consultation with the State Government, undertake the responsibility for providing medical benefit to insured persons and where such medical benefit is extended to their families, to the families of such insured persons in the State subject to the condition that the State Government shall share the cost of such medical benefit in such proportions may be agreed upon between the State Government and the Corporation.*

(2) *In the event of the Corporation exercising its power under sub-section (1), the provisions relating to medical benefit under this Act shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.]*

<sup>5</sup>**[59B. Medical and para-medical education----** *The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees' State Insurance Scheme.]*

4. The grievance raised in the petitioner is to the effect that the ESI Corporation is mandated to establish ESI dispensary within a radius of 8 kms., normally, for catering to the needs of the insured population. If insured population has a potential of 3000, then a dispensary is a necessary pre-requisite and if it is less than 3000, alternatives like 'Insured Medical Practitioner' System (IMP) or tie-

up system with other local dispensaries/hospitals have to be contemplated. Proper arrangement should also be made for 'Super Speciality Treatment' to the beneficiaries. In various paragraphs of the writ petition, it is stated that the benefits under the ESI Act as per Section 46, such as Medical benefits, like sickness benefits, maternity benefits, disablement benefits, permanent disablement benefits and other benefits such as funeral expenses, extended sickness benefits, confinement benefits, unemployment benefit, rehabilitation benefit are to be provided under the ESI scheme apart from other need based benefits to the insured workers under the ESI Act.

5. With the notification dated 01.03.2019, issued by the Central Government, in exercise of power conferred by sub-section (3) of Section 1 of Employees' State Insurance (Amendment) Act, 2019, the entire Vadodara District has been covered under the ESI Act, 2019, which prior to that was partially covered. Resultantly, from 01.03.2019 onwards contributions from employer and employees are being deposited with ESI Corporation. The industrial area covered under the ESI Act in Vadodara District has estimated number of employees to the tune of 4,47,310 and employers are 2,807 in number. As per the norms under the ESI Act reasonable medical care

in the form of medical treatment and attendance to the insured persons (IPs) and their families in respect of medical, surgical, other treatments is to be provided. The insured persons are entitled to avail treatment in ESI dispensaries/hospitals/diagnostic centre/recognized institutes both in the form of out-patient treatment and in-patient in a hospital or other institutions.

5.1. It is stated in paragraph '5.16' of the writ petition that being aggrieved by the lack of medical facilities and in absence of dispensaries (ESI), the petitioner made several representations to the respondent authorities, but no satisfactory response has been received. The representation filed in the year 2020, 2022 and the replies received by the petitioner on 18.01.2020 and 25.05.2023 are appended as Annexure-'E' collectively, to the writ petition. It is further in paragraph '5.17' of the writ petition that to solve the issues of the employees, grievances redressal meetings are held every month by the ESI Corporation. However, whenever, requests were made to open the hospitals/dispensaries, only assurance has been given from time to time by the Corporation that they would look into the matter and initiate the process to open the hospitals and dispensaries. The Minutes of the Meetings held between 11.12.2019, 17.04.2023 are appended as Annexure-'F' collectively, to the writ

petition.

5.2. Thereafter, the petitioner has made a reference to the RTI application moved on 08.04.2023 for collecting information and the replies thereto have also been filed in the writ petition. From the data collected under the RTI Act, it is stated in the writ petition that as against huge strength of employees covered under the ESI Act, only 11 dispensaries have been established in the entire District Vadodara. A chart showing the name of dispensaries, the sanctioned posts and the strength of the staff has been extracted to demonstrate that the existing dispensaries are also not well equipped to provide medical facility to such a huge number of insured persons, about 4,47,310 in number. In various paragraphs of the writ petition, thereafter, it is stated that sufficient number of hospitals and dispensaries have not been established by the ESI Corporation in the District to provide benefit of ESI scheme to the insured persons.

