

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K V ARAVIND

WRIT PETITION NO. 797 OF 2024 (GM-RES-PIL)



BETWEEN:

THE REGISTRAR GENERAL
THE HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

... PETITIONER

(BY SRI SHRIDHAR PRABHU, ADVOCATE AS
AMICUS CURIAE &
SRI B. VACHAN, ADVOCATE)

AND:

1 . UNION OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAVAN
NEW DELHI - 110 011
(REPRESENTED BY ITS SECRETARY)

2 . STATE OF KARNATAKA
DEPARTMENT OF HEALTH
AND FAMILY WELFARE,
105, I FLOOR, VIKAS SOUDHA,
BENGALURU - 560 001
(REPRESENTED BY ITS PRINCIPAL SECRETARY)

... RESPONDENTS

(BY MS. VIDYA PAI, ADVOCATE FOR
MS. NAYANA TARA B.G., CGC FOR R-1 &
SMT. NILOUFER AKBAR, AGA FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENTS TO FILL UP THE SANCTIONED POSTS OF THE MEDICAL PERSONNEL IN THE KARNATAKA STATE & DIRECT THE RESPONDENTS TO GIVE A REPORT ON THE STRATEGY FOR IMPLEMENTING THE BUDGET ALLOCATION ON HEALTHCARE, MORE PARTICULARLY ON MEDICAL INFRASTRUCTURE & ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N.V. ANJARIA
and
HON'BLE MR. JUSTICE K.V. ARAVIND

CAV JUDGMENT

(PER: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. V. ANJARIA)

In the Bengaluru Edition of 'The New Indian Express' dated 16.10.2023, a news report titled 'Karnataka Short of 16,500 Medical Personnel' was published. It further highlighted that there is a shortfall of 454 Primary Health Centers in the State and that rural areas have inadequate medical facilities.

2. The report caught the eye of this High Court. The Court took *suo motu* cognizance of the said report and passed the order dated 07.11.2023, which reads as under,

"A news item is published in 'The New Indian Express' Bengaluru dated 16.10.2023 under caption "Karnataka short of 16,500 medical personnel". It shows a shortfall of 454 PHCs in State, and it says that rural areas need better facilities. Then there is a tabular statement in the news item as under:

"Deficit of medical staff

723 MBBS Doctors, 7,492 Nurses, 1,517 Lab Technicians, 1,512 Pharmacists, 1,752 Assistants & 3,253 Group D employees"

The contents of this news item shows that this issue needs an immediate attention in the larger public interest. Accordingly this news report is taken cognizance of and learned Advocate Sri Sridhar Prabhu is requested to assist this court as an Amicus Curiae.

Learned Advocate Sri Sridhar Prabhu fairly accepts. Learned counsel Sri B.Vachan is requested to assist Amicus Curiae Sri Sridhar Prabhu. Learned counsel Sri B.Vachan to present a proforma petition before this court within two weeks.

On submission of proforma petition, the Registry to place the same before this court for further orders."

2.1 The aforementioned news report was based on the report released on 11.10.2023 by the Federation of Indian Chambers of Commerce and Industry (FICCI) titled as "\$ 1

Trillion Economy Karnataka's Vision". The news item which is part of the record of the petition (page 26, Annexure-A) highlighted that there was uneven distribution of medical staff and Primary Health Centers and that there are deficits of medical professionals across thirty districts of the Karnataka. It was mentioned that Bengaluru Urban, Belagavi, Mysuru, Tumakuru, Hassan and Mandya districts have 39.1 percent shortage of the nursing personnel.

2.2 It also reflected that there was shortage of Primary Health Centers to the extent of 245 urban and 209 rural centers leading to shortfall of total 454 centers. It highlighted that 1,60,000 beds were required to be provided with health cover under the Ayushman Bharat - National Health Protection Mission. The newspaper report referred to the statement by the Director of Medical Education that most institutions only end up recruiting for minimum sanctioned posts and according to the National Medical Council's Standards, the posts would still remain vacant. The Director stated that the medical personnel had to work for long hours on account of shortage of staff which affected their mental health and quality of work.

2.3 The news-item stated that the citizens have to travel long distances to avail the basic medical facilities and healthcare needs. It was also stated that the State must focus on achieving universal health coverage, creating a preventive healthcare system, address the medical staff shortage by building adequate infrastructure and ensure proper execution of all initiatives. It was recommended that gaps in the healthcare system needs to be filled up with increased budget allocation.

