Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3155 OF 2017

UNION OF INDIA … APPELLANT

VERSUS

MOOL CHAND KHAIRATI RAM TRUST … RESPONDENT

WITH

CIVIL APPEAL NOS.3153-3154 OF 2017

CIVIL APPEAL NO. 3156 OF 2017

AND

CIVIL APPEAL NOS.3157-3158 OF 2017

J U D G M E N T

ARUN MISHRA, J.

1. The question involved in the appeals is with respect to the validity of Circular issued by the Government of NCT of Delhi (GNCTD) on 2.2.2012 whereby it intimated the hospitals to implement

the judgment of Delhi High Court with regard to free treatment to the weaker sections of the society in terms of the judgment dated 22.3.2007 in the case of *Social Jurists v. Government of NCT of Delhi & Ors*. Thereafter, the Land & Development Officer (in short, 'L&DO') passed an order dated 2.2.2012 wherein it was stated that the Government of India had taken a policy decision that all the hospitals which have been provided land by L&DO have to strictly follow the policy of providing free treatment as provided in it. That the said conditions were applicable to Moolchand Hospital and St. Stephens Hospital as they were allotted land by L&DO. Communication on similar lines was issued by Government of NCT of Delhi to Sitaram Bhartia and the Foundation of Cancer Research imposing condition of providing free treatment to 10% indoor patients and 25% to outdoor patients of poor strata of the society. The decision was taken in the light of the decision of Delhi High Court in *Social Jurists* case (supra) which was referred by this Court in Special Leave Petition [Civil] No.18599 of 2007 vide order dated 1.9.2011 in which this Court observed that 25% OPD and 10% IPD have to be given treatment free of cost. Said patients should not be charged with anything. However, the concerned hospital could make the arrangements of the cost

either by meeting the treatment/medicines cost from its funds or resources or by way of sponsorships or endowments or donations. As the respondents-hospitals were not a party, they have questioned imposition of said conditions in the impugned order by filing writ applications. The High Court has quashed the imposition of conditions hence, the appeals have been preferred.

2. The factual matrix reflects that the Government of India in the year 1949 took a decision to provide all possible help to the hospitals by allotting land to the hospitals and schools at highly concessional rates so as to involve them in achieving the larger social objective of providing health and education to the people. Pursuant to the decision taken in the meeting dated 10.6.1949 under the Chairmanship of the Secretary (Finance) it was decided that the land would be allotted to the hospitals and schools at the rate of Rs.2000/- to Rs.5000/- per acre. The hospitals and schools were treated as charitable institutions. While the first safeguard relating to institutions being secular and non-communal in character, free help by allotment of land to schools and hospitals was unanimously accepted. It was also agreed that non-profit making bodies be

included under the term “charitable institution” with the aforesaid institutions. The test should be that the institute should be run for the good of the public without any profit motive. The relevant portion of policy decision dated 10.6.1949 is extracted hereunder:

> “1) It should be clearly laid down that the land will be made available only for institutions of secular and non-communal character, schools and hospitals should be freely helped by allotment of land but applications from other types of charitable institutions should be considered individually on merits. It would be risky to lay down a general rule as regards the latter.
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> 2) Recognition by an appropriate authority to the Government should be a condition precedent the allotment of land to schools, hospitals etc.
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> 2) The first safeguard was unanimously accepted. It was understood that an institution of secular and non-communal character was one which did not discriminate against any class of people on any ground while making an admission. It was also agreed that institutions like Arts and Crafts Society and other non-profit making bodies should be included under the term "Charitable Institution". The test should be that the institution should be run for the good of the public without any profit motive."

3. It was also deliberated upon on 10.6.1949 that what should be premium and ground rent chargeable to a charitable institution. As per the policy laid down by the Government of India in the letter of

the Department of Education, Land, dated 25.7.1943, the premium charged was too high, to be easily payable by any charitable institution much less by any displaced institution from Pakistan. According to that formula, any charitable institution will have to pay a premium at the rate of 25,000 to 35,000 per acre, plus ground rent @ 15% on the premium per annum, that would be obviously too high. Hence, it was agreed that the premium chargeable on land allocated to charitable institutions in Delhi should vary from Rs.2000/- to Rs.5000/- per acre.

Facts relating to Mool Chand Khairati Ram Trust :

4. In the year 1927 one Lala Kharaiti Ram of Lahore made a Will with a codicil registered at Lahore by which Moolchand Khairati Ram Trust was constituted by Lala Kharaiti Ram with the name of his father Shri Moolchand. The relevant clauses of the Will are extracted hereunder :

> "(8) After meeting the above-mentioned allotments the following instructions shall be observed with regard to the property of every description that may remain after my death:-
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> (a) All the remaining property of every description shall constitute a Trust known as Moolchand

> Kharaiti Ram Trust, Lahore, the objects of which shall be as follows:-
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> (1) Imparting education in and preaching Sanskrit according to Sanatan Dharm Methods, and
>
> (2) Devising means for imparting education in and improving the Ayurvedic System of Medicine and preaching the same. In order to gain object No.2 it is not prohibited to take help from the English or Yunani or any other system of medicine and according to need one or more than one Ayurvedic Hospital may be opened."

5. It was the case of the Trust that the author neither used the word charity nor charitable while creating the Trust in the Will. In law, it became a charitable trust on account of the provisions of section 2 of the Charitable Endowments Act, 1890. Mool Chand hospital acquired the perception of being charitable not from the Will or the purpose set out for the Trust but from the very nature of the activity of providing medical relief, more so in view of section 2(15) of the Income Tax Act, 1961 which defines charitable purpose.

6. The Trust was running a hospital in Lahore in the name of Moolchand Kharaiti Ram Hospital. After partition, the trustees had to leave Pakistan and migrate to India as refugees in 1947. The Ministry of Rehabilitation allotted nine acres of land at Lajpat Nagar to the

Trust on 17.4.1951 on which land at Lajpat Nagar, Delhi, the Trust built a hospital which has been running since then. At the time of allotment Lajpat Nagar was not a prime location of Delhi.

7. It was further the case of the Trust that in the allotment letter there was no term or condition to provide free treatment to patients belonging to economically weaker sections of the society at the hospital. Subsequently, lease deed was formally executed between the President of India and Moolchand Kharaiti Ram Trust which was to be effective from 17.4.1951 for a period of 99 years. In this lease deed also, there was no such condition regarding free treatment to any patient. Thus, it was not open to the Government to impose the obligation of providing free medical treatment by an executive order. The policy of 1949 regarding institution should be run for the good of the public without any profit motive was applicable to other institutions like Arts & Crafts Society and not to hospitals. At the most, the only rider in the policy was that the institution would be run for the good of the public without any profit motive. This policy/test was to be applied at the time of allotment of land and only such institutions were to be allotted land which in the opinion of the

Government fulfilled the said criteria. Since the policy has not been converted into law by enactment of an Act by the legislature, only insistence could be that the institution should be run without any profit motive and not that the institution be required to provide free treatment to any specified number of patients. The DDA (Disposal of Developed Nazul Land) Rules, 1981 are not applicable in the case of Trust. Clause 14 of the lease deed did not authorize the Government to impose such conditions. That the decision of *Social Jurists* case (supra) is not applicable as in that case there was either conditions of allotment, or the stipulations in the lease deed under which the hospitals were obliged to provide access to significant percentage of the IPD and OPD facilities. Right to carry on any occupation, trade or business is fundamental under Article 19(1)(g) as such, such restriction could have been imposed by enacting a law under Article 19(6) of the Constitution of India by Parliament or the State legislature. Such condition could not have been imposed by executive feat in exercise of power under Article 162. In the decision in *Social Jurists* (supra) which has been affirmed by this Court, the Trust was not a party. The condition of lease could not have been altered unilaterally. This Court while dismissing the SLP on 1.9.2011 by a

speaking order, did not intend such result. This Court never intended to pass adverse order against a person who had not been given notice or heard in the matter. A contempt petition was filed in the High Court for proceeding against the hospital run by the trust. The same was dismissed by the High Court as they were not parties to the case of *Social Jurists* (supra). Land was given by way of incentivizing the Trust to open a hospital in that locality because at that time not so many people were willing to open hospitals or schools. As these services were to be provided by the State, the land was not given at the concessional rate. It was the market rate that prevailed in the year 1951. Report of Justice Qureshi Committee was not relied upon by the High Court while deciding the case of *Social Jurists* (supra) and High Court had appointed a Committee namely Mr. N.N. Khanna Committee. At that time when Justice Qureshi Committee's report was prepared, it was based upon the statement made by disgruntled workmen who were having dispute with the management of the hospital as such said report cannot be looked into. It was also submitted that there are specialist doctors in the Trust run since 1958 who devote one hour each day to OPD patients from the weaker

sections of the society without charging them anything and they will continue to do so.

Facts regarding St. Stephen hospital :

8. In the case of St. Stephen hospital, it was averred by the hospital that it was established in the year 1885 by a group of missionary women in Chandni Chowk, Delhi. In 1908 it moved to its present location to Tees Hazari, Delhi. Land admeasuring 1.37 acres, 2331 sq.yds. and 1.29 acres was allotted to it by L&DO vide allotment letters dated 12.6.1970, 25.2.1972 and 19.1.1976 for its additional requirements. Subsequent to the agreement, the lease deeds were signed and perpetual lease deeds were executed. There was no such condition in the allotment letters/lease deeds for providing free care/treatment to the patients. The hospital having regard to its objective has always been providing substantial treatment to the needy. In the writ petition, the order passed by L&DO on 2.2.2012 was questioned regarding the condition of free care as part of the terms and conditions of the lease deed. Same has been allowed by the High Court. Though land had been obtained for purpose of the charitable institution it was not open to imposing such riders by

executive order. There was no condition of free care in the 1949 policy. Unilateral amendment of the lease deed could not have been made. The decision of *Social Jurists* (supra) is not applicable as 20 hospitals were dealt with in the said decision. There was no stipulation regarding free care in the allotment letters/lease deeds. The order is without jurisdiction. Hence, the writ petition was filed in the High Court.

Facts regarding Sitaram Bhartiya Institute of Science & Research:

9. Sitaram Bhartiya Institute of Science & Research was a registered society. On 30.3.1984, it applied for allotment of land admeasuring 3 acres for establishing a multi-disciplinary research complex in New Delhi. On 22.10.1984 the DDA allotted land admeasuring 1.52 acres @ Rs.6 lakhs per acre. Request was made by the said society to charge at the concessional rate that was declined on 20.11.1984. On 2.9.1985 lease deed was signed by which a consideration of Rs.8,76,000/- for 1.46 acres was transferred to the petitioner. The case of *Social Jurists* (supra) was filed in the High Court. The writ petition was disposed of by the High Court. Pursuant to the decision in *Social Jurists* (supra), Circular was issued by the

Government on 20.1.2012 to the hospitals/societies to whom land had been allotted at concessional rates to provide free treatment to the eligible patients or weaker sections category free of charge. The society took the stand that it was not allotted the land for the purpose of hospital at concessional rate. Hospital was asked by the department on 28.6.2012 to provide free treatment. On 28.6.2012 it directed that it was making arrangement to comply with the order. On 12.7.2012 the society informed the Director of Health Services about the stand taken by it to comply with the said directions. However, on 13.3.2012 contempt application filed against it for not complying with the directions, was disposed of by the High Court holding that no contempt was made out. On 18.4.2013 and 29.4.2013, Director of Health Services required the accounts of hospitals for the purpose of scrutiny for the last two years from the date on which the possession of land was given. Petitioner pointed out on 4.5.2013 that there was no condition to provide free treatment to economically weaker sections category as such the hospital was not similarly situated. Condition was not applicable. However, name of petitioner was not removed from the hospitals that failed to provide free treatment hence the writ petition was filed in the High Court.

Moreover, similar are the facts of Foundation for Applied Research in Cancer.

The stand of the Government:

10. On behalf of the State it was contended that the stand of the Government was that as per the policy decision taken in the year 1949, it was decided to allot the land at concessional rates *i.e.* @ Rs.2000/- to Rs.5000/- per acre to the institutions which was far lesser than the already prevailing concessional rate of Rs.25,000/- to Rs.30,000/- per acre fixed vide letter dated 25.7.1943.

