

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

Tuesday, the 4th day of May 2021/14th Vaisakha, 1943

WP(C) No.10659/2021(S)

PETITIONER

ADV. SABU P. JOSEPH, AGED 46 YEARS,
SON OF T. A. JOSEPH, VICE-CHAIRMAN -LEGAL CELL,
HUMAN RIGHTS FORUM, REG. NO. 186/IV/19, REGISTERED OFFICE AT
B.NO. XX-638, CLASSIC TOWER, A.M. ROAD, PERUMBAVOOR, PIN-683 542,
ERNAKULAM DISTRICT.

RESPONDENT

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.
2. DIRECTOR OF HEALTH SERVICES,
DIRECTORATE OF HEALTH SERVICES,
GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM, PIN-695 035.
3. INDIAN COUNCIL FOR MEDICAL RESEARCH,
V.RAMALINGASWAMI BHAVAN, P.O.BOX NO.4911,
ANSARI NAGAR, NEW DELHI, PIN-110029, REPRESENTED
BY ITS SECRETARY AND DIRECTOR GENERAL.
4. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
HEALTH AND FAMILY WELFARE, NIRMAL BHAVAN,
NEW DELHI, PIN-110011.

ADDL. R5 IMPEADED

5. KERALA PRIVATE HOSPITALS ASSOCIATION HAVING ITS
REGISTERED OFFICE AT KPHA HEAD QUARTERS, ASHIR BHAVAN ROAD,
KACHERIPPADY, ERNAKULAM, KOCHI-682 018, REPRESENTED BY ITS
PRESIDENT, HUSSAIN KOYA THANGAL.

ADDL. R5 IS IMPEADED AS PER ORDER DATED 04/05/2021 IN IA.3/2021 IN
WPC 10659/2021.

ADDL. R6 TO R11 IMPEADED

6. THE STATE HEALTH AGENCY, REPRESENTED BY EXECUTIVE DIRECTOR,
ARTECH MEENAKSHI PLAZA, 5TH FLOOR, OPP. GOVT. WOMEN AND
CHILD HOSPITAL, THYCAUD, THIRUVANANTHAPURAM-695 014.

P.T.O.

7. NATIONAL HEALTH MISSION, REPRESENTED BY THE EXECUTIVE DIRECTOR, NRHM BUILDING, GENERAL HOSPITAL, DIRECTORATE OF HEALTH SERVICES, JAI VIHAR, KUNNUKUZHY, THIRUVANANTHAPURAM-695 035.
8. KERALA MEDICAL SERVICES CORPORATION LIMITED, REPRESENTED BY THE EXECUTIVE DIRECTOR, CV RAMAN PILLAI ROAD, NEAR WOMEN AND CHILDREN HOSPITAL, THYCAUD, THIRUVANANTHAPURAM-695 014.
9. THE INDIAN MEDICAL ASSOCIATION (IMA) KERALA, REPRESENTED BY ITS PRESIDENT, HEADQUARTERS, ANAYARA P.O., THIRUVANANTHAPURAM-695 029.
10. QUALIFIED PRIVATE MEDICAL PRACTITIONERS ASSOCIATION, REPRESENTED BY ITS PRESIDENT, FLOOR V-E/F, VALLAMATTAM ESTATE, RAVIPURAM, M.G. ROAD, KOCHI-682 015.
11. CATHOLIC HEALTH ASSOCIATION OF INDIA, REPRESENTED BY THE EXECUTIVE DIRECTOR, PASTORAL ORIENTATION CENTRE, CIVIL LINE RD, PALARIVATTOM, KOCHI-682 028.

ADDL. R6 TO R11 ARE SUO MOTU IMPEADED AS PER ORDER DATED 04/05/2021 IN WPC 10659/2021.

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 direct the respondents to re-fix tariff for the private hospital/nursing homes for the treatment of Covid-19 patients including charges of laboratories and Diagnostic Centers considering the common man with low income, pending disposal of the Writ Petition.

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 30/04/2021 and upon hearing the arguments of M/S C.N.SREEKUMAR, SURESHKUMAR.C, MANJU PAUL, Advocates for the petitioner and of SRI.K.V.SOHAN, STATE ATTORNEY for R1 & R2, SRI.P.VIJAYAKUMAR, ASG OF INDIA for R3 & R4, SRI.K.RAMAKUMAR (SENIOR ADVOCATE) along with M/S.T. RAMPRASAD UNNI, R.S.ASWINI SANKAR, RANJITH G., K.ANAND, S.M.PRASANTH & T.H.ARAVIND, Advocates for Addl. R5, SRI.M. AJAY, Advocate for Addl. R6 to R8, the court passed the following:

Devan Ramachandran &
Dr.Kauser Edappagath, JJ.