3. The Registrar General, High Court of Karnataka - the petitioner, presented the public interest petition with extensive pleadings. It was quoted from the report that there was shortage of 723 MBBS doctors, 7,492 nurses, 1,517 lab technicians, 1,512 pharmacists, 1,752 attendants and 3,253 Group 'D' employees which constitute different categories of medical staff. It was highlighted that Chapter 12 of the aforementioned report dealt with healthcare and current standing of the Karnataka State in the healthcare sector. Subsequent to the publishing of the FICCI report, the Government of Karnataka notified an ordinance in Gazette publication dated 08.11.2023 wherein certain employees were exempted from compulsory rural service.

3.1 In the petition, highlighted were the details of the National Health Mission which is a health initiative launched by the Hon'ble Prime Minister of India in the year 2005, implemented under the Ministry of Health and Family Welfare. The project envisages universal access to equitable, affordable and quality healthcare services. It was also referred that a National Health Policy was announced which provided a framework within which the health policy of the State would be refashioned to meet the current needs of the State.

3.1.1 The Karnataka State Health Policies were also highlighted to state that the State Health Policy was based on the following premises,

"(i) It will build on the existing institutional capacities of the public, voluntary and private health sectors.

(ii) It will pay particular attention to filling up gaps and will move towards greater equity in health and health care, within a reasonable time frame.

(iii) It will use a public health approach, focusing on determinants of health such as food and nutrition, safe - water, sanitation, housing and education.

(iv) It will expand beyond a focus on curative care and further strengthen the primary health care strategy.

(v) It will encourage the development of Indian and other systems of medicines.

(vi) It views health as a reasonable expectation of every citizen and will work within a framework of social justice."

3.1.2 It was stated that the Ayushman Bharat - Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) was started on 23.09.2018 to provide financial protection and cover benefit of Rs. 5 lakh per year to the poor and deprived families of the rural areas as well as to the occupational categories of urban workers' families which is the world's "largest Government funded healthcare programme" seeking to cover fifty crores beneficiaries. There was yet another mission called Pradhan Mantri Ayushman Bharat Infrastructure Mission launched on 25.10.2021 providing outlay for the scheme to the extent of Rs. 64,180 crores till financial year 2025-2026. It was averred that the Ministry of Health and Family Welfare, Government of India had sanctioned and allotted budget resource pool to be spent by the State of Karnataka to the tune of Rs.2,800/- crores.

3.1.3 It was noted that the provisions of the Karnataka Compulsory Service Training by Candidates Completed Medical Courses Act, 2012, contemplated that every candidate who has completed MBBS degree should have to undergo one year compulsory rural service training in Government Primary

Health Centres or Government Hospitals. It was noted that total 24 Government medical colleges offering MBBS course in Karnataka head the total intake of 3,750 seats and 36 private medical colleges at the intake capacity of 4,445 seats. It was stated that Corporate Sectors had also been discharging its social responsibility and funding public health projects.

3.1.4 After referring to the above scheme and projects functioning in different directions, it was pleaded that despite several initiatives, the healthcare sector lags behind and desired efficiency is not achieved. It was stated that there is lack of co-ordination and supervision in implementing different health related strategies. It was pleaded that therefore, the intervention of this Court was required.

3.2 The petition stressed the concept of Right to Health both from International Conventions and the Constitutional provisions. It was highlighted by referring to the decisions of the Supreme Court in **Paschim Banga Khet Mazdoor Samity and others vs. State of West Bengal and another** reported in (1996) 4 SCC 37, **Parmanand Katara vs. Union of India and others** reported in (1989) 4 SCC 286, **Bandhua Mukti Morcha vs. Union of India and others** reported in (1984) 3 SCC 161,

State of Punjab and others vs. Mohinder Singh Chawla and others reported in (1997) 2 SCC 83 and **State of Punjab and others vs. Ram Lubhaya Bagga and others** reported in (1998) 4 SCC 117, that Right to Health to be the fundamental right and it is the Constitutional obligation and responsibility on part of the State Government to provide health services and to ensure medical facilities in furtherance of Right to Health.

3.3 With the pleadings elaborated as above, the prayer incorporated in the *suo motu* petition is to direct the respondent authorities to fill up all the medical personnel in the Karnataka State. Consequently, it was prayed to direct the respondents to give a report on the strategy for implementing the budget allocation on healthcare more particularly, the medical infrastructure.

3.4 The respondents arraigned in these proceedings were Union of India through the Ministry of Health and Family Welfare and State of Karnataka through the Department of Health and Family Welfare represented by its Principal Secretary.