11. In the case of Moolchand Khairati Ram Trust vide allotment letter dated 17.4.1951 land was allotted at the rate of Rs.2000/- to Rs.5000/- per acre and ground rent @ 5% on the premium per annum. Thereafter, a lease deed was executed for 99 years on 24.4.1968 in favour of Moolchand Khairati Ram Trust.

12. St. Stephens hospital was similarly allotted 1.37 acres of land vide allotment letter dated 12.6.1970 which was followed by lease deed dated 3.7.1970, whereafter, further land admeasuring 2331 sq. yds. was allotted vide allotment letter dated 25.2.1972 at the rate of Rs.5000/- per acre and ground rent at the rate of 5% per annum.

13. Sitaram Bhartiya Institute of Science & Research was allotted 1.52 acres of land at the rate of Rs.6/- lakhs per acre on 22.10.1984 followed by lease deed dated 2.9.1985 in respect of another plot of 1.46 acres for a consideration of Rs.8,76,000/-. The Government of Delhi with the approval of Lt. Governor of Delhi constituted a Committee headed by Mr. Justice A.S. Qureshi to review the existing free facility extended by the charitable hospitals and various other hospitals which had been allotted land at concessional terms/rates by the Government. Amongst other measures the Committee opined as under:

> "1. Most of the representatives of the hospital submitted that 25% of beds earmarked for poor patients were excessive since the cost of medicines was too high. It was agreed that it should not be more than 15% in any case, but 10% would be ideal. Therefore, the Committee recommended 10% indoor beds free for poor patients for all purposes including medicines and consumables. The free treatment services should be available to 25% of total OPD patients. **This condition should be made applicable to all hospitals that have been allotted land by the govt.**"
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> (emphasis supplied)

14. The recommendations of the Qureshi Committee were accepted with some variation in the meeting of the GNCTD presided over by the Chief Secretary on 23.10.2002.

15. Earlier, a writ petition was filed by *Social Jurists* under Article 226 of the Constitution of India in the High Court of Delhi seeking that conditions of allotment of land to hospital particularly in regard to free treatment to poor people be complied with and action be taken in respect of recommendations of the Justice Qureshi Committee. The writ petition was decided on 22.3.2007. Various directions were issued, *inter alia*, as under:

> "A. All the 20 hospitals stated in this judgment and/or all other hospitals identically situated shall strictly comply with the term of free patient treatment to indigent/poor persons of Delhi as specified above i.e. 25 OPD and 10% IPD patients completely free of charges in all respects."

16. The High Court of Delhi vide order dated 17.7.2007 directed all the hospitals which had been given land on concessional rates to abide by the order of free treatment. The special leave petitions were preferred by the hospitals which were dismissed by a speaking order

by this Court. This Court observed that 25% OPD and 10% of IPD patients have to be given treatment free of cost. The said patients should not be charged with anything.

17. Thereafter the GNCTD came out with a Circular on 20.1.2012 intimating hospitals to implement the directions of the High Court with regard to free treatment in terms of judgment dated 2.3.2007. Land & Development Officer passed an order in this regard to follow the policy. Similar letters were issued to Sitaram Bhartiya and Foundation for Applied Research in Cancer.

18. The Foundation for Applied Research in Cancer was allotted a plot admeasuring 0.9 acres @ Rs.28,50,000/- per acre provisionally with annual ground rent at 2.5% per annum, the premium was revised to Rs.39,00,000/- per acre on 22.10.1991. In August 1992, it represented to the Lt. Governor that as per notification dated 11.09.1991, the price of the land allotted to it was fixed at Rs.3,25,000/- and sought a refund, however, the request was declined.

19. The High Court of Delhi had allowed the writ applications, hence, the appeals have been preferred. Social Jurists, a civil rights group has filed Civil Appeal Nos.3157-3158 of 2017 against the judgment and order passed in the case of Moolchand Kharaiti Ram Trust and others. Other appeals have been filed by Union of India/NCT of Delhi.

Rival Submissions

20. It was urged by Mr. Sandip Sethi, learned Additional Solicitor General on behalf of the appellants that the High Court erred in allowing the writ applications. The condition of providing 10% IPD and 25% OPD free medical treatment to poor strata of the society cannot be considered to be a restriction in terms of Article 19(6) of the Constitution of India putting fetters on the right of the respondent hospitals to carry on their trade and profession under Article 19(1)(g) of the Constitution of India. The direction has been issued in terms of the policy of allotment in public interest which must override the business interest of an individual. The High Court erred in holding it to be a restraint under Article 19(6) which can be imposed only by a legislation. It was within the competence of the Government to pass

Government Order to implement the recommendations of Mr. Justice A.S. Qureshi Committee. The respondents Moolchand Khairati Ram Trust and St. Stephens hospital were given land at the concessional rate being charitable institutions with the purpose of providing medical aid to poor and needy sections of the society. The concessional rates in 1949 were reduced substantially as per policy from the rates in 1943 with respect to charitable institutions. The Moolchand Khairati Ram Trust and St. Stephens hospital have taken benefit of State largesse on account of being charitable institutions cannot turn around and question the conditions imposed by the Government to provide free medical aid to the percentage of patients. It was also urged by learned counsel on behalf of the appellants that in Writ Petition [C] No.2866 of 2002 - *Social Jurists v. GNCTD & Ors.* decided by the High Court, the cases were similarly placed. The allotment was made in those cases also at the concessional rate by the Government. Though there was some stipulation in some of the lease deeds of the said hospitals to provide free service to the extent from 10% to 70%. However, Justice A.S. Qureshi Committee recommended a uniform standard of 10% IPD and 25% OPD free

treatment in all hospitals that had been given land by the Government at a concessional rate.

21. It was also urged that in the cases of Sitaram Bhartia Institute of Science & Research and Foundation for Applied Research in Cancer, there was a stipulation in the lease deed under clause 7 as under:

> "7. The DDA reserves its right to alter any terms and conditions on its discretion."

The Government was well within its powers to impose the condition in terms of the aforesaid clause.

22. It was also urged that Sunder Lal Jain Charitable hospital had challenged the said order by preferring a special leave petition that was dismissed by this Court on 1.9.2011 by a speaking order. Thus, the issue had attained finality and it was incumbent upon the hospitals in question to provide free services to the poor.

23. Sitaram Bhartia Institute of Science & Research and Foundation for Applied Research in Cancer were given land as per the DDA, 1981 Rules, in particular Rules 3, 4, 5, 6 and 20 at

concessional rates. The pre-determined rates are nowhere close to market rates. A bare reading of the rules would reflect that a separate process is given for the sale of plots by auction or tender. Thus, allotment of land at pre-determined rates is also concessional.

24. It was also urged that the definition of 'charitable' as given in Income-tax Act would not govern the field in the present case. Word 'charitable' is to be seen in the legal sense. Word 'charitable' is used and has been relied upon in the *Law Lexicon by P. Ramanatha Aiyar*, 2nd Edition, 1997, which defines the 'charitable' as under:

> "includes every gift for a general public use, to be applied consistent with existing laws, for benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint."

25. On the other hand, learned senior counsel appearing on behalf of the respondents-hospitals contended that legal obligation of a person can be created by an agreement or statutory law and in no other manner. The court cannot pass an order on account of sympathy in contravention of the settled law as the function of this court is to protect and preserve the rule of law which has been held to

be basic feature of the Constitution in the case of *Kesavananda Bharti*. In the case of Moolchand Khairati Ram Trust, in the Will, the executor of the Will by which he created the Trust, never intended that free treatment should be provided to the poor and needy. Reliance has been placed on the definition of 'charity' in Charitable Endowment Act, 1890 and Income Tax Act, 1961 and the land had been allotted to the Trust as per the directions issued by the Ministry of Rehabilitation as the trustees came to India as refugees from Pakistan. The policy decision in 1949 did not envisage free treatment to the patients neither the conditions in allotment letter nor in the lease deed executed for 99 years. The condition in the policy dated 10.6.1949 that the institution should be run for good of the public without any profit motive was not applicable to hospitals. Even if it was applicable to hospitals it only provided that the institutions would be run for the public good without any profit motive. Thus, condition of free treatment could not have been imposed. The DDA Rules of 1981 are not applicable. Clause 14 of the lease deed would not cover imposition of such onerous condition. The decision in *Social Jurists* (supra) is not applicable. Thus, such a condition could have been imposed in view of provision under Article 19(6) of the

Constitution by enacting a statutory law as defined in Article 13. It was not open to the Executive to impose such conditions. The order of this Court dated 1.9.2011 is not applicable to respondent-hospitals as they were not parties to the said decision and this Court could not have issued such directions without hearing them. Contempt petition filed in the High Court against the Trust for violating decision in *Social Jurists* (supra), was dismissed. As a matter of fact allotment was made at the market rates prevailing in 1951. Free services are being provided in the hospital since 1958 at its own level.

26. In the case of St. Stephens hospital similar arguments have been raised, apart from that it was urged by learned senior counsel that though charity is being performed by the missionaries as such conditions could not have been imposed by the appellants. There was no such stipulation in the allotment letters/sale deeds. The interpretation of the lease deed made by L&DO was impermissible. Unilaterally such conditions could not have been imposed. It could have been done by enacting statutory law. The conditions were impermissible, arbitrary and violative of Article 14. The lease deeds are not governed by the provisions of the Government Grants Act. The

Executive power referred to in Articles 73 and 298 of the Constitution did not empower the State to unilaterally amend the terms of a perpetual lease deed granted by it. The fundamental rights cannot be abridged by an executive order. Decision in *Social Jurists* (supra) is distinguishable. There was no similar stipulation in the lease deeds of respondents. Judgment of the High Court in *Social Jurists* (supra) was faulty to the extent that it imposed a condition of free care on hospitals in whose lease deeds there was no such condition. It was not open to the court to first create a law or an obligation and then seek to enforce it. Charity would not mean free services to be provided. Medical relief itself is a charitable purpose. It would not mean that it cannot charge for services provided by it. Though while seeking allotment by the missionaries as charitable society, do not get actuated by a profit motive. Surplus income is also utilized for charitable purpose for providing medical care. The fact that the land was allotted on concessional rates would not confer any right on the Government of India to unilaterally amend the lease deed. There was no provision for free care in 1949 policy.

27. On behalf of Sitaram Bhartiya Institute of Science & Research, *inter alia*, it was urged that it was not covered by the judgment of Delhi High Court in *Social Jurists* (supra). The land was not given to respondent No.1 at concessional rates. No condition for providing free treatment was prescribed in the allotment letter or in the lease deed. Since lease was in perpetuity there was no right to impose a further condition on the lessee which may have financial implications. Clause 7 of the allotment letter does not authorize the lessee to change or alter any terms of the lease. As no such condition was there in the letter of allotment, as such new condition could not have been imposed. Lease rental is liable to be increased after every 30 years. The condition of free treatment is not legally tenable or justified. Since the work of the institute was not charitable in nature, such conditions could not have been imposed. Respondent No.1 Sitaram Bhartiya Institute provides medical services as part of its agenda, as the same generates valuable research data and funds for respondent No.1's research activities. A show cause notice was issued to the society on 9.2.2005 alleging that it was running a hospital on commercial lines. It was required to show cause as to why the allotment and lease deed should not be canceled, and it was informed

to the Commissioner, Institutional Branch, DDA that it was pursuing its mission of research in healthcare and medicine. The clinical/hospital portion generates valuable research data and funds which enable respondent No.1 to finance research activities. It was further contended that there were three categories, government organisations, charitable organisations and other institutions, for the purposes of allotment of land. Other institutions were allotted land at the zonal variant rates that were the rate paid by the respondent. There was no such condition. The condition would have serious financial consequences as entire feasibility and viability would have to be worked out, whether it would be economically viable to undertake the project at all or not. Such unconscionable, unreasonable and arbitrary condition could not have been imposed. Some of the medicines are very expensive. Its cost cannot be borne by the hospital and it cannot form part of free medical treatment except possibly in Government hospitals. No profit no loss condition would not mean that it was allotted on a concessional basis. Respondent No.1 is a self-supporting society, is doing medical research also. In case free medical treatment is provided it would diminish the respondent's ability to invest in research. Populist and misplaced policies could not

have been framed or imposed. Similar arguments have been raised by the Foundation for Applied Research in Cancer.