6. As against the same, in the reply filed on behalf of respondent nos. 3 to 5, namely the ESI Corporation, it is stated that the ESI scheme has been implemented in more than 442 districts and partially implemented in 153 districts of the Country. For the population of the insured persons under the ESI Act, medical care to the beneficiaries is provided through large infrastructure comprising

of 109 ESIS and 51 ESIC hospitals with 20,211 commissioned beds, 1502 dispensaries, 89 dispensary cum branch offices, 6 diagnostic centres, 4 Employer's Utilization Dispensaries (EUDs) and 1003 Insurance Medical Practitioners (IMP) Clinic besides tie-up arrangement with various other institutions. Besides, ESIC is also conducting annual health preventive check-up programmes and implementing 'Atal Bimit Vyakti Kalyan Yojana' (ABVKY) and 'Rajiv Gandhi Sharmik Kalyan Yojana' for providing reliefs in the case of the insured persons facing unemployment. It is submitted that ESIC is providing comprehensive social security benefits to its insured persons and beneficiaries across India.

6.1. As far as the State of Gujarat, the Corporation with the aid and help of the State Government has been providing numerous medical facilities to the insured persons. In the State of Gujarat, more than 17 lakhs workers were covered under the scheme of ESI Act and more than 65 lakh family members are being accorded benefit of the ESI scheme being managed by the ESI Corporation with the help of the State Government. *Insofar* as the area of Vadodara region, the respondents officers of the Corporation have been actively implementing the scheme of the ESI Act. They are constantly communicating with the GIDC, Gandhinagar, in an endeavour to

procure land to construct 100 bedded hospital for the benefit of the insured persons.

6.2. It is stated that full district implementation of Vadodara came into force with effect from 01.03.2019. The primary and secondary care medical services are provided by the State Government and the tertiary medical care is provided by the ESIC mostly through the tie-up hospitals. Recently, the ESIC is now making efforts to establish in-house Super Speciality Treatment facilities in ESIC hospitals. After implementation of the provisions of the ESI Act in the areas of District Vadodara, the ESIC with the help of the State Government and GIDC has been negotiating to acquire 7 acre lands so as to establish 100 bedded hospital at Savli - Manjusar area. The authorized officers of the Corporation have already visited the place and earmarked the space to construct the ESIC hospital with residential quarters. The copies of the communications with the GIDC as well as State Government have been brought on record as Annexure-'R-1', Collectively.

6.3. It is further stated that the employees got registered themselves along with all insured persons through online portal of ESIC or Shram Suvidha portal. Even the Company can register itself with ESIC through the portal of Ministry of Corporate Affairs. As per

Employer Master Register (EMR), there are 951 employees covered in the new areas after the implementation of ESI Act in Vadodara District. With the online facilities being given by the Union of India as well as ESIC since 2010, the employees/ workers/employers need not to attend the office of ESIC physically to get registered themselves.

7. *Insofar* as the medical facilities in Vadodara district is concerned, primary health care is being provided through 12 ESI dispensaries located in the Vadodara including 1 each located at Waghodia and Nandesari industrial area. The only ESIS hospital located in Gotri is within 8 kms., from any of the dispensaries in Vadodara District except the dispensaries situated at Waghodia and Nandesari. It is stated that ESI hospital, Gotri is well connected with the local transport facilities for all medical facilities and amenities. ESIC has executed Memorandum of Understanding (MOU) agreement with the nearby private hospitals and also empaneled various hospitals as well as pathology laboratories. Through tender process, ESI has also got tie-up with Super Speciality Treatment for the betterment of the insured persons. The details in this regard from the year 2019 till the year 2025 are appended at Annexure-'R-3', Collectively.

8. It is stated in the affidavit filed on behalf of the ESI Corporation that providing ESIS dispensaries and 100 bedded hospital in the newly implemented areas after whole Vadodara district implementation is now at the last stage and the negotiations are at the verge of completion. It is submitted that from the date of implementation of the ESI Act in the newly implemented area, this issue was deliberated and serious efforts have been made by the competent authorities of ESIC in consultation with all affected parties and time and again, discussions have been made in various Suvidha Samagam held in State Regional Office (SRO) Vadodara. Every matter which has been brought to the notice of the competent authority for providing dispensary at newly implemented areas has been taken note of. Presently, most of the insured persons population of these areas have options with them to choose attachment to nearest ESI dispensary of his/her choice. So far as the Super Speciality Treatment is concerned, the tie-up for the entire State of Gujarat is being made by State Medical Officer, Gujarat directly from Gujarat Regional Office. Insurance benefit matters of these areas are being catered by three branches of the Vadodara City. namely. Gowra, Makarpura, Panigate. The services of ambulances of the hospitals are very efficient and effective and

widely popular with the patients/insured persons who can reach in any hospital within the shortest possible time. In addition the ambulance services are also being provided by the State of Gujarat by calling 108 which effective and prompt service.