4. On behalf of respondent No.2 - The Department of Health and Family Welfare, State of Karnataka, a response in

form of affidavit has been filed. The details about the different posts and vacancies available in the Health and Family Welfare Department are given. These details are summarized herein as under,

(a) Medical Officers : The sanction posts are 2355. Out of those, 1750 are presently working in the permanent post. The remaining 605 Medical Officers vacant posts, 287 posts are filled through Government contract, 801 Medical Officers are filled under the National Health Mission and 252 more posts are working under Compulsory Rural Service. Out of 2877 sanctioned Specialist posts, 2133 are presently working as regular permanent Doctors.

(b) Specialists and Dentists : 50 Specialist posts are filled through Government Contract and 612 Specialist post are filled through National Health Mission and the remaining 82 Specialists are working under Compulsory Rural Service. Out of 425 Dentist posts, 400 Dentists are working as regular permanent Doctors and the remaining 25 posts are under process to be filled on contract basis.

(c) Junior Laboratory Technicians : As against the sanctioned posts of 2324, the Technicians working are 1682, leaving a vacancy of 642. Recruitment to 204 posts of Junior Laboratory Technicians is underway, and it is almost in the final stage. 54 posts for Kalyana Karnataka are under process as final stage. 150 Posts for residential parent cadre are also under process as per the Notification dated 02.09.2022. There is a proposal for filling up of remaining 413 posts.

(d) Senior Laboratory Technicians : The sanctioned posts are 407 and those presently working are 262, leaving a vacancy of 145 posts. Out of 145 posts, 36 posts will be filled through Direct Recruitment.

(e) Pharmacists : The sanctioned posts are 2932 and those presently working on permanent basis are 1729 leaving a vacancy of 1203. Out of this, 498 posts are in the process of recruitment with 98 posts in the process of completion of recruitment with document verification. The remaining 400 posts are under document verification which is under way and that there is further proposal to fill up remaining 705 posts

which is under active consideration. 707 pharmacists are working on contract basis under the National Health Mission Project.

(f) Nursing Officers : Several Nursing Officers working under the Directorate of Health and Family Welfare Services are concerned, the number of sanctioned posts is 6750. Those presently working on permanent basis are 5844 and 906 posts are vacant. The proposal for filling up of these posts is also under consideration apart from this, 7455 Nursing Officers are working on contract basis under National Health Mission.

(g) Group - D Employees - The sanctioned posts are 16,897 and 6644 persons are presently working on permanent basis. 10,253 posts are vacant . As per the Government Order No. AKUKA 01 CGM 2019, Bengaluru dated 24.06.2019 for up to 75% of Group-D vacancy, Non Clinical/Group D staff (4201 in number) are recruited on outsource basis at each District Commissioner's (Revenue's) level and they are presently working. On contract with the National

Health Mission (NHM) Project, 1005 persons are working as Group-D Employees.

4.1 Respondent No.2 has further stated the details of Primary Health Centers sanctioned and functional. It is stated that one primary health centre is sanctioned for every population of 30,000 in the plains and one such centre for population of 20,000 in hilly and tribal areas. According to revised rural projected population of 2022 for the State is 4,27,29,610. It is stated that 2,159 Primary Health Centers are currently functioning in rural areas and that the proposals for sanctioning new primary health centres where there is shortage is under consideration and a proposal is under examination.

4.1.1 It is showed that in Vijayapura District, ten new Primary Health Centers are proposed, in Uttara Kannada District, two are contemplated, in Chamarajanagara District, one Primary Health Centre will be set up and two Primary Health Centers shall be coming up in Davanagere and two in Kolar District whereas, three in Shimogga District and four in Haveri District are proposed. It is stated that infrastructure for such Primary Health Centers and Health Wellness Centers are available and

the expenses and expenditure for that is taken under different head of accounts.

4.1.2 It is stated that approval is taken for 33 new Primary Health Centers at the cost of Rs.13200.00 lakhs under the Kalyana Karnataka Region Development Board. The Karnataka Mining Environment Restoration Corporation has accorded administrative approval to take up construction for 13 new Primary Health Centers at the cost of Rs.5477.90 lakhs. The other sub-centers are also being set up in the different districts as per the details given in paragraph 12 of the affidavit. It is stated that the Central Government has accorded an administrative approval to construct 231 health and wellness centers and the tenders were invited for 217 such centers at the cost of Rs.14105.00 lakhs.

4.2 It is further given out that in the State Budget 2023-2024, 35 Primary Health Centers with additional infrastructure facilities are approved, for renovation 206 Primary Health Centers are approved and that the renovation work is in progress. The Karnataka Government has been giving sufficient grants in a phased manner for the purpose.

