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W.P.(MD) Nos.11886 of 2019 & 19218 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Reserved on</i>	30.01.2025
<i>Pronounced on</i>	09.04..2025

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

W.P.(MD) Nos.11886 of 2019 & 19218 of 2024
and
W.M.P.(MD) No.24803 of 2024 in W.P.(MD) No.11886 of 2019

W.P.(MD) No.11886 of 2019
Dr.S.Gurushankar

...Petitioner

Vs.

1.The Chief Secretary to the
Government of Tamilnadu,
Fort St.George, Chennai – 600 009.

2.The Principal Secretary to the
Government of Tamilnadu,
Health & Family Welfare Department,
Fort St.George, Chennai – 600 009.

3.The Director,
Directorate of Tamilnadu Medical
and Rural Welfare,
No.258, 3rd Floor, DMS Complex,
Anna Salai, Teynampet,
Chennai – 600 018.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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praying to issue a Writ of Mandamus, directing the respondents to frame necessary guidelines in respect of the standards of medical and infrastructural facilities to be made available in all the Government Hospitals in the State of Tamil Nadu with the assistance of committee of Experts in the Medical filed by raising the Public Health Expenditure to 2.5% of the GDP as per the National Health Policy 2017 and to implement and monitor the directions issued by the Honourable Supreme Court in the case reported in (1996) 4 SCC 37, *Paschim Banga Khet Mazdoor Samity v. State of W.B.*

Prayer in W.M.P.(MD) No.24803 of 2024 in W.P.(MD) No.11886 of 2019: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, praying to issue an appropriate order, fiat or direction to the respondents to facilitate Bone Marrow Transplant Procedures (BMT) with qualified doctors at the Government Hospitals, Madurai and elsewhere.

For Petitioner : Mr.S.Venkatesh
for Mr.S.Ramesh

For Respondents : Mr.J.Ravindran,
Additional Advocate General,
assisted by Mr.P.Thilak Kumar,
Government Pleader



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W.P.(MD) No.19218 of 2024

A.Veronica Mary

...Petitioner

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Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to the
Government of Tamilnadu,
Health & Family Welfare Department,
Fort St.George, Chennai – 600 009.

2.The Director,
Directorate of Medical Education,
162, E.V.R. Periyar Salai,
Kilpauk, Chennai – 600 010.

3.The Dean,
Madurai Government Rajaji Hospital,
Madurai – 625 020.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to direct the respondents No.1 and 2 to establish Bone Marrow Transplantation Surgery facilities with all infrastructure in Madurai Government Rajaji Hospital as established in Chennai Rajiv Gandhi Government General Hospital to provide quality medical services to the needy patients of Southern districts in Tamil Nadu in accordance with the law stipulated by this Court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.J.Ravindran,
Additional Advocate General,
assisted by Mr.P.Thilak Kumar,
Government Pleader



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COMMON ORDER
(Order of the Court was made by M.S.RAMESH, J.)

In both these Public Interest Litigations, the core issue that requires to be addressed is with regard to the absence of guidelines in respect of the standards of medical and infrastructural facilities to be made available in all the Government Hospitals in the State of Tamil Nadu in general and for establishment of Bone Marrow Transplantation (BMT) facilities in the Government Hospitals in particular. Hence, a common order is passed.

2. The case revolves around the basic fact that apart from the Rajiv Gandhi General Hospital, Chennai (RGGH) and Institute of Child Health and Hospital for Children, Egmore (ICHHC), no other Government Hospital has the facility of free BMT services in the State of Tamil Nadu. It is also brought to our attention that the Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER) extends BMT services at Puducherry.

3. According to both the learned counsels appearing on behalf of the petitioners, BMT surgery is an important procedure for treatment of rare medical conditions, which procedure involves huge expenditure in a



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Private Hospital, which the rich and affluent alone can afford. Since these facilities were not available anywhere else in the State of Tamil Nadu except Chennai, the patients in and around the District of Madurai are put to great hardship and therefore seeks for a direction to the Government to establish the facility of BMT in the Government Rajaji Hospital, Madurai, as well as other Government Hospitals.