28. Following questions arise for consideration:

1. Whether by virtue of fact that Moolchand Kharaiti Ram Trust and St. Stephens Hospital have obtained the land for charitable purposes at a concessional rate, it was open to the Government to impose a condition of 10% in IPD and 25% in OPD services to be provided free of cost to patients of economically weaker sections?

2. Whether in view of the condition No.7 of the allotment letter issued in the case of Sitaram Bhartiya Institute and Foundation for Applied Research in Cancer, the imposition of the aforesaid condition of free treatment was permissible?

3. Whether the imposition of aforesaid conditions amounts to restriction under Article 19(6) to carry on profession, trade or business under Article 19(1)(g) of the Constitution of India?

4. What is the effect of the previous decision rendered in the case of *Social Jurists* (supra)?

In reference to question nos.1 & 2 :

29. In order to decide the main question, it is necessary to ponder on the question with respect to the meaning of charity. In the background of the fact that Government of India in the year 1949 took a decision for allotment of land at the concessional rate to the charitable institutions. The hospitals and schools *inter alia* were treated as charitable institutions of secular and non-communal character with a further rider that the same should be run for the good of public without any profit motive. It was observed that as per the policy decision dated 25.7.1943, the premium charged was too high. As per that formula, the premium was Rs.25,000 to Rs.35,000 per acre per annum plus ground rent at 5% on the premium per annum. It was decided to allot the land at the concessional rates between Rs.2,000/- to Rs.5,000/- per acre. A substantial area of 9 acres in Lajpat Nagar the heart of Delhi to Moolchand Khairati Ram Trust and 2.66 acres & 2331 sq. yards to St. Stephens hospital was allotted.

30. It was urged on behalf of the Moolchand Kharaiti Ram Trust that creator of the Trust never intended that free treatment should be provided to the poor and needy. Reliance has been placed on the

definition of charity in Charitable Endowment Act, 1890 and Income Tax Act, 1961. The policy decision taken in 1949, did not envisage free treatment to the patients. In the allotment letter, there was no such condition that free treatment shall have to be provided to the patients belonging to economically weaker sections of the society at the hospital. The lease deed was executed for 99 years. The only condition was that the institution should be run for the good of the public without any profit motive. The aforesaid condition was not applicable to the hospitals, even if it was applicable, the only rider was that it should run without any profit motive. The free treatment was not envisaged in the aforesaid expression.

31. It was urged that the hospital by itself is a charitable institution. It carries out obligation and stipulations of free treatment at its own level. In order to appreciate the submission made, we deem it appropriate to consider the meaning of charitable, charitable purpose, charitable corporation and charitable trust in common parlance.

32. The *Black's Law Dictionary, Ninth Edition* defines 'charitable', 'charitable purpose', 'charitable corporation' and 'charitable trust' thus:

> "**Charitable** - Dedicated to a general public purpose, usu. for the benefit of needy people who cannot pay for benefits received.
>
> **Charitable purpose** – The purpose for which an organization must be formed so that it qualifies as a charitable organization under the Internal Revenue Code – Also termed charitable use.
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> **Charitable corporation** – A nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code. – Also termed eleemosynary corporation.
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> **Charitable trust** – A trust created to benefit a specific charity, specified charities, or the general public rather than a private individual or entity. Charitable trusts are often eligible for favorable tax treatment. If the trust's terms do not specify a charity or a particular charitable purpose, a court may select a charity. – Also termed public trust; charitable use."

33. In *Webster's New World Dictionary*, the expressions of 'charitable' and 'charity' are defined thus:

> "**Charitable** – 1. Kind and generous in giving money or other help to those in need. 2. of or for charity. 3. kindly in judging others; lenient.

> **Charity** – 1. in Christianity, the love of God for man or of man for his fellow men. 2. an act of good will or affection. 3. the feeling of good will; benevolence. 4. the quality of being kind or lenient in judging others. 5. a giving of money or other help to those in need; benefaction. 6. an institution, organization, or fund for giving help to those in need."

34. The Halsbury's Laws of England, Vol.5, Fourth Edition while dealing with the definition of 'charity' for the purpose of the Charities Act, 1960, has discussed the matter thus:

> "501. Definition of "charity". For the purposes of the Charities Act, 1960 "charity" means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. "Institution" includes any trust or undertaking; and "charitable purposes" means purposes which are exclusively charitable according to the law of England and Wales. The question of whether purposes are or are not charitable is therefore determined according to the same principles as before 1960.
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> The requirement that an institution is subject to the control of the High Court in the exercise of the court's jurisdiction with respect to charities is satisfied if the institution is subject to that jurisdiction in any significant respect. It does not have to be subject to that jurisdiction which the court only exercises over charities and not over other trusts or other corporate bodies, and it is sufficient if the court could restrain the institution

> from applying its property ultra vires or in breach of trust.
>
> The Charities Act 1960 establishes a register of charities and it is the duty of the charity trustees of any charity which is required to be registered to apply for registration. The effect of registration is that an institution is for all purposes other than rectification of the register conclusively presumed to be or to have been a charity at any time when it is or was on the register of charities. The Act does not provide that an institution which, if it were a charity, would be required to be registered, but which is not registered, is for that reason, not a charity."

35. Again, the Halsbury's Laws of England while dealing with the meaning of charity, has discussed the matter thus:

> "502. Meaning of "charity". Since the Charities Act, 1960 provides no statutory definition of what purposes are and what are not charitable, all the cases previously decided on the subject are still relevant. The legal meaning of "charitable purposes" is said to be precise and technical, and the phrase is a term of art, but it is probably incapable of definition. The popular use of the expressions "charity", "charitable", "charitable objects" and "charitable purposes" does not coincide with their technical legal meaning according to the law of England. The word "charitable", when used in its legal sense, covers many objects which a layman might not consider to be included under that word, but it excludes some benevolent or philanthropic activities which a layman might consider charitable.

Charitable uses or trusts form a distinct head of equity, and it is the court's duty to determine whether particular purposes are charitable. To be charitable a purpose must satisfy certain tests; it must either fall within the list of purposes enumerated in the preamble to the ancient statute of Elizabeth I (sometimes referred to as the Statute of Charitable Uses or the Charitable Uses Act, 1601) or within one of the four categories of charitable purposes laid down by Lord Macnaghten and derived from the preamble and in the case of the fourth of those categories it must be within the spirit and intendment of the ancient statute, either directly or by analogy with decided cases on the same point, or it must have been declared to be charitable by some other statute. In addition, it must be for the public benefit, that is to say, it must be both beneficial and available to a sufficient section of the community.

References to "charity" in any legislative Act should be construed in their technical legal sense unless a contrary intention appears from the context. For income tax purposes "charity" means any body of persons or trust established for charitable purposes only. References in any enactment or document to a charity within the meaning, purview, and interpretation of the ancient statute of Elizabeth I, or of the preamble to it, are to be construed as references to a charity within the meaning which the word bears as a legal term according to the law of England and Wales.

An activity which is charitable in the legal sense is not any the less charitable because it is being carried on without any regular organization by a person who may discontinue it at any time. Such an activity would come within the statutory definition of charity as a trust or undertaking.”

36. The charitable trust can be enforced by the Court, which knows about what charitable purposes are. In the Halsbury's Laws of England, the following discussion has been made in this regard :

> "504. Purposes must be exclusively charitable. To be a charity in law, a trust or institution must be established for purposes which are exclusively charitable; a charitable trust can be enforced by the court at the suit of the Attorney General, for the court knows what are charitable purposes and can apply the trust property accordingly, but a trust for benevolent purposes cannot be so enforced and is therefore void for uncertainty."

37. Public welfare is one of the essential requirements of legal charity, which has been discussed in Halsbury's Laws of England in paragraph 505, which is extracted hereunder:

> "505. **Public benefit essential**. It is a clearly established principle of the law of charities that a purpose is not charitable unless it is directed to the public benefit so that the element of public benefit is the necessary condition of legal charity. There are two distinct elements in this requirement: the purpose itself must be beneficial and not harmful to the public, and the benefit of the purpose must be available to a sufficient section of the public. The line of distinction between purposes of a public and a private nature is fine and practically incapable of definition."

38. The benefit to the poor is one of the essential requirements of charity. The concept has been discussed in paragraph 509 of Halsbury's Laws of England, which reads thus:

> "509. **Benefit to rich as well as poor.** An object may be charitable in the legal sense notwithstanding that it will benefit the rich as well as the poor, but it is difficult to believe that a trust would be held charitable if the poor were excluded from its benefits."

39. In *Incorporated Council of Law Reporting for England and Wales vs. A-G* (1971) 3 All ER I029, CA, it was observed that when a purpose has been proved to be of general public welfare or beneficial to the community, it will be held to be charitable unless there is some reason for holding that it is not within the spirit and intendment of the Preamble.

40. The Cy-pres doctrine is applied by the Courts in England to administer a charitable trust of which the particular mode of application has not been defined. Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed, but the law will substitute another mode. The Cy-pres doctrine has been discussed in paragraph 696 of Halsbury's Laws of England, which is extracted hereunder:

“**696. The cy-pres doctrine**. Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed, but the law will substitute another mode cy-pres, that is, as near as possible to the mode specified by the donor.

An application cy-pres results from the exercise of the court’s ordinary jurisdiction to administer a charitable trust of which the particular mode of application has not been defined by the donor. Where he has in fact prescribed a particular mode of application and that mode is incapable of being performed, but he had a charitable intention which transcended the particular mode of application prescribed, the court, in the exercise of this jurisdiction, can carry out the charitable intention as though the particular direction had not been expressed at all.

However, where the particular mode of application prescribed by the donor was the essence of his intention, which may be shown by a condition or by particularity of language, and that mode is incapable of being performed, there is nothing left upon which the court can found its jurisdiction, so that in such circumstances the court has no power to direct any other charitable application in place of that which has failed.

Where the particular mode of application does not exhaust a gift, these principles apply to the surplus.

There can be no question under English law of a cy-pres application of property subject to trusts which are not charitable in law.”

41. It has also been observed in the Halsbury's Laws that not all hospitals are charitable institutions, for there may be hospitals run commercially, with a view to the profit of private individuals or hospitals, the services of which are not available to a sufficient section of the public. The mere fact that a hospital is supported by the payment of fees does not prevent its being a charitable corporation. In paragraph 707, the following discussion has been made:

> "707. Hospital supported partly by fees. Not all hospitals are charitable institutions, for there may be hospitals run commercially, with a view to the profit of private individuals, or hospitals the services of which are not available to a sufficient section of the public. The mere fact that a hospital is supported by the payment of fees does not prevent it's being a charitable corporation, and the same is true of schools. Furthermore, the Charity Commissioners have the power to authorize the committee of management of a voluntary hospital to provide facilities for paying patients in certain circumstances."

42. In the Law Lexicon, the Encyclopedic Law Dictionary by P. Ramanatha Aiyer, the discussion has been made with the help of certain decisions and dictionaries, with regard to charitable,

charitable object, charitable purpose, charity and charitable trust of public nature, relevant parts of which are reproduced hereunder:

> "**Charitable**. Having the character or purpose of a charity. The word "charitable", in a legal sense, includes every gift for a general public use, to be applied consistent with existing laws, for benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint. This term is synonymous with "beneficent", "benevolent", and "eleemosynary". (Black)
> Connected with an object of charity, of the nature of charity [S.49, Indian Evidence Act and S.92(1), C.P.C.]
>
> **Charitable purpose**. In Charitable Endowments Act "Charitable purpose" includes relief of the poor, education, medical relief, and advancement of any other object of general public utility, but does not include a purpose which related exclusively to religious teaching or worship. Act VI of 1890 (Charitable Endowments), S. 2.
>
> Per MUKERJI, J. The expression "charitable purposes" in Act XXI of 1860 should be understood in a wide sense. If relief wants of occasioned by lack of pecuniary means is charity, adoption of preventive measures to ward off pecuniary wants is also charity. 51 CLJ 272 = AIR 1930 Cal 397.
>
> CHARITABLE PURPOSES, technically, and in the eye of a Court of justice, "has a meaning so extensive as to include everything which is expressly described as a 'charitable use' in 43 Eliz. c. 4, S. 1, or is within what has been called the equity of the statute, but there is perhaps not one person in a thousand who knows what is the technical and

legal meaning of the word ‘charity’. Per Lord CAIRNS in Dolan v. Macdermott, (1868) 3 Ch App 678.