4.3 In addition to the above details, respondent No.2 has mentioned the following in the affidavit,

(i) The State Government has been making endeavours and taking steps to ensure that the health schemes are running effectively.

(ii) Vacant posts of the medical personnel shall be filled once the approval is granted through direct recruitment or by recruiting on contractual basis or by outsourcing mode.

(iii) As per the statistical data, the total number of vacancies is 16,249 and number of vacancies filled under the contract basis is 16,501.

(iv) Ayushman Bharat - Pradhan Mantri Jan Arogya Yojana and Chief Ministers Arogya Karnataka have been implemented since 30.10.2018.

(v) The package services are also provided comprehensively at the private health care centers and health wellness centers.

(vi) Under the Ayushman Bharath Infrastructure Mission, sum of Rs.11.25 crores was released for

the financial years 2021-2022, an amount of Rs.7.50 crores was added by the State Government and that it was released and also to be utilized during the financial years 2022-2023.

(vii) 33.84 crores has been released by the Central Government and 22.56 crores were added by the State Government in the financial years 2022-2023.

(viii) As per the programme of National Health Mission, the Ministry of Health and Family Welfare, an amount of Rs. 792.48 crores has been released to the State Government and Rs. 951.42 crores is added by the State Government for the financial years 2021-22.

(ix) Similarly, the sum of Rs.881.10 crores was released by the Central Government and Rs. 831.11 crores was contributed by the State Government during the subsequent financial year and total amount utilized is Rs. 1844.08 crores.

(x) During the previous years, supernumerary posts were created to meet with the shortage in the vacancies during one year compulsory rural service.

5. It was thus demonstrated by the respondents that all steps are taken to effectuate and upgrade the medical facilities in the State. It was claimed that sufficient budgetary amount is allocated and spent towards medical health schemes, for running the Primary Health Centers and to provide medical infrastructure thereat and also for meeting with the salary and other expenses of medical personnel. It is also suggested that various health schemes such as Pradhan Mantri Ayushman Bharat Infrastructure Mission or Ayushman Bharat - Pradhan Mantri Jan Arogya Yojana floated by the Central Government as well as the schemes of the State Government such as Karnataka State Integrated Health Policy are effectively implemented to the benefit of those who need the medical care and treatment. The shortage of staff is sought to be answered by stating that steps are made effective to undertake the recruitment.

5.1 The above details largely answers the cause sought to be espoused in the *suo motu* public interest litigation upon a

newspaper report that there is serious shortage of personnel medical facility in the State and in the rural areas of the State.

6. In **Mohinder Singh Chawla** (*supra*), the Supreme Court observed that it is settled law that right to health is integral part of right to life. It was stated that Government has a constitutional obligation to provide health facilities. The proposition that right to healthy life emanates from Article 21 of the Constitution and therefore right to health is a fundamental right was again highlighted by the Supreme Court in **Ram Lubhaya Bagga** (*supra*), in which in the context of the fundamental right of right to health, the obligation of the State to tone up the health services was stressed. Right to health care is held to be enforceable against private persons also and the private Doctors are held obliged to give immediate medical relief in injury cases, as observed by the Apex Court in **Pt. Parmanand Katara** (*supra*).

6.1 The philosophy that welfare State in under constitutional obligation to extend health care services and therefore right to life to one and all, was highlighted in the following words by the Supreme Court in **Paschim Banga Keth Mazdoor Samity and others vs. State of West Bengal [(1996) 4 SCC 37]**,

“...it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary

for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See: Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] , SCC at p. 631.] The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by the court and steps should be taken to implement the same.”

(Para 16)

6.1.1 It was further observed,

“The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 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 to life guaranteed under Article 21.”

(Para 9)

7. When right to health and right to medical-care is treated as fundamental right, it stands enforced only with corresponding Constitutional obligation on part of the State to create medical facilities. For effective enjoyment of this right, the creation of medical cadre, adequate medical personnel, setting up of infrastructure, availability of medicines in sufficient quantity and without interruption, as also establishment of Primary Health Centres in the rural area, are the concomitants. They become inseparable necessities for enjoyment of right to health and right to medicare. At all levels from urban to semi-urban to rural areas of the State, the medical facility, medical infrastructure and medical personnel have to be made available by the welfare state.