W.P.(C)No.10659 of 2021 S

Dated this the 4th day of May, 2021

ORDER

Devan Ramachandran, J.

I.A.No.3 of 2021

This application has been filed by the Kerala Private Hospital Association to bring them on record as additional fifth respondent. Since none of the respondents oppose this application, it is allowed. Registry is directed to make consequential incorporations in the cause title.

W.P.(C)No.10659 of 2021

Sri.K.V.Sohan, learned State Attorney, submitted that State has already initiated action to ensure rationalisation of prices for COVID-19 treatment even in the private sector. He has handed over certain Government Orders across the Bar, which, he says, will be produced along with appropriate pleadings by the next posting date.

Prefetorily, when we go through the various materials available on record, there are five or six broad heads under

which rationalisation of prices would become necessary. The first is the charges of hospital bed/room and the second is the cost chargeable for nursing and doctors on a daily basis. The expenses and charges to be incurred for the various hospital medical machinery and equipments, including oxigenerators, oxygen concentrators, ventilators, etc. will also require to be kept in mind, but what is most important and which has now created a lot of confusion among the public is the cost of hospital consumables, including the PPE kits. Illustratively, the Registry of this Court is getting requests from public with respect to the charges for PPE kits, alleging that even where there are several patients in a ward, which is manned only by two or three or four Nurses, each of them are being charged for PPE kits as if they have the assistance of an exclusive Doctor or Nurse. Obviously, no hospital can be allowed to charge for consumables individually from patients, when they are being used commonly and it is necessary that such expenses be charged on a prorata basis, charging it from patients commonly.

As we have said in our earlier orders, there is also a problem of finding a benchmark of a fair price. Since we are dealing with a situation which is an unparalled in history, it may

not be possible to fix common rates for all hospitals on a like basis. In fact, this is the submission of Sri.K.Ramakumar, learned Senior Counsel appearing for the Kerala Private Hospital Association, who have come themselves on record as additional respondent.

In addition to this, we deem it appropriate to alert the State that we have come across one instance – which may not be an isolated one – of a certain private hospital operating a First Line Treatment Centre (FLTS) and charging Rs.10,000/- to Rs.20,000/- as a package for each day. These kind of instances will certainly have to be borne in mind by the Governemnt and addressed before this Court appropriately.

We, therefore, deem it appropriate that the State Health Agency, an entity which normally fixes benchmark rates for members, who are enrolled with them even for treatment in private hosptials, is brought on the party array, as also the National Health Mission and Kerala Medical Services Corproation Limited. We are certain that these entities will be in a position to give us valuable inputs as we move forward in this case. We are also of the view that presence of the Indian Medical Association, which is the largest voluntary organisation of

doctors, would also be necessary.

Therefore, the State Health Agency represented by Executive Director, Artech Meenakshi Plaza, 5th and 8th Floor, Opp. Govt. Women And Child Hospital, Thycaud, Thiruvananthapuram-695 014, National Health Mission represented by the Executive Director, NRHM Building, General Hospital, Directorate of Health Services, Jai Vihar, Kunnukuzhy, Thiruvananthapuram – 695 035, Kerala Medical Services Corporation Limited represented by the Executive Director, CV Raman Pillai Road, Near Women and Children Hospital, Thycaud, Thiruvananthapuram-695 014 and the Indian Medical Association (IMA) Kerala represented by its President, Headquarters, Anayara P.O. Thiruvananthapuram-695 029 are also impleaded as additional respondents in this case. We record that Sri.M.Ajay takes notice on behalf of the first three additional respondents, while the petitioner will take out notice to the IMA by e-mail today itself.

Sri.M.Ajay, in fact, submits that State Government has already had discussions with certain organisations representing the Private Hospitals, namely Qualified Private Medical Practitioners Association represented by its President, Floor V -

E/F, Vallamattam Estate, Ravipuram, M.G.Road, Kochi-682 015 and Catholic Health Association of India represented by the Executive Director, Pastoral Orientation Centre, Civil Line Rd, Palarivattom, Kochi-682 028. We, therefore, deem it appropriate to implead them also. It is so ordered. The petitioner is directed to take out notice to them by e-mail today itself.

Registry is directed to make consequential incorporations in the case title.

Since this is a matter of great public importance, we deem it appropriate that we hold a special sitting on 06.05.2021 and record that this has been agreed to by all the learned counsel appearing for the parties.

List, therefore, on 06.05.2021 at 11 a.m.

Sd/-
Devan Ramachandran, Judge

Sd/-
Dr.Kauser Edappagath, Judge

tkv