4. The learned Additional Advocate General placed reliance on the status report filed by the Directorate of Medical Education, Chennai and submitted that the total estimation cost for Civil Structure, Equipment, Staff Sanctioning would be Rs.13,52,76,000/- and the Annual Expenditure for the medical and non-medical staff would be an additional sum of Rs.3,63,76,000/-. He further submitted that the total cost of the equipments for Oncopathology and Blood Bank, Transplant Unit and Transplant Room would be Rs.4,99,00,000/-. He also added that the Medical Officers in the rank of Professor from the Government Medical College, Dindigul and two Associate Professors from Madurai Medical College have been deputed to undergo Bone Marrow Training Programme at ICHHC, Chennai. However, the learned Additional Advocate General submitted that the estimated cost for the proposal for Civil Structure, Equipment and Human Resource for establishment of



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BMT at Government Rajaji Hospital, Madurai is subject to the approval of the Government. He would further submit that they were not in a position to give a probable time limit for such establishment of the facility, since it involves the policy decision of the Government.

5. We have given our anxious consideration to the submissions made by the respective counsels.

6. Before addressing the response of the Government to the issue involved in these Public Interest Litigations, we find it relevant to address the importance of the medical procedure of a BMT.

7. A BMT, also known as a stem cell transplant, is a medical procedure that replaces damaged or diseased bone marrow with healthy blood forming stem cells. This treatment is crucial for patients whose bone marrow is not producing sufficient healthy blood cells due to conditions such as Leukaemia, Lymphoma, Aplastic anaemia or certain genetic disorders. By restoring healthy bone marrow, BMT can re-establish normal blood cell production and impress immune system function. The procedure involved in conducting BMT includes pre-transplant evaluation, chemotherapy/radiation therapy, stem cell infusion



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and monitoring of post transplant patients. A regular BMT procedure requires a multi-disciplinary team, including haematologist/oncologist, transplant surgeon, radiation oncologist, infectious disease specialist and other paramedical experts.

8. At present, in the State of Tamil Nadu, free BMT procedure is provided at RGGH and ICHHC, Chennai. The Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS) also covers BMT procedures at Government and Empanelled Hospitals at subscribed rates for eligible low income families. Among the private hospitals outside the city of Chennai, it is stated that Meenakshi Mission Hospital and Research Centre, Madurai is the only hospital that offers BMT services.

9. It is also stated that the cost involved in undergoing a BMT procedure runs to several lakhs in the private hospitals, which amount cannot be afforded by the poor and underprivileged section of the public. This apart, in order to avail the free facilities of BMT at Chennai, the underprivileged people from the remote districts of Kanyakumari, Ramanathapuram, Tirunelveli, etc. are required to travel hundreds of kilometres for availing the benefit, apart from spending months at the Government Hospital in Chennai. In view of this pitiable and distressing



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situation, which these people in the southern districts of the State are pushed into, the petitioners herein have initiated these Public Interest Litigations.

10. On a first blush, the status report of the Directorate of Medical Education, Chennai appears to be on a positive note, wherein the Director has estimated the total cost involved in providing the infrastructure, medical and non-medical staff, equipments, etc. and have also deputed medical officers from Dindigul and Madurai districts to ICHHC, Chennai for a three month training programme. However, what is not appreciable in the status report is a rider that these proposals, as well as the time limit for establishment of the BMT facility in the Government Hospital at Chennai is equivocal, since it is claimed as a policy decision of the Government.

11. The learned Additional Advocate General also stressed upon this aspect and by quoting the huge expenditure, as well as the lack of infrastructure and trained medical officers/staff, had attempted to portray that the High Court, in exercise of its powers under Article 226 of the Constitution of India, should not venture to issue directions over policy



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decision matters of the Government.

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12. At the outset, we are constrained to straightaway reject the objection of the learned Additional Advocate General by reminding that the State cannot avoid its constitutional obligation to provide free legal aid to the poor and depressed class, on account of its financial constraints, which proposition of law is well settled by the Hon'ble Supreme Court.