9. With the above-noted averments and additional statement made in the affidavit, it is submitted on behalf of the Corporation that only object of ESI Corporation is to provide medical benefits to all insured persons and their families free of charge. It is submitted that for ESIS, the insured persons are the most important persons as the entire scheme of the ESI Act is enacted for the benefit and betterment of the downtrodden persons who cannot afford highly expensive medical facilities and amenities. The issues raised in the present Public Interest Litigation has been taken care of by the ESI Corporation with the help of the State of Gujarat.

10. Taking note of the grievances raised by the petitioner and the stand of the ESI Corporation in the affidavit filed before us, we may note that Section 56 of the ESI Act mandates the Corporation to meet the requirement of an insured for providing benefits not only to the insured persons, but also members of his family whose condition requires medical treatment and attendance. Such medical benefits are to be provided both in the form of out-patient treatment and

attendance in a hospital or dispensary, clinic or other institutions, or by visit to the home of the insured persons or treatment as in-patient in hospital and other institutions. Sub-section (3) of Section 56 of the ESI Act provides that the insured persons are qualified to claim sickness benefits or maternity and other benefits such as disablement benefit.

10.1. Section 57 of the ESI Act, deals with scale of medical benefit to which an insured person and his family are entitled to and states that such persons are entitled to receive the medical benefits only of such kind and on such scale as may be provided by the State Government or by the Corporation and that they shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institutions, to which he or his family is allotted, or as may be provided by the regulations. Sub-section (2) of Section 57 of the ESI Act, further makes it clear that the insured person and his family cannot claim reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

10.2. Section 58 of the ESI Act casts responsibility upon the State Government to provide for insured persons and their families in the State reasonable medical, surgical and obstetric treatment. Proviso

to sub-section (1) of Section 58 of the ESI Act states that the State Government may with the approval of the Corporation arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon. Sub-section (3) of Section 58 of the ESI Act provides that the Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and their families and for sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the State Government. Sub-section (5) of Section 58 of the ESI Act further states that the State Government may, in addition to the Corporation under this Act, with the previous approval of the Central Government, establish such organization to provide for certain benefits to employees in case of sickness, maternity and employment injury.

10.3. Section 59 of the ESI Act provides for establishment and maintenance of hospitals, by Corporation with the approval of the State Government and states that the Corporation may establish and maintain in a State such hospitals, dispensaries and other medical and surgical services, as it may think fit, for the benefit of insured

persons and their families.

10.4. Sub-section (2) of Section 59 of the ESI further states that the Corporation may also enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and their families in any area and sharing the cost thereof. The Corporation is also empowered to enter into an agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families.

10.5. Sub-section (1) of Section 59A of the ESI Act starts with Non-obstinate clause and provides that the Corporation may, in consultation with the State Government, undertakes the responsibility for providing medical benefit to insured persons, and where such medical benefit is extended to their families in the State subject to the condition that the State Government shall share the cost of such medical benefit in such proportion as may be agreed upon between the State Government and the Corporation. Sub-section (2) of Section 59A of the ESI Act states that in the event the Corporation exercising its power under sub-section (1), the provision

relating to medical benefit under the ESI Act shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.

11. From the reading of the above provisions, it is more than evident that providing the medical benefits under the ESI Act to the insured persons and their families (where such medical benefits is extended to his family) is the conjoint duty of the ESI Corporation as well as the State Government. The ESI Corporation is empowered to tie up with the private bodies, local bodies, the State medical facilities available in an area, to extend medical benefit to insured persons and their families. The idea of giving such power to the Corporation is to expand the horizon in order to include other available medical facilities in the area for the benefit of the insured persons and their families. As noted hereinabove, the ESI Corporation is making effort for providing 100 bed hospital in the newly implemented area of Vadodara District and as per the statement made in the affidavit filed on behalf of the Corporation, the said project is at the last stage and negotiations are on the verge of completion. The material brought on record along with the affidavit of ESI Corporation also demonstrates that it has entered into agreements with medical institutions, doctors for providing

medical benefits to the insured persons and their families through the available medical infrastructure in the district. The only insistence made in the writ petition by the petitioner who was once associated with the cause being the member of the Advisory Committee at one point of time, is that Corporation is required to open/establish ESI dispensaries within the radius of 8 Kms., of the industrial units or the area where the insured persons and their families are located.