8. It is expected that the respondent State Government and the Department of Health and Family Welfare remains attentive and active in catering to the needs of the medical facilities in the State and especially in the rural areas to ensure that

medical infrastructure is widely available and the medical facilities as well as medical treatment reach the door steps of the rural inhabitants. Extending continuous by the medical facilities and medical treatment by creating and setting up necessary infrastructure in that regard spread over the State in the cities, towns and rural areas, becomes a primary responsibility and a constitutional obligation of a Welfare State. The medical facility and its effective availability have also to be continuously monitored.

9. The whole underlying purpose for initiating the present *suo motu* public interest litigation was to effectuate the fundamental right to health and to orient and activate the state authorities incharge of the health care to achieve the welfare-purpose.

10. While taking note of the details given regarding the steps taken by the respondent-State to post medical personnel in adequate numbers at various hospitals and public health centers, creation of the infrastructure for medicare in the rural area and also the details of the functional Primary Health Centres in the rural areas of the State of Karnataka, the Court

is inclined to close the present public interest petition, however by issuing the following directions,

- (i) Respondent No.2-Department of Health and Family Welfare, State of Karnataka, shall constitute a three member Committee headed by the Secretary, Department of Health, to continuously oversee and implement the mechanism to ensure the providence of medical facility and medical infrastructure including the medical and para-medical personnel at all levels-City, District and Rural.
- (ii) The Committee as above shall every six months collect and assess the relevant details from deterrent Districts about the number of vacancies of medical staff in different categories, the need for upgrading or further extending the medical infrastructure and medical facilities including medicines to the various Government Hospitals and Primary Health Centres run by the Government.
- (iii) The Committee shall gather the information about the medical staff vacancies in the Government Hospitals and Primary Health Centres and take steps for filling up

the vacant posts. This exercise shall be undertaken every six months.

- (iv) The Committees at the District level for the above purposes, shall be constituted under the headship of Collector/Deputy Commissioner which shall collect the details relating to the medical staff vacancies, medical infrastructure and medical facilities at district and taluka levels to provide such details to the Committee contemplated in (i) above, every six months and shall function in aid and in coordination.
- (v) The respondent No.2-State Government shall periodically and preferably every six months undertake the survey of the Primary Health Centres in the rural areas of the State for the purpose of upgradation of such centres in terms of medical facilities to be catered by them and also decide about establishing additional Primary Health Centres on need basis in the villages.
- (vi) Respondent No.2-Health and Family Welfare Department shall evolve and set up a mechanism to see that there is proper co-ordination and supervision in implementing different Health Schemes of the Central

Government and the State Government, as also the health related strategies.

- (vii) The budgeting provision for the purpose shall be properly and adequately made and there shall be ensured purpose-serving spending of the budgetary allocations.

10.1 While parting, the figures regarding vacancies on the posts of medical personnel mentioned in the affidavit filed by respondent No.2, which is referred to in the earlier part of the judgment, may be recollected. The total sanctioned posts of the medical officers are 2355, whereas the vacant posts are 605. As far as the post of Junior Laboratory Technicians are concerned as against 2324 sanctioned posts, 642 vacancies exist. The sanctioned posts of the Pharmacists are 2932 against which vacancies are 1203. The vacant posts of Nursing Officers are 906 in number, as against the sanctioned posts of 6750. In Group-D category, vacant posts are 10253 against the sanctioned available post of 16897 in that category. It is further stated in the affidavit that the proposal for filling up the said vacant posts is under consideration or is underway.

10.2 It is to be noticed that the process of filling up the vacant posts in the above category had started as back as in the year 2022. Considering the immediate requirement to medical services in the entire State and for the reasons stated hereinabove, it is expedient to direct respondent No.2 to file affidavit setting out the timeline which the State Government will adhere to for filling up the vacant posts for medical services as per the directions issued hereinabove in paragraph 10. The recruitment process has to be continuous process which shall be reviewed for filling up vacant posts every six months based on the vacancies which may arise.

10.3 In respect of the present vacancies available in the different cadres as above, the respondents are directed to take immediate steps to complete the process which has already started but, has not been taken to its logical end.

10.4 The time schedule and the steps taken in this regard shall be placed on record of this Court in the present proceedings by filing an affidavit, notwithstanding the disposal of the proceedings.

10.5 Time is granted to file the affidavit stating necessary facts and detailing the progress made in respect of the

recruitment and that the affidavit shall be filed within ten weeks from today.

10.6 After the affidavit is filed, the papers of the present public interest petition shall be placed before the Court by listing the petition to satisfy the Court about the compliance.

11. The present petition is disposed of accordingly.

**Sd/-
(N.V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K V ARAVIND)
JUDGE**

KPS