This term has the legal technical meaning given it by English law. Commissioners of Income Tax v. Pemsel, (1891), App Cas 532; and see Cunnack v. Edwards, (1896) 2 Ch 679 (CA). [In the Income Tax Act, 1842 (5 & 6 Vic. c. 35), sch. A, S. 61]

“Charitable purposes” in S. 4 of the Income-tax Act would include relief of the poor, education, medical relief and the advancement of any other object of general public utility. Trusts for the benefit of the inhabitants of a particular locality are regarded as charitable, but trusts for the benefit of a particular political party or for the advancement of particular political purposes or opinions are not regarded as charitable. A gift for such purposes as a particular individual or individuals may consider to be charitable is not a good charitable purpose although a gift for such charitable purposes as the managing committee of a trust may think fit would be good, because the committee would be bound to keep within the ambit of charity, and if they go beyond the legal boundary, they can be controlled by the Court. 43 Bom LR 1027 = 1942 Bom 61.

The definition includes relief of the poor. Relief of the poor by itself would not be a charitable object unless it involved an object of general public utility. Relief for the poor relations of the settlor or donor will not be a charitable purpose within the definition. Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income Tax, AIR 1952 Bom 346. [S. 4(3)(i) Income Tax Act 1992]

‘Charitable purpose' – the dominant purpose of a State Bar Council is to ensure quality service of competent lawyers to the litigating public, a spread

legal literacy, promote law reforms and provide legal assistance to the poor, such purpose is the advancement of the object of general public utility and it will be a charitable purpose. C.I.T. Bombay v. Bar Council of Maharashtra, AIR 1981 SC 1462, 1467. [Income Tax Act (43 of 1961), Ss. 2(15) and 11.]

Charity. "In the broadest sense charity includes whatever proceeds from a sense of moral duty or from humane feelings towards others, uninfluenced by one's own advantage or pleasure." (Doyle v. Lyun, 19 Am Rep 431.). In Jones v. Williams, Ambll. 651, Lord CAMDEN defined a charity to be "a gift to a general public use, which may extend to the poor as well as to the rich." It embraces all that is usually understood by the words "benevolence, "Philanthropy" and "good will". A gift to a home for the friendless is a gift to charity.

This “word”, in its widest sense, denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, Relief of the Poor. In neither of these senses is it employed in the English Chancery Courts. Here its signification is derived chiefly from the Statute of Elizabeth (43 Eliz. c. 4.). Those purposes are considered charitable which that statute enumerates, or which by analogies are deemed within its spirit and intendment”. Per GRANT, M.R., Morice v. Dhurhan Bp., 9 Ves. 405.

The term “charity” under the Hanafi School of Mahommedan Law has a more general import than under the English Law. A wakf of property by a Mahommedan to defray the expenses of the poor, the fakirs, the orphans, the needy and the indigent, and to defray the expenses of good deeds, creates a trust for public purposes of a charitable nature. (32 All 499 = 7 ALJ 420=6 IC 188.)

> In common parlance, the word 'charity' means a giving to some one in necessitous circumstances and in law it means a giving for public good. A private gift to one's own self or Kith and Kin may be meritorious and pious but is not a charity in the legal sense. Fazlul Rabhi v. State of West Bengal, AIR 1965 SC 1722, 1727. [West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 6(1)(i)]
>
> A benevolence, specially to the poor [S. 378, ill. (n), I.P.C.]"

43. From the aforesaid discussion, it is apparent that charitable is the public purpose for the benefit of the needy people, who cannot pay for benefits received. The Internal Revenue Code may define it separately for its purposes what is charitable so as to claim the benefit under the Act. The charitable trust is a trust which is for the benefit of general public. Charitable is a kind and generous in giving money or other help to those in need as defined in Webster's New World Dictionary and Black's Law Dictionary. The Halsbury's Laws of England discussed the meaning of charity, which provides that if there is no statutory definition of charitable purposes, to be a charitable purpose, it must satisfy certain tests. It must be for the public benefit and available to a sufficient section of the community. The reference to charity should be construed in their technical legal

sense. For income tax purpose, the charity may be defined in the Act and in that light, the interpretation of the Act has to be made. Public benefit is an essential ingredient of charitable activities. There are two distinct requirements, the purpose itself must be beneficial and not harmful to the public. In paragraph 509 of Halsbury's Laws of England, it has been discussed that it is difficult to believe that a trust would be held charitable if the poor are excluded from its benefits.

44. The cy-pres doctrine has been discussed in paragraph 696 of Halsbury's Laws of England. The said doctrine can be clearly pressed into service in the instant matter when the Government land has been allotted to the hospitals even if the mode of giving charity was not specified. It can be specified later on and the Court is not powerless to enforce that purpose of the charitable trust, of which the particular mode of the application had not been defined by the donor or otherwise. In *Ironmongers' Co. vs. A-G* (1844) 10 CI & Fin 908 at 927, HL, it was observed that where a testator intends to benefit several charitable objects, one of which fails, the fund must not be distributed among other objects if the one that fails bears no

resemblance to the other. In reference *Lambeth Charities* (1853) 22 LJ Ch 959, it was observed that when trusts have been altered by a scheme, and the trusts of the scheme become impossible so that a new cy-pres scheme is required, the trusts of the new scheme must be as close as possible to the original trusts of the gift.

45. The relief of the poor is one of the essential requirements of the charity. All hospitals are not charitable institutions as there may be hospitals which run commercially. The hospitals, which are operating under the guise of charity, are in fact being run on a commercial basis and it has become impossible for the poor to afford the life-saving drugs at an affordable price. Their right to life is in jeopardy. Merely by the expression hospital, it could not be successfully claimed by the respondent-hospitals that they are charitable. They can be directed to fulfill their obligation and fulfill the purpose by undertaking charitable activities and give it the real meaning by giving free services as envisaged in the policy. The claim of the hospitals that they are undertaking charity at their own level cannot be used as a shield to the performance of charity in an organized way. The very spirit of the argument that as they do

charity, it cannot be fastened upon them, is self-destructive and tends by its tenor to negate unjust obstruction created in the path of real charity

46. The definition of “charitable purpose” as defined in the Charitable Endowments Act, 1890 is extracted hereunder:

> “2. **Definition.** – In this Act "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship."

It is apparent from the definition that charitable purpose includes relief of the poor, education and medical needs. As per the provisions of the Charitable Endowments Act, 1890, relief of the poor and medical relief is included as such conditions which had been imposed are clearly within the parameters of aforesaid definition.

47. The charity in the broadest sense includes whatever proceeds from a sense of moral duty or from humane feelings towards others uninfluenced by one's own advantage or pleasure. In its widest sense, denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In

the Mahommedan Law, the charity has a more general import than under the English Law. A wakf of property by a Mahommedan to defray the expenses of the poor, the fakirs, the orphans, the needy and the indigent and to defray the expenses of good deeds, creates a trust for public purposes of a charitable nature. In common parlance, the word charity means giving to someone in any necessitous circumstances and in law, it means a giving for public good.

48. In *P.C. Raja Ratnam Institution* vs. *Municipal Corporation of Delhi & Ors.,* 1990 (Supp) SCC 97, wherein this Court considered the definition of 'charitable purpose' under Section 115 (4) (a) of the Delhi Municipal Corporation Act, 1957, the school in question was run by a Society. It was claimed that it was a non-profit making registered society and its object was to organize and run schools in Delhi and elsewhere with a view to promoting education and welfare. The question arose whether it was necessary for the educational institution to qualify for exemption from the tax liability to offer medical relief. In that context, it was observed by this Court that the test of charitable purpose would be satisfied by the proof of any of the

three conditions, namely, relief of the poor, education or medical relief. The fact that some fee was charged from the students was not decisive. The explanation was held inclusive and not exhaustive. This Court observed thus:

> "3. The learned Counsel for the petitioner has contended that in view of the language of Section 115(4)(a), quoted below, it is not correct to suggest that to qualify for exemption from the tax liability it is necessary for a society to offer medical relief:
>
> > "(a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose:
>
> Provided that such society or body is supported wholly or in part by voluntary contributions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.
>
> Explanation-"Charitable purpose" includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching;"
>
> The argument is well founded. The test of 'charitable purpose' is satisfied by the proof of any of the three conditions, namely, relief of the poor, education, or medical relief. The fact that some fee is charged from the students is also not decisive inasmuch as the proviso indicates that the expenditure incurred in running the society may be supported either wholly or in part by voluntary contributions. Besides, the explanation is in terms inclusive and not exhaustive. The impugned

> judgment must, therefore, be held to be erroneous."

The question in the aforesaid case was altogether different with respect to the meaning of charitable purpose as defined under Section 115 (4) (a).

49. In *Municipal Corporation of Delhi vs. Children Book Trust,* (1992) 3 SCC 390, this Court considered the provisions of Section 115(4)(a) of Delhi Municipal Corporation Act, 1957 and dealt with the question of charitable purpose, context of property tax in respect of lands and buildings and exemption to lands and buildings occupied and used by a society for charitable purpose. It was held that conditions for applicability of the tax exemption were firstly on the society must be charitable and not earn a profit. This Court considered the meaning of charitable purpose for imparting education sans an element of public welfare not per se charitable. Secondly, society must be supported wholly or in part by voluntary contribution and lastly, society must utilize its income in promoting its object and must not pay any dividend or bonus to its members. This Court observed that the tax liability of a registered society running recognized private unaided school should be considered in the light of the above

conditions. Transfer of funds by the school to the society even in the name of contribution would amount to transfer by the society itself and, therefore, cannot be considered for the purposes of the exemption. It was also observed that where running of school by the society generating positive income from the fees and donations received from the students/parents, the activity of the school was not for a charitable purpose but for commercial purpose. The conditions of charitable purposes having not been fulfilled, society was not entitled to tax exemption. This Court has further observed that where the predominant object is to sub-serve charitable purpose and not to earn a profit, it would be a charitable purpose. This Court has observed thus:

> "68. Therefore, an element of public benefit or philanthropy has to be present. The reason why we stress on this aspect of the matter is if education is run on commercial lines, merely because it is a school, it does not mean it would be entitled to the exemption under Section 115(4) of the Act.
>
> xxx xxx xxx
>
> 76. In view of the above rulings, it would be clear that where the predominant object is to subserve charitable purpose and not to earn profit it would be a charitable purpose. However, the argument of the appellant is as per the Delhi School Education Act and the rules framed thereunder, if the society cannot utilise the fund and the school cannot be run for private gain in the absence of any profit, it would be a charitable purpose.

77. We have already seen that merely because education is imparted in the school, that by itself, cannot be regarded as a charitable object. Today, education has acquired a wider meaning. If education is imparted with a profit motive, to hold, in such a case, as charitable purpose, will not be correct. We are inclined to agree with Mr. B. Sen, learned counsel for the Delhi Municipal Corporation in this regard. Therefore, it would necessarily involve public benefit.

78. The rulings arising out of Income Tax Act may not be of great help because in the Income Tax Act "charitable purpose" includes the relief of the poor, education, medical relief and the advancement of any other object of general public utility. The advancement of any other object of general public utility is not found under the Delhi Municipal Corporation Act. In other words, the definition is narrower in scope. This is our answer to question No. 1.

xxx xxx xxx

85. The last aspect of the matter is utilisation of the income in promoting its objects and not paying any dividend or bonus to its members. The learned counsel for the appellant and the intervenor would urge that on the basis of *Cane (Valuation Officer) vs. Royal College of Music*, (1961) 2 QBD 89, the position in the instant case is the same. At page 121 the following observation is found:

> "One, I think, that enriches the corporation itself or relieves it of a burden or furthers its objects or powers."

Thus, it is apparent from the aforesaid discussion that the charitable object would be served if it is not to earn a profit.

50. The medical and legal professions stand on a different pedestal in the matter of fulfilling the obligations towards the society. They are not meant to be for commercial activity which by and large has become a bitter reality of the day. 'Free treatment' to economically weaker sections is a normal obligation by very nature of charity, and it was also contended on behalf of the hospitals that the medical treatment itself is regarded as charitable one. The question arises when medical profession is charitable, what meaning is to be given to charity and whether by virtue of commercial gains only by giving treatment, it would still retain charitable character in its true meaning. Charity in common parlance is a relief to the poor and needy.

51. What may be proper for others in the society, may still be improper for members of the legal profession. The same ethical standard applies with equal force to the medical profession. Medical profession deals with the life of human beings. There has to be a balancing of human rights with the commercial gains.

52. In the wake of globalisation, we are in a regime of Intellectual Property Rights. Even these rights have to give way to the human rights. It is an obligation of the Government to provide life-saving drugs to have-nots at affordable prices so as to save their lives, which is part of Article 21 of the Constitution of India. It is equally an obligation of the State to devise such measures that have-nots are not deprived of the very treatment itself. Administering medicines is also a part of medical therapy. Thus, in our considered opinion members of the medical profession owe a constitutional duty to treat the have-nots. They cannot refuse to treat a person who is in dire need of treatment by a particular medicine or by a particular expert merely on the ground that he is not in a position to afford the fee payable for such an opinion/treatment. The moment it is permitted, the medical profession would become purely a commercial activity, it is not supposed to be so due to its nobleness. Thus, in our opinion, when the Government land had been obtained for charitable purpose of running the hospital, the Government is within its right to impose such an obligation.

53. The nobility and obligation of the medical profession have also found statutory recognition in the form of regulations framed by the Medical Council of India in the exercise of the power conferred under section 20A read with section 33(m) of the Indian Medical Council Act, 1956. The Medical Council of India with prior approval of the Central Government has made the regulations relating to the standards of professional conduct and etiquette and code of ethics for registered medical practitioners. Chapter 1 whereof contains the code of medical ethics. Part B of Regulation 1.1 deals with the character of a physician. Regulation 1.1.1 provides that the institution shall uphold the dignity and honour of the profession. Regulation 1.1.2 is self-explanatory and the same is extracted hereunder:

> "1.1.2 The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Whosoever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life."

It lays down in an unequivocal term that the medical profession has to render service to humanity; reward or financial gain is a subordinate consideration. The doctor is supposed to be noble in all actions of his life.

54. Under Regulation 1.2.1 it is the duty of the member of the medical profession to make available to the patients the benefits of their professional attainments. Regulation 1.2.1 is extracted hereunder:

> "1.2.1 The principal objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion. Physicians should try continuously to improve medical knowledge and skills and should make available to their patients and colleagues the benefits of their professional attainments. The physician should practice methods of healing founded on a scientific basis and should not associate professionally with anyone who violates this principle. The honoured ideals of the medical profession imply that the responsibilities of the physician extend not only to individuals but also to society."

55. Under Regulation 1.8, the physician engaged in the practice of medicine has to give priority to the medical interests of the patients

and not to the personal financial interests. Regulation 1.8 is extracted hereunder:

> **“1.8 Payment of Professional Services:** The physician, engaged in the practice of medicine shall give priority to the interests of patients. The personal financial interests of a physician should not conflict with the medical interests of patients. A physician should announce his fees before rendering service and not after the operation or treatment is underway. Remuneration received for such services should be in the form and amount specifically announced to the patient at the time the service is rendered. It is unethical to enter into a contract of "no cure no payment". Physician rendering service on behalf of the state shall refrain from anticipating or accepting any consideration."

56. Under Regulation 2.1 it is provided that in the case of emergency the physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient. At the time of registration, the medical practitioner has to submit a declaration that "I solemnly pledge myself to consecrate my life to service of humanity" and that "I will maintain the utmost respect for human life from the time of conception." And he is duty-bound to maintain all means in his power to honour the noble provisions of the medical profession and he has to abide by the regulations framed by the Medical Council of India. Considering the object of the statutory rules also, medical profession

owes a duty to serve the poor and have-nots, irrespective of financial status, they have to treat everybody equally with respect to social standing and economic disparity, that cannot be achieved without free treatment to the needy.

57. When the Government land has been allotted to the hospitals, they would not be doing free service but being a recipient of Government largesse at concessional rates and continue to enjoy it, they owe a duty to act in public interest. In our opinion, not only Moolchand Kharaiti Ram Trust and St. Stephens Hospital have obtained the land at a concessional rate, the other two hospitals, namely, Sita Ram Bhartia Institute of Science & Research and Foundation for Applied Research in Cancer have also obtained land at a lower pre-determined rate, not at market rate. It was not by way of a public auction that they have received the land. Besides in the cases of Sita Ram Bhartiya Institute of Science & Research and Foundation for Applied Research in Cancer, clause 7 was inserted in the allotment letters to the effect that "The DDA reserves its right to alter any terms and conditions on its discretion."

58. It was contended on behalf of Sita Ram Bhartia Institute of Science & Research and Foundation for Applied Research in Cancer that their request for allotment of land at concessional rate had been turned down. It was urged on behalf of the State that DDA (Disposal of Developed Nazul Land) Rules, 1981, in particular Rules 3 to 6 and 20 indicate that the land was allotted to the charitable institutions at pre-determined rates and not on market rates. The allotment of land to aforesaid two institutes was at pre-determined rates. The pre-determined rates are nowhere close to the market rates. As per the DDA Rules, land has to be disposed of by way of open auction or tender. The pre-determined rates are nowhere near market rates fetched in auction or tender thus they are also the concessional ones. Apart from that, as already discussed, as hospitals are enjoying Government land it is open to the Government to impose such riders and stipulations for free treatment to be given to economically weaker sections.

59. The realization of human rights vests responsibilities upon the State. The State has to constantly make an endeavor for realization of human rights agenda, particularly in relation to economic, social and

cultural rights. Right to health is provided in Article 25 of Universal Declaration of Human Rights of 10.12.1948 (the UDHR). The Article provides that:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

60. The State has to ensure the basic necessities like food, nutrition, medical assistance, hygiene etc. and contribute to the improvement of health. Right to life includes right to health as observed in *State of Punjab & Ors. v. Mohinder Singh Chawla & Ors*. (1997) 2 SCC 83. Right to life and personal liberty under Article 21 of the Constitution also includes right of patients to be treated with dignity as observed by this Court in *Balram Prasad v. Kunal Saha & Ors*. (2014) 1 SCC 384. Right to health *i.e.*, right to live in a clean, hygienic and safe environment is a right under Article 21 of the Constitution as observed in *Occupational Health and Safety Association v. Union of India & Ors.*, AIR 2014 SC 1469. The concept

of emergency medical aid has been discussed by this Court in *Pt. Parmanand Katara v. Union of India & Ors*. (1989) 4 SCC 286. In *Paschim Banga Khet Mazdoor Samity & Ors. v. State of West Bengal & Anr*. (1996) 4 SCC 37, right to medical treatment has been extended to prisoners also.

61. In *Parmanand Katara* (supra) this Court has observed that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise, which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way, and there is an obligation upon the doctor to treat the injured victim on his appearance before him either by himself or being carried by others. It has also been observed by this Court that the effort to save the person should be the top priority not only of the medical professional but even of the Police or any other person who happens to be connected with the matter or who happens to notice such an incident or a situation. Apprehensions that the doctor will have to face police interrogation and stand as a

witness in court and face all the harassments, should not prevent them from discharging their duty as medical professionals to save a human life and to do all that is necessary.

62. In *Paschim Banga Khet Mazdoor Samity* (supra), this Court has observed that the Constitution envisages the establishment of a welfare State. 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 centers which provide medical care to the person seeking to avail of those facilities. Preservation of human life is thus of paramount importance. Government is duty-bound to provide timely care to persons in serious conditions. Medical facilities cannot be denied by the Government on the ground of non-availability of bed. Denial of medical assistance on unjust ground was held to be in violation of right to life under Article 21 and the State was directed to pay the compensation of Rs.25,000 to the petitioner and requisite directions were issued by this Court. The State cannot avoid its constitutional

obligation in that regard on account of financial constraints and was directed to allocate funds for providing adequate medical infrastructure.

63. In our opinion, the State can also impose such obligation when the Government land is held by such hospitals and it is the constitutional obligation imposed upon such hospitals. Under Article 47, State has to make constant endeavor to raise the level of nutrition and the standard of living and to improve public health. It is also one of the fundamental duties enshrined in Article 51A(h) to develop the scientific temper, humanism and the spirit of inquiry and reform. It would be inhuman to deny a person who is not having sufficient means or no means, the life-saving treatment, simply on the ground that he is not having enough money. Due to financial reasons, if treatment is refused, it would be against the very basic tenets of the medical profession and the concept of charity in whatever form we envisage the same, besides being unconstitutional would be violative of basic human rights. In our opinion, when the State largesse is being enjoyed by these hospitals in the form of land beside it is their obligation by the very nature of the medical services to extend the

reciprocal obligation to the public by providing free treatment as envisaged in the impugned order. In case they want to wriggle out of it and not to comply with it, they have to surrender the land and orge out the benefit which they have received by virtue of holding the Government land in an aforesaid manner.

64. It is regrettable that the land had been obtained by Moolchand Kharaiti Ram Trust which claims to be charitable and St. Stephens Hospital run by the Missionaries admittedly for charity, are questioning the very conditions for which they have come into being and it appears with the passage of time they have lost the very purpose of their establishment. In our opinion they should have welcomed the conditions imposed by the Government, considering their objectives and for the purpose, they have obtained the land. Two other hospitals, namely, Sita Ram Bhartia Institute of Science & Research and Foundation for Applied Research in Cancer also cannot wriggle out of their such obligations.

65. Even when the purpose of the charitable activity is not defined, it is open to the court to define it. The decision of the Government cannot be said to be foreign to the purpose for which land is held.

Thus, the action of the State cannot be said to be unauthorized, illegal or arbitrary in any manner whatsoever and is in furtherance of the very objectives for which the medical profession exists. It is very unfortunate that by and large the hospitals have now become centers of commercial exploitation and instances have come to notice when a dead body is kept as security for clearance of bills of hospitals which is *per se* illegal and criminal act. In future, whenever such an act is reported to the police, it is supposed to register a case against management of Hospital and all concerned doctors involved in such inhumane act, which destroys the basic principles of human dignity and tantamount to a criminal breach of the trust reposed in the medical profession.

66. It is unfortunate that most of the hospitals are being run on a commercial basis and various ills have sunk in the noble medical profession. Right from wrong reporting, uncalled for investigation inclusive of invasive one, even as to heart and other parts of the body, which are wholly unnecessary, are performed, it is time for soul-searching for such big hospitals in and around Delhi, Gurgaon etc. and other places. They must ponder what they are doing. Is it not a

criminal act? Simply by the fact that action is not taken does not absolve the responsibility. Time has come to fix accountability and to set right the evils which have rotten the system. The medical profession had never been intended to be an exploitative device to earn money at the cost of patients who require godly approach and helping hand of doctors. Every prescription starts from Rx, not from the amount of bill. Being big commercial international hospitals in and around Delhi, they are not above the ethical standards which they have to maintain at all costs even by extending financial help to the have-nots.

67. The poor cannot be deprived of the treatment by the best physician due to his economic disability in case he requires it. It is the obligation on the medical professionals, hospitals, the State and all concerned to ensure that such person is given treatment and not deprived of the same due to poverty. That is what is envisaged in the Constitution also. On the making of a doctor, the State spends and invests a huge amount of public money and it is the corresponding obligation to serve the needy and the treatment cannot be refused on the ground of financial inability of the patient to bear it. To such an

extent, the right and moral obligation can be enforced and that precisely has been done by issuance of the impugned directions to provide free treatment in IPD and OPD to economically weaker sections of society. They have suffered so long and benefit has not percolated down to them of distributive justice and they are deprived of equal justice and proper treatment due to lack of financial means. It is apparent from the policy decision dated 10.6.1949 and also the provisions contained in section 2 of the Charitable Endowments Act, 1890 that running of hospitals is regarded as a charitable activity. The further rider in policy was that such institution claiming allotment should be secular and of non-communal character.