11.1. The contention is that the option of having a tie-up arrangement can only be available to the Corporation, if the population has potential of less than 3000. The contention in the writ petition is that if the insured population has a potential of 3000 then a dispensary is necessary pre-requisite. However, there is no answer to the stand of the Corporation that it is making efforts to provide adequate medical facilities to the insured persons and their families through various means, i.e. by opening dispensaries, commissioning for 100 bed hospital, Super Speciality Hospital in the area and signing Memorandum of Understanding with the available hospitals/institutions/dispensaries in the area. There is no reply to the affidavit filed on behalf of respondent no. 4. All communications placed in the writ petition are directed to only one contention that the ESI is

mandated to open dispensaries within a radius of 8 kms of the population of insured persons where the population is approximately 3000 or more.

12. Moreover, it has been brought on record by means of the affidavit of the Corporation that a Committee on Reorganization of ESI dispensaries has been constituted for the regional area by the Regional Officer, Ahmedabad vide order dated 27.03.2024 and the committee meetings are being held in the State Regional office of Vadodara jurisdiction. A perusal of page '202' of the paper book indicates that the the Committee is collecting data and information of employees through various means and even at one stage, data has been provided by the employee's representatives namely, Shri Jagdish Patel, who is the petitioner herein, which has also been taken into consideration by the Committee in its meeting held on 05.04.2024. The Minutes of the Meeting dated 05.04.2024 appended at page '202' of the paper book contains the recommendations of the Committee which may be extracted herein-under :-

**"RECOMMENDATION OF THE COMMITTEE** - Based on the available data and information, at present there are 20 dispensaries functioning i.e. 10 dispensaries in Vadodara Municipality limit, one in Nandesari GIDC (Dist. Vadodara), one in Waghodia GIDC (Dist. Vadodara), one in Nadia, (Dist. Kheda), one in Halol (Dist. Panchmahal), one in Kalol (Dist. Panchmahal), one-part time disp. In Godhra (Dist. Panchmahal), one in Bharuch city, two in Ankleshwar (Dist. Bharuch), one-part time at Cambay and one DBO at

*Ankleshwar. Apart from this, one dispensary approved by DIMS and proposal of seven dispensaries at various locations in Vadodara is pending (Total eight), proposal to convert part-time dispensary at Godhra and Cambay into full time is pending (already counted above), four dispensaries already approved by MoH & FW, GoG in Bharuch District, proposal for three dispensaries in Anand Districts is pending.*

*Accordingly, the committee has to examine the necessity and reasonability of reorganisation/reallocation of total 39 dispensaries which are either already functioning (full time/part time) or approved by competent authority or pending for approval.”*

13. As per the above noted facts, it is evident that the Committee constituted by the Regional Office, Ahmedabad is evaluating the data and examining the necessity and responsibility of re-organizing/re-location of the dispensaries which are either already functioning (full time/part time) or approved by the competent authority or pending for approval. We, therefore, direct that it is open for the petitioner to make a representation to the competent authority, namely the Regional Director, ESI Corporation, Ahmedabad, namely respondent no. 3 herein, raising the grievances made in the present petition along with the copy of this order. In case the petitioner makes such a representation, the grievances raised by the petitioner shall be placed before the aforesaid Committee for re-organization of ESIS dispensaries, which shall duly consider the same and also invite the petitioner in the meetings for deliberations and suggestions.

13.1. The Committee will be free to take a decision(s) independently

after considering the issues raised by the petitioner in the representation and during the personal deliberations, in the matter of establishment/re-organization/re-location of the ESI dispensaries within its jurisdiction.

14. With the above, the writ petition stands disposed of.

**(SUNITA AGARWAL, CJ )**

**(PRANAV TRIVEDI,J)**

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