13. The decision in ***Paschim Banga Khet Mazdoor Samity Vs. State of W.B.*** reported in ***(1996) 4 SCC 37*** is one such decision, in which the Hon'ble Supreme Court had held as follows:-

“16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that 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 us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the memorandum of the Government of West Bengal dated 22-8-1995 and the further directions given herein.

(emphasis supplied)

14. The aforesaid ratio *decidendi* squarely overrules the objections of the learned Additional Advocate General, expressing their commitment to introduce BMT procedure in the southern regions, owing



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to financial constraints and also indicating that the High Court should not interfere in the Government policy decisions.

15. In a recent decision in the case of ***C.Anand Raj Vs. The State of Tamil Nadu, Health and Family Welfare Department and Others*** passed in ***W.P.(MD) No.22575 of 2024, dated 30.01.2025***, this Bench had an occasion to overrule a similar objection of the Government, when we had dealt with the shortages of the facility of dialysis technicians in the Government Hospitals, by placing reliance on a few other decisions of the Hon'ble Supreme Court. It would be appropriate to make a reference to our observations in this regard, which reads as follows:-

*“5. We are not inclined to accept the submission of the learned Additional Advocate General that creation and filling up of the posts of Dialysis Technician is a policy decision to be taken by the Government only. In this public interest litigation, we are addressing the issue of shortage of these specialized technicians to monitor the dialysis instrument in various hospitals. In a regular case arising in service law, the High Court may not be justified in directing the Government to create posts in any of the Departments. In **Ilmo Devi's case** (supra) relied upon by the Additional Advocate General, the issue before the Hon'ble Supreme*



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*Court was a judgement of the High Court, directing the Government to sanction and create posts of regular sweepers in a Post Office, in order to accommodate casual labours/daily wagers/temporary employees. But, in a case where when there is a dearth of technical staffs in the hospitals, it is a constitutional obligation of the Government to fill up such vacancies at any costs. Failure to do so, this Court would be well within its powers to direct for setting right the lacuna in the Department that provides medical facilities to the public. To such a view, we are supported by a decision of the Hon'ble Supreme Court in the case of **State of Punjab vs. Mohinder Singh Chawala and Others**, [(1997) 2 SCC 83] and the relevant portion is extracted hereunder:*

"4. It is contended for the appellants-State that the Government have taken decision, as a policy in the Resolution dated January 25, 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



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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 inpatient are an integral part of the expenses incurred for the said treatment. Take, for instance, a case where an inpatient 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 integral part of the expenditure incurred towards treatment. It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the 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 inpatient."

*A similar view has also been held down in the **State of Punjab vs. Ram Lubhaya Bagga**, [(1998) 4 SCC 117], as follows:*

"6. This Court has time and again emphasised to the Government and other authorities for focusing and giving priority and other authorities for focusing and giving priority to the health of its, citizen, which not only makes one's life meaningful, improves



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one's efficiency, but in turn gives optimum output. Further to secure protection of one's life is one of the foremost obligation of the State, it is not merely a right enshrined under Article 21 but an obligation cast on the State to provide this both under Article 21 and under Article 47 of the Constitution. The obligation includes improvement of public health as its primary duty. Learned counsel for the appellant on the other hand does not deny such a right but urges that the same can be placed within permissible limits by rules and policies laid down. The right claimed may be sacrosanct, which has to be given, but the same can be put within reasonable limits, under a policy which is framed after taking into consideration various factors. Thus the only question is, whether the new policy is arbitrary, unreasonable violative of any law or principle to be struck down. Of course it has to stand to the test of reasonableness and not to erode or curtail any of the Constitutional or Statutory right of any employee, If not, the claim cannot go beyond the policy."

"26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, o reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-



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keep; maintenance and cleanliness has to be beyond aspersion. To employ best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at then try point but also during the whole tenure of their service. Since it is one of the most sacrosanct and a valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority."

6. In all the aforesaid decisions, the Hon'ble Supreme Court had stressed upon the fact that medical facility is a fundamental and human right to protect the health of the citizens. When there is such a constitutional obligation on the part of the Government to provide the right and adequate medical facilities and when it is brought to the notice of this Court that there is a lack of such facilities, the High Court, in exercise of its power under Article 226 of the Constitution of India, will be justified in directing the Government to create



such posts in order to effectively extent proper treatment to the patients in the Government Hospitals.