68. The Arts and Crafts Society and other non-profit making bodies were also included under the term ‘charitable institution' with the rider that the institution should be run for the good of the public without any profit motive. It was contended on behalf of the hospitals that the aforesaid condition is not applicable to hospitals and would apply to Arts and Crafts Association, and there was no specific stipulation with respect to providing free treatment in the letter of allotments and lease deed. In our opinion, the rider that the Arts and

Crafts institution should be run for good of the public, without any profit motive is primarily applicable to the charitable institutions like hospitals etc. then it has been only specified as an obligation to Arts and Crafts institution etc. too. As such there would be an obligation upon hospitals being charitable by their very nature to provide free treatment to economically weaker sections of society. The expression ‘no profit motive' would also exclude the hospitals being run for commercial gains. That would be violative of the very foundational basis and fulcrum on which the allotment order had been issued and lease deeds have been executed. Once having claimed themselves to be charitable institutions, it does not lie in the armory of defense to raise such plea and having obtained the benefit of the public largesse. It is not open to raising the aforesaid challenge within the framework of legal parameters. As a matter of fact, as these hospitals are being run for commercial gains, it would be open to the lessor to terminate the lease. That can be done in case there is a refusal to comply with or violation in any manner of the obligation of providing free medical treatment to 10% IPD and 25% OPD patients belonging to economically weaker sections of the society. The imposition of the said condition is inherent in the policy and in the very grant on the

basis of which the land is held and even otherwise in the case of two other institutes *i.e.* Sita Ram Bhartia Institute of Science & Research and Foundation for Applied Research in Cancer, as they are holding the Government land for the hospital purpose and research functions in the hospital, the allotment was also made at a pre-determined rate and not by way of auction and considering the specific stipulation in clause 7 of the lease deed and considering the aforesaid other aspects, and it being charitable activity, it was open to the Government to obligate them by providing free medical treatment.

69. It is apparent that decision in *Social Jurist*s (supra) has been rendered on the basis of the terms and conditions contained in the allotment letters as well as stipulations made in the lease deeds. Some representations were made relating to free treatment. The High Court, hence in *Social Jurists* (supra), opined that it was not necessary to incorporate each and every condition in the lease deed and other corresponding documents would also be seen and it was not only contractual but statutory, and public law obligation enjoined upon the hospitals to fulfil condition of free treatment. The order was

affirmed by this Court by a reasoned order, hence it becomes binding as precedent.

70. It is apparent that in the case of Moolchand Kharaiti Ram Trust and St. Stephens Hospital, the lands were allotted for charitable purposes under the Scheme of the year 1949, as further modified, thus, the policy under which they had obtained lease deed would also be a relevant document and of paramount importance for entitlement to hold the land for purpose as specified in the policy, as that is the basic document governing the rights of the parties, and the terms and conditions of lease deed, would be supplemental to the main objective of the policy. The lease deed can supplement not supplant the main policy or rules as the case may be under which the allotment has been obtained and lease deed has been executed.

71. In our considered opinion, not only by the policy that prevailed in 1949, the land at concessional rates for charitable purposes, had been obtained and free treatment being as stipulated in the order dated 02.02.2012 issued by the Government of India, is within the realm of the policy under which allotment had been made at highly concessional rates in the heart of Delhi and the Delhi Development

Authority Rules framed in 1981. They cannot wriggle out of their obligation by contending that there was no such stipulation in the allotment letter or lease deed. Allotment letter and lease deed are subject to the riders in the main policy and rules under which grant has been made. It is the foundation of the allotment letter and the lease deed.

72. In the case of Sitaram Bhartia Institute of Science & Research and Foundation for Applied Research in Cancer, the allotment had been made by the DDA when the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 were in vogue.

73. In the case of Sitaram Bhartia Institute of Science & Research, applications were made to the DDA for allotment of land for establishing a multi-disciplinary research complex in New Delhi. The allotment was made for 1.52 acres of land at Rs.6 lacs per acre on 22.10.1984, followed by lease deed dated 02.09.1985 in respect of another plot of land of 1.46 acres for a consideration of Rs.8,76,000. Thus, it was clearly subject to Rules 5 and 20 of aforesaid DDA Rules, 1981. Rules 5 and 20 are extracted hereinbelow:

"5. Rules of premium for allotment of Nazul land to certain public institutions.- The Authority may allot Nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organisations and local bodies for remunerative, semi-remunerative or unremunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time.

[Explanation.- For the purpose of this rule the expression 'hospitals' do not include the hospitals/dispensaries established by a company, firm or trust as referred to in Sub-rule (2) of Rule (4).]

20. Allotment to certain public institutions. - [***] No allotment of Nazul land to public institution referred to in Rule 5 shall be made unless -

(a) according to the aims and objects of that public institution -

(i) it directly subserves the interests of the population of the Union Territory of Delhi;

(ii) it is generally conducive to the planned development of the Union Territory of Delhi;

(iii) it is apparent from the nature of work to be carried out by that public institution, that the same cannot, with equal efficiency be carried out elsewhere than in that Union Territory.

(b) it is a society registered under the Societies Registration Act, 1860 (21 of 1860) or such institution is owned and run by the Government or any Local Authority, or is constituted or established under any law [for the time being in

> force or it is a company, firm or trust for the purpose of establishment of hospital or dispensary];
>
> (c) it is of non-profit making character;
>
> (d) it is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use; and
>
> (e) allotment to such institution is sponsored or recommended by a [Department of the Government of National Capital Territory of Delhi] or a Ministry of the Central Government:
>
> [Provided that in case of allotment to a company, firm or trust for the purpose of establishment of hospital or dispensary by tenders or auction, as the case may be, such company, firm or trust, as the case may be, shall not be required to be sponsored by a Department of the Government of National Capital Territory of Delhi or a Ministry of the Central Government.]"

74. It is apparent from Rule 5 that allotment of lands to the charitable institutions would be at pre-determined rates and not on market rates. According to Rule 20 above, the allotment is subject to the further rider that public institution should sub-serve the interests of the population of the Union Territory of Delhi and such institutions should be of non-profit motive character. There was a clear stipulation by way of the condition in clause 7 of the allotment letter to the effect that DDA reserves the right to alter any terms and

conditions on its discretion. Thus, it appears that the land was obtained for research purposes. Later on, it was noticed that hospitals were set up and were running on commercial lines, which was objected to by the DDA as it was in clear violation of the terms and conditions. As the land was obtained at concessional rates, not on market rates, the hospitals were bound to serve the public good and the imposition of such condition in the lease deed could not be said to be impermissible, arbitrary or irrational. The allotments that were made in favour of Sitaram Bhartiya Institute and Foundation for Applied Research in Cancer were at pre-determined rates, which were lesser than the market rates.

75. The contention raised on behalf of Moolchand Kharaiti Ram Trust to the effect that this Court cannot proceed to make an order on account of sympathy in contravention of settled law and it will seriously damage the credibility of this institution. In our view, it is wholly impermissible submission. The Trust cannot be permitted to wriggle out of its obligation unjustly and unfairly. Originally the Trust was set up for pure charity. In raising such unworthy and untenable submission, Trust has lost its main objective and assumed

a commercial character and it is regrettable that it has to be reminded of its responsibility by the Court for the purpose for which it exists and having obtained the land on a particular basis, is observed only in breach thereof. The adverse remarks in the report of Justice Qureshi Committee with respect to the institution cannot be brushed aside on the sole ground that comments recorded in Justice Qureshi's report were based on the statement made by disgruntled employees of the hospitals, who were in dispute with the management of the hospital.

76. Learned senior counsel appearing on behalf of St. Stephens Hospital has also relied on the decision rendered in *Divisional Manager, Aravali Golf Club & anr. v. Chander Hass & anr.,* (2008) 1 SCC 683, to contend that it is not open to the Court to create a law or an obligation and then seek to enforce it. The statement in the factual matrix has no legs to stand and we are conscious that we are not trying to create any new obligation. It was a self-created obligation on missionaries to do charity for which they exist while obtaining the land and Court is duty bound to enforce it. By the stipulation in the question of free treatment, the policy rules of

allotment have been given a shape that is enforceable and cannot be termed to be a new imposition not contemplated initially.

77. On behalf of Moolchand Kharaiti Ram Trust, Will has been relied upon to indicate the purpose of creation of Trust. It is apparent that Moolchand Kharaiti Ram Trust was created by a Will executed by Lala Kharaiti Ram resident of Lahore in 1927. The Will was produced for perusal. The objects of the creation of Trust were imparting education in and preaching Sanskrit according to Sanatan Dharam methods; and, secondly, for devising means for imparting education in and improving the "Ayurvedic system of medicine" and preaching the same. In order to achieve the latter object, it was not prohibited to take help from the English or Yunani or any other system of medicine and according to need, one or more than one Ayurvedic Hospital may be opened. It was contended that it was not in the deed of the Trust to impart free medical aid. The ground raised and what is contained in the Will is against the very purpose for which the Moolchand Kharaiti Ram Hospital is being run. When its object was of improving the Ayurvedic system of medicine only as is apparent from the material on record that at present the said activities had been

confined to one room and the changed main activity is an Allopathic system of medicine which was not at all the intendment of the creator of the Trust. We leave the matter at that in these proceedings. However, having obtained the land for charitable purposes for the hospital, for no profit and for the public good, whatever system of medicine is being administered, it can be obligated with such charitable rider of free treatment as envisaged in the impugned order issued by the Government.

78. Similarly, St. Stephens Hospital is Missionaries' hospital and its very objective admittedly is to provide the charitable services free of charge but it has also become more or less a commercial venture as in the case of other hospitals *inter alia* involved in the instant matter, how such provision for charity is opposed is beyond comprehension, is it charity versus charity. They have to abide by the just and reasonable legal conditions for free treatment which are constitutionally envisaged also.

79. It was also urged on behalf of Moolchand Kharaiti Ram Hospital that though nine acres of land was allotted at Lajpat Nagar, it was not a prime locality at the relevant time and the land was given at the

market rate. The submissions are wholly baseless and against the record and cannot be countenanced. The record belies the same.

In Reference to question No.3 relating to Article 19(1)(g) and 19(6):

80. It was contended on behalf of the respondents/hospitals that imposition of such a stipulation for free treatment tantamounts to imposing restriction on the right enshrined in Article 19(1)(g) of the Constitution which confers a Fundamental Right on all citizens of India to practice any profession or to carry on any occupation, trade or business in India. Since the Trustees are Indian citizens, they are exercising their fundamental right in running the hospitals. If any restriction was to be placed on their right to run the institution by providing the manner in which they must run their hospitals by providing free treatment to a particular percentage of patients, this could only be done by enacting a 'law' under Article 19(6) of the Constitution. It was further contended that 'law' is clearly defined in Article 13 of the Constitution as 'statutory law' which has a foundation in a legislation enacted either by the Parliament or State Legislatures. Reliance has been placed on *Kharak Singh v. State of U.P.* (1964) 1 SCR 322 in which this Court observed that the

provisions contained in Police Regulations had no statutory basis but were merely executive or departmental instructions and that they could therefore not be "a law" which the State was entitled to make under Article 19(2) to (6) to regulate or curtail Fundamental Rights nor would it constitute a procedure established by law in furtherance of Article 21 of the Constitution and if any action under those executive instructions violated the Fundamental Rights of a person, the person concerned would be entitled to relief from the courts.

81. Reliance has also been placed on *Bijoe Emmanuel & Ors. v. State of Kerala & Ors*. (1986) 3 SCC 615 wherein the Government had issued circulars requiring all students to join in the singing of the National Anthem. It might have been a very laudable object of the Government and its policy but this Court held that the Circular being only executive instructions of the Government, could not infringe upon the Fundamental Rights of the students and stated that "The law is now well settled that any law which be made under clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be 'a law' having

statutory force and not a mere executive or departmental instruction."

This Court observed:

> "15. If the two circulars are to be so interpreted as to compel each and every pupil to join in the singing of the National Anthem despite his genuine, conscientious religious objection, then such compulsion would clearly contravene the rights guaranteed by Article 19(1)(a) and Article 25(1).
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> 16. We have referred to Article 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Article 19(2) which provides that nothing in Article 19(1)(a) shall prevent a State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. The law is now well settled that any law which may be made, under Clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be 'a law' having statutory force and not a mere executive or departmental instruction. In Kharak Singh v. State of U.P. AIR 1963 SC 1295, 1299, the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Article 19(2) to (6). The Constitution Bench answered the question in the negative and said:
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> > Though learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave this up and conceded that the regulations

> contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not, therefore, be "a law" which the State is entitled to make under the relevant Clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be "a procedure established by law" within Article 21. The position, therefore, is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations.

17. The two circulars on which the department has placed reliance in the present case have no statutory basis and are mere departmental instructions. They cannot, therefore, form the foundation of any action aimed at denying a citizen's Fundamental Right under Article 19(1)(a). Further it is not possible to hold that the two circulars were issued 'in the interest of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence’ and if not so issued, they cannot again be invoked to deny a citizen's Fundamental Right under Article 19(1)(a). In Kameshwar Prasad v. State of Bihar (1962) Supp 3 SCR 369, a Constitution Bench of the court had to consider the validity of Rule 4A of the Bihar Government Servants Conduct Rules which prohibited any form of demonstration even if such demonstration was innocent and incapable of causing a breach of public tranquillity. The Court said:

> No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration-be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result.
>
> Examining the action of the Education Authorities in the light of Kharak Singh v. State of Uttar Pradesh and Kameshwar Prasad v. State of Bihar (supra) we have no option but to hold that the expulsion of the children from the school for not joining the singing of the National Anthem though they respectfully stood up in silence when the Anthem was sung was violative of Article 19(1)(a).”

82. Reliance has also been placed on *State of M.P. & Anr. v. Thakur Bharat Singh*, AIR 1967 SC 1170 wherein it was pointed out that the executive power of the State under Article 162 being only an executive power and not a legislative power anything done in exercise of executive power under Article 162 does not become law under the Constitution. This Court in the factual matrix of the case that executive order was issued during an emergency was pending under Article 19. It was contended that Article 358 protects action of both

legislative and executive. The decision in the aforesaid case was not supported by Article 358 of the Constitution. It was observed:

> "(4). Counsel for the State did not challenge the view that the restrictions which may be imposed under cl. (b) of S. 3(1) requiring a person to leave his hearth, home, and place of business and live and remain in another place wholly unfamiliar to him may operate seriously to his prejudice, and may on that account be unreasonable. xx xxx.
>
> (5) xx xx Counsel for the State while conceding that if S. 3(1)(b) was, because it infringed the fundamental freedom of citizens, void before the proclamation of emergency, and that it was not revived by the proclamation, submitted that Art. 358 protects action both legislative and executive taken after proclamation of emergency and, therefore any executive action taken by an officer of the State or by the State will not be liable to be challenged on the ground that it infringes the fundamental freedoms under Art. 19. In our judgment, this argument involves a grave fallacy. All executive action which operates to the prejudice of any person must have the authority of law to support it, and the terms of Art. 358 do not detract from that rule. Article 358 expressly authorises the State to take legislative or executive action provided such action was competent for the State to make or take, but for the provisions contained in Part III of the Constitution. Article 358 does not purport to invest the State with arbitrary authority to take action to the prejudice of citizens and others : it merely provides that so long as the proclamation of emergency subsists laws may be enacted, and executive action may be taken in pursuance of lawful authority, which if the

provisions of Art. 19 were operative would have been invalid. Our federal structure is founded on certain fundamental principles : (1) the sovereignty of the people with limited Government authority, i.e. the Government must be conducted in accordance with the will of the majority of the people. The people govern themselves through their representatives, whereas the official agencies of the executive Government possess only such powers as have been conferred upon them by the people; (2) There is distribution of powers between the three organs of the State - legislative, executive and judicial - each organ having some check direct or indirect on the other; and (3) the rule of law which includes judicial review of arbitrary executive actions. As pointed out by Dicey in his "Introduction to the study of the Law of the Constitution", 10th Edn., at p. 202 the expression "rule of law" has three meanings, or may be regarded from three different points of view.

"It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the Government."

At p. 188 Dicey points out :

> "In almost every continental community the executive exercises far wider discretionary authority in the matter of arrest, of temporary imprisonment, of expulsion from its territory, and the like, than is either legally claimed or in fact exerted by the government in England : and a study of European politics now and again reminds English readers that wherever there is discretion there is room for arbitrariness and that in a republic no less than under monarchy discretionary authority on the part of the government must mean insecurity for legal freedom on the part of its subjects."

> We have adopted under our Constitution not the continental system but the British system under which the rule of law prevails. Every Act done by the Government or by its officers must if it is to operate to the prejudice of any person, be supported by some legislative authority.
>
> xxx xxx xxx
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> 7. We are therefore of the view that the order made by the State in exercise of the authority conferred by S. 3(1)(b) of the Madhya Pradesh Public Security Act 25 of 1959 was invalid and for the acts done to the prejudice of the respondent after the declaration of emergency under Art. 352 no immunity from the process of the Court could be claimed under Art. 358 of the Constitution, since the order was not supported by any valid legislation."

83. For deciding the aforesaid submission pivotal question arises whether imposition of condition tantamounts to a restriction imposed within the purview of Article 19(6) of the Constitution. In our considered opinion the High Court has erred in law in holding that such stipulation could have been imposed only by a statutory law. In our considered opinion, it is not a restriction on the right to carry on medical profession, the medical profession has obligated itself by such conditions by very nature of its professional activity and when the State land is being held which is for the public good with no profit motive, such land is held for the charitable purpose of public good. The charitable purpose would include, as already discussed, the aforesaid obligation of free treatment to the persons of economically

weaker strata of the society. It is not a restriction but the very purpose of existence of medical profession and very purpose of policy/Rules to grant land to institutions without public actions that would have fetched market rate and does not amount to putting any fetter to practice the medical profession or to carry on occupation. On due consideration of the very object of the medical activity its professional and other obligations for the proper treatment of the persons of economically weaker sections of the society deprived of the fruits of development. The benefits of various welfare schemes hardly reach to them in spite of efforts made, economic disparity is writ large and persists. They cannot afford such treatment and thus in lieu of holding land of Government at concessional rate and enjoying huge occupancy benefits *inter alia* for aforesaid reasons, the hospitals can be asked to impart free treatment as envisaged in the Government order.

84. The hospitals now-a-days have five-star facilities. The entire concept has been changed to make commercial gains. They are becoming unaffordable. The charges are phenomenally high, and at times unrealistic to the service provided. The dark side of such

hospitals can be illuminated only by sharing obligation towards economically weaker sections of the society. It would be almost inhuman to deny proper treatment to the poor owing to economic condition and when hospitals claim that they are doing charity at their own level, we find impugned order dated 2.2.2012 is simply an expression to the aforesaid activity which has been given a channelized form.

85. We are of the considered opinion that there was no necessity of enacting a law, as the policy/rules under which the land has been obtained, the hospitals were obligated to render free treatment as the land was allotted to them for earning no profit and held in trust for public good. Similar is the provision in the rules of 1981 and apart from that the regulations framed by the Medical Council of India also enjoins upon the medical profession to extend such help and in view of the object of the hospitals, trust, and missionaries it is apparent that there was no necessity of any legislation and the Government was competent to enforce in the circumstances, the contractual and statutory liability and on common law basis.

86. The right to carry on the medical profession has not been restricted, however, what was enjoined upon the respondent-hospitals to perform otherwise had been given a concrete shape. Thus, it was permissible to issue circular in the exercise of power under Article 162 of the Constitution. It was urged on behalf of hospitals that they were doing a charitable work at their own, thus, it could not be said to be a restriction within the meaning contemplated under Article 19(6) for which a law was required. No new restriction has been imposed for the first time under Article 19(6) of the Constitution of India, as such in our opinion, there was no necessity for enacting a law, such guidelines could be issued under the executive powers.

87. In *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab* (1955) 2 SCR 225= AIR 1955 SC 549, this Court observed that it is open to the State to issue executive orders even if there is no legislation in support thereof provided the State could legislate on the subject in respect of which action is taken. There can be executive orders in the absence of legislation in the field. This Court has observed:

“7. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in article 162. The provisions of these articles are analogous to those of section 8 and 49 respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down:

> "Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has the power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Thus, under this article, the executive authority of the State is executive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by the Parliament. Similarly, article 73 provides that the executive powers of the Union shall extend to matters with respect to which the Parliament has power to made laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to be State it would be open to the Parliament to provide that in exceptional cases the

executive power of the Union shall extend to these matters also.

Neither of these articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr. Pathak seems to suggest, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them.

On the other hand, the language of article 162 clearly indicates that the powers of the State executive do extend to matters upon which the state Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies article 73 of the Constitution. These provisions of the Constitution, therefore, do not lend any support to Mr. Pathak's contention.

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12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily, the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.

The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not

contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature.

It can also when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of executive are limited merely to the carrying out of these laws.

13. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is it's retaining the confidence of the legislative branch of the State.

The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on or supervision of the general administration of the State.

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> 17. Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed.
>
> 18. In the present case it is not disputed that the entire expenses necessary for carrying on the business of printing and publishing the textbooks for recognised schools in Punjab were estimated and shown in the annual financial statement and that the demands for grants, which were made under different heads, were sanctioned by the State Legislature and due Appropriation Acts were passed.
>
> For the purpose of carrying on the business the Government do not require any additional powers and whatever is necessary for their purpose, they can have by entering into contracts with authors and other people. This power of contract is expressly vested in the Government under article 298 of the Constitution. In these circumstances, we are unable to agree with Mr. Pathak that the carrying on of the business of printing and publishing textbooks was beyond the competence of the executive Government without a specific legislation sanctioning such course."

88. In *U. Unichoyi & Ors. v. State of Kerala*, AIR 1962 SC 12, in which notification issued by the Government of Kerala was questioned that wages prescribed were something above the

minimum wages, the fixation was questioned on the ground that it affected the rights of the industries to carry on their activities under Article 19(1)(g) of the Constitution. The submissions were rejected following the earlier decisions of this Court in *Bijay Cotton Mills Ltd. v. State of Ajmer*, AIR 1955 SC 33. This Court observed that when a Committee consisting of representatives of the industry and the employees considered the problem and made its recommendation and when they were accepted by the Government, it would ordinarily not be possible to examine the merits of the recommendation. The submission made upon infringement of Article 19(1)(g) read with Article 19(6) was rejected. This Court observed thus:

> "10. In the case of The Edward Mills Co. Ltd., Beawar v. State of Ajmer, 1955-I SCR 735: ((S) AIR 1955 SC 25) the validity of S. 27 of the Act was challenged on the ground of excessive delegation. It was urged that the Act prescribed no principles and laid down no standard which could furnish an intelligent guidance to the administrative authority in making selection while acting under S. 27 and so the matter was left entirely to the discretion of the appropriate Government which can amend the schedule in any way it liked and such delegation virtually amounted to a surrender by the Legislature of its essential legislative function. This contention was rejected by Mukherjea, J., as he then was, who spoke for the Court. The learned Judge observed that the Legislature undoubtedly intended to apply the Act to those industries only where by reason of unorganised labour or want of

proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. He also pointed out that conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by a person who is placed in charge of the administration of a particular State. That is why the Court concluded that in enacting S. 27 it could not be said that the Legislature had in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act.

11. In the same year another attempt was made to challenge the validity of the Act in Bijay Cotton Mills Ltd. v. State of Ajmer (1955)-1 SCR 752; ((S) AIR 1955 SC 33). This time the crucial sections of the Act, namely, Ss. 3, 4 and 5 were attacked, and the challenge was based on the ground that the restrictions imposed by them upon the freedom of contract violated the fundamental right guaranteed under Art. 19(1)(g) of the Constitution. This challenge was repelled by Mukherjea, J., as he then was, who again spoke for the Court. The learned Judge held that the restrictions were imposed in the interest of the general public and with a view to carry out one of the directive principles of State policy as embodied in Art. 43 and so the impugned sections were protected by the terms of Cl. (6) of Art. 19. In repelling the argument of the employers' inability to meet the burden of the minimum wage rates it was observed that "the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers on account of their poverty and

helplessness are willing to work on lesser wages, and that if individual employers might find it difficult to carry on business on the basis of minimum wages fixed under the Act that cannot be the reason for striking down the law itself as unreasonable. The inability of the employers may in many cases be due entirely to the economic conditions of those employers." It would thus be seen that these two decisions have firmly established the validity of the Act, and there can no longer be any doubt that in fixing the minimum wage rates as contemplated by the Act the hardship caused to individual employers or their inability to meet the burden has no relevance. Incidentally, it may be pointed out that in dealing with the minimum wage rates intended to be prescribed by the Act Mukherjea, J., has in one place observed that the labourers should be secured adequate living wages. In the context it is clear that the learned Judge was not referring to living wages properly so-called but to the minimum wages with which alone the Act is concerned. In view of these two decisions we have not allowed Mr. Nambiar to raise any contentions against the validity of the Act. It is true that Mr. Nambiar attempted to argue that certain aspects of the matter on which he wished to rely had not been duly considered by the Court in Bijay Cotton Mills Ltd.'s case (1955)-1 SCR 752; ((S) AIR 1955 SC 33). In our opinion it is futile to attempt to reopen an issue which is clearly concluded by the decisions of this Court. Therefore, we will proceed to deal with the present petition, as we must, on the basis that the Act under which the Committee was appointed and the notification was ultimately issued is valid.”

89. In *Minerva Talkies, Bangalore & Ors. v. State of Karnataka & Ors.* 1988 Suppl. SCC 176 in which Rule 41-A of the Karnataka Cinemas (Regulation) Rules, 1971 came to be questioned as violative of Article 19(1)(g) of the Constitution of India. The argument that the income would be reduced as such the rule was prohibitive not restrictive, this Court rejected the submission of violation of Article 19(1)(g) and observed thus :

> "12. The appellants'/petitioners' contention that restriction under Rule 41-A is unreasonable is founded on the premise that Rule 41-A is not regulatory in nature instead it totally prohibits exhibition of cinematograph films for one show and its impact is excessive as it reduces appellants'/petitioners' income to the extent of one-fifth. The appellants/petitioners have no unrestricted fundamental right to carry on business of exhibiting cinematograph films. Their right to carry on business is regulated by the provisions of the Act and the Rules framed thereunder. These provisions are necessary to ensure public safety, public health and other allied matters. As already discussed Rule 41-A has placed limit on the number of shows which a licensee can hold in a day. The rule does not prohibit exhibition of cinematograph films instead it regulates it by providing that instead of five shows only four shows should be exhibited in a day. In Narender Kumar v. Union of India, (1960) 2 SCR 375, this Court held that a law made in the public interest prohibiting a business would be valid as the 'prohibition' is only a kind of 'restriction'. The expression "restriction" includes "prohibition" also. Rule 41-A, however, does not

> take away the licensees' right to carry on business of exhibiting cinematograph films. It merely regulates it. No rule or law can be declared to be unreasonable merely because there is reduction in the income of a citizen on account of the regulation of the business. In our opinion, Rule 41-A does not place any unreasonable restriction on the appellants'/petitioners' fundamental right guaranteed to them under Article 19(1)(g) of the Constitution."

90. In *T.V. Balakrishnan v. State of T.N. & Ors.,* 1995 Suppl. 4 SCC 236, wherein Rules 1-A (3)(b), 2, 3(ii) and 7(4) of Tamil Nadu Timber Transit Rules, 1968 had been questioned on the ground of violation of Article 19 (1)(g). It was held that it was not restrictive but regulatory, hence was intra vires. This Court has discussed the matter thus:

> 4. The High Court further found that the impugned Rules were only regulatory and did not in any manner infract the right of the petitioners guaranteed under Article 19(1)(g) of the Constitution of India. The High Court rejected the argument on the following reasoning:
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> > "When the rules as framed are intended to subserve the aims of the Act which was meant to consolidate the law relating to the forest produce, the transit thereof and the duty leviable thereon; and hence those rules were meant to effectuate same of all of these objects. Having noticed the uphill task faced by the Government in preventing illicit felling of trees, over large extents with limited man power, and checking at check-posts at forest frontiers having been found to be insufficient, ineffective and being no match to the swift manner in which they are carried away by

> lorries; and on raids conducted in places like Mettupalayam, Tambaram and elsewhere large stocks of illicit timber having been found in saw-mills and with dealers, the impugned rules, which insist on a Form II pass to accompany during every movement of timber, and hammer mark being affixed on the transported timber, are absolutely necessary for the protection and management of forest wealth in the State of Tamil Nadu. Hence, the impugned rules are not violative of Article 19(1)(g)."
>
> 5. Having found that the rules were regulatory and not prohibitive, the High Court also rejected the argument based on Articles 301-304 of the Constitution of India. So far as the enhancement of fee is concerned, the High Court examined the scheme and operation of the rules and came to the conclusion that the State Government was providing sufficient services to the timber merchants at every check-point and as such the principle of quid pro quo was satisfied."

91. In *State of Orrisa and Anr vs. Radheyshyam Meher & Ors.* AIR 1995 SC 855 = 1995 (1) SCC 652 the question which arose for consideration was about the power of the State Government in the absence of rule or regulations to permit the opening of medical store in campus of hospital remaining open day and night. Objection was raised by store-keepers across road close to hospital that opening of store in campus will jeopardise their interest and they will not be able to sustain themselves. This Court observed that the intention in

starting day and night store within the campus has direct nexus with the public interest particularly with that of patients and that the policy decision of the Government in absence of rules and regulations was not liable to be interfered with. This Court has observed thus:

> "5. Learned Counsel appearing for the appellants vehemently urged before us that the said advertisement inviting applications for settling the shop to have a medical store inside the hospital premises was issued in pursuance of the Government policy and with the sole object to make the medicines available to the patients even at odd hours and, therefore, the High Court should not have interfered with the administrative decision of the Government taken in the public interest. We find considerable force and much substance in these submissions.
>
> 6. In the aforesaid background the question arises whether, in the absence of any rule or regulation to the contrary, can the power of the State be abridged on the basis of an individual interest of certain trader, even to the extent of restricting the State's capacity to advance larger public goods. It can hardly be disputed that the consideration of availability of the medicines to the patients should be the uppermost consideration as compared to the right of a person to derive income and make profits for his sustenance by running a medical store for the reason that the medical stores are primarily meant for the patients and not the patients for the medical stores or those who run the same. The submission of the respondents that if a medical store is opened within the campus of the hospital, the same will jeopardise their interest adversely affecting their business and that they will not be able to sustain themselves could not be

> a valid ground to disallow the appellants to open a shop within the hospital campus. Undoubtedly, the opening of a medical store within the hospital campus will provide a great facility to the patients who may not be having any attendant of their own in the hospital for their assistance at odd hours in the event of an emergency to go out to purchase the medicines. There may be patients having an attendant who may not find it convenient or safe to go out of the campus to purchase the medicines in the night hours. In these facts and circumstances, the paramount consideration should be the convenience of the patients and protection of their interest and not the hardship that may be caused to the medical store keepers who may be having their shops outside the hospital campus. Thus the intention of the appellants to open a medical store within the hospital campus is to salvage the difficulties of the patients admitted in the hospital and this object of the appellants has direct nexus with the Public Interest particularly that of the patients and, therefore, the High Court should not have interfered with the decision of the State Government to settle the holding of a medical store in the Hospital premises. However, if the respondents so choose, they may keep their medical stores also open day and night. Consequently, the impugned order could not be sustained."

92. In *Dalmia Cement (Bharat) Ltd. v. Union of India* 1996 (10) SCC 104, compulsory packing of specified commodities with jute packaging material (gunny bags) was held not to be violative of Articles 14, 19(1)(g) and 301 of the Constitution. This Court held that

the Act primarily intended to provide socio-economic justice to agriculturist. This Court observed that the role of Article 14 in ushering in healthy social order by providing equal opportunities to all citizens to make fundamental rights meaningful and life worth living should also consider the role of Article 38 in securing and protecting social, economic and political justice and in the case of economic legislation presumption of constitutionality arises in favour of legislation. It is empowered to make experiments on economic legislation having regard to various socio-economic aspects. Court should not adjudge crudities and inequities arising from economic legislation. With respect to human rights and fundamental freedom, in the Universal Declaration of Human Rights, democracy, development, and respect for human rights, this Court has observed thus:

> "15. In Valsamma Paul v. Cochin University, (1996) 3 SCC 545, a Bench of this Court has held that human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development, and respect for human rights and the fundamental freedoms are interdependent and have mutual reinforcement. Article 29(2) of the Declaration of Human Rights provides that:

> "…in the exercise of this right and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of leading the just requirements of morality, public order and general welfare in a democratic society."

The concept of equality and equal protection of law guaranteed by Article 14 of the Constitution in its proper spectrum encompasses social and economic justice in a political democracy as its species to eliminate inequalities in status and to provide facilities and opportunities among the individual and groups of people to secure adequate means of livelihood which is the foundation for stability of political democracy."

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18. Article 14 of the Constitution is a shining star among the fundamental rights which guarantees equality to every citizen and equal protection of laws to all persons. Equality before law is a correlative to the concept of rule of law for all-around evaluation healthy social order. Directives set forth social principles to eliminate inequalities in income, in status and opportunity and to provide facilities and opportunities to every citizen to make the fundamental rights meaningful and the life of every citizen worth living and at its best, with the dignity of person and fraternity, lest they remain empty vessels and teasing illusions to majority population.

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21. Article 38 of the Constitution enjoins the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, the social order in which justice - social, economic and political - shall, inform all the

institutions of the national life striving to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities, opportunities amongst individuals and groups of people residing in different areas or engaged in different avocations. As stated earlier, agriculture is the mainstay of rural economic and empowerment of the agriculturists. Agriculture, therefore, is an industry. To the tiller of the soil, livelihood depends on the production and return of the agricultural produce and sustained agro-economic growth. The climatic conditions throughout Bharat are not uniform. They vary from tropical to moderate conditions. Tillers of the soil being in unorganised sector, their voice is scarcely heard and was not even remotely voiced in these cases. Their fundamental right to cultivation is as a part of right to livelihood. It is a bastion of economic and social justice envisaged in the Preamble and Article 38 of the constitution. As stated earlier, the rights, liberties, and privileges assured to every citizen are linked with corresponding concepts of duty, public order, and morality. Therefore, the jural postulates form the foundation for the functioning of a just society. The fundamental rights ensured in Part III are, therefore, made subject to restrictions i.e., public purpose in Part IV Directives, public interest or public order in the interest of general public. In enlivening the fundamental rights and the public purpose in the Directives, Parliament is the best Judge to decide what is good for the community, by whose suffrage it comes into existence and the majority political party assumes governance of the country. The Directive Principles are the fundamentals in their manifestos. Any digression is unconstitutional. The Constitution enjoins upon the Executive, Legislature, and the Judiciary to balance the competing and conflicting claims involved in a dispute so as to harmonise the competing claims to establish an egalitarian social order. It is a settled law that the Fundamental

Rights and the Directive Principles are two wheels of the chariot; none of the two is less important than the other. Snap one, the other will lose its efficacy. Together, they constitute the conscience of the Constitution to bring about social revolution under rule of law. The Fundamental Rights and the Directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the Court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty, and fraternity in an egalitarian social order and prevent exploitation.

22. Social Justice, therefore, forms the basis of progressive stability in the society and human progress. Economic justice means abolishing such economic conditions which remove the inequality of economic value between man and man, concentration of wealth and means of production in the hands of a few and are detrimental to the vast. Law, therefore, must seek to serve as a flexible instrument of socio-economic adjustment to bring about peaceful socio-economic revolution under rule of law. The Constitution, the fundamental supreme lex distributes the sovereign power between the Executive, the Legislature, and the Judiciary. The three instrumentalities, within their play endeavour to elongate the constitutional basic structure built in the Preamble, Fundamental Rights and Directives, namely, establishment of an egalitarian social order in which every citizen receives equality of opportunity and of status, social and economic justice. The Court, therefore, must strive to give harmonious interpretation to propel forward march and progress towards establishing an egalitarian social order.”

93. This Court has observed that above economic justice means abolition of such economic conditions which remove inequality between man and man. In our opinion, there has to be positive action for that