7. Thus, we are not inclined to accept the submissions of the learned Additional Advocate General that it is a policy decision of the Government to create such posts. Likewise, we do not accept the statements made in the additional affidavit that there are sufficient staffs to monitor the dialysis instruments in the Government Hospitals.”

16. On an overall appraisal of all the decisions of the Hon'ble Supreme Court, we have no difficulty in holding that the provision of a medical facility in the Government Hospitals, so as to reach the poor, downtrodden and underprivileged citizens of the society, is a constitutional obligation of the State and when such facilities are neglected by the State Government, this Court would be well within its powers under Article 226 of the Constitution of India to issue positive directions for such provisions.

17. It is not in dispute that apart from RGGH and ICHHC at Chennai, no other Government Hospital, within the State of Tamil Nadu, has the facility for providing free BMT procedure. In the status report



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dated 30.09.2024, the Government have set out a proposal submitted by the Dean, Government Rajaji Hospital, Madurai and have estimated the proposal for civil structure, equipments and human resource for establishment of BMT in Government Rajaji Hospital, Madurai at Rs. 13.53 crores. The facility of BMT requires to be extended to atleast one General Hospital in each district, by taking into account the unavailability of such a facility in any of the districts, except Chennai. The Government shall take into consideration all the imminent and crucial medical procedures, which have been deprived to the poor and underprivileged section of the public in the remotest districts and shall endeavour to extend the facilities at the earliest.

18. Now that the Director of Medical Education has come out with a proposal with estimation for extending the BMT facility at the Government Rajaji Hospital, Madurai, the Principal Secretary, Health and Family Welfare Department, Government of Tamil Nadu, shall consider the proposal, extracted in their status report dated 30.09.2024 and allocate the necessary funds at the earliest, in any event, within a period of three months from the date of receipt of a copy of this order.

19. Insofar as the prayer for framing of necessary guidelines in



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respect of the standards of medical and infrastructural facilities in all the Government Hospitals is concerned, this Court, through an interim order dated 17.06.2019, had constituted a Three Member Committee to conduct an inspection as to the availability of basic infrastructures and maintenance of the hospitals in a neat and tidy sanitary condition and also as to the availability of adequate manpower with the basic functions. Pursuant to the interim order, the Committee had visited the Government Hospitals at Srivilliputhur, Ramanathapuram and Paramakudi and through their report dated 22.07.2019, have proposed certain recommendations for improvement of these hospitals. However, several years have lapsed, since the inspection was conducted and it would not be conducive to act upon the suggestions and recommendations made by the Committee.

20. In this background, we are of the view that if the petitioner is granted liberty to make a representation to the respondents herein for framing of guidelines, touching upon the standards of medical and infrastructural facilities in the Government Hospitals with a consequential direction to the Government to consider the same, the ends of justice could be secured.



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21. In the light of the aforesaid observations, the following directions are issued:-

(a) the respondents shall allocate the necessary funds for civil structure, equipments and human resource for establishment of BMT facility at Government Rajaji Hospital, Madurai, within a period of three months from the date of receipt of a copy of this order.

(b) on such allocation of funds, the respondents shall ensure that the facility of BMT is established at Government Rajaji Hospital, Madurai, within a period of six months from the date of allocation of the funds.

(c) the petitioners herein are granted liberty to make an appropriate representation to the respondents, seeking for framing of suitable guidelines, in respect of the standards of medical and infrastructural facilities in all the Government Hospitals in the State of Tamil Nadu and on receipt of the same, the Principal Secretary, Health and Family Welfare Department, Government of Tamil Nadu, shall consider it and pass suitable orders in accordance with law, within a period of three months from the date of receipt of such representation.

22. In the result, both the Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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Index:Yes
Neutral Citation:Yes
Speaking order

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[M.S.R., J] [A.D.M.C., J]
09.04.2025



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To

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Government of Tamilnadu,
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M.S.RAMESH, J.
and
A.D.MARIA CLETE, J.

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Pre-delivery common order made in
W.P.(MD) Nos.11886 of 2019 & 19218 of 2024

09.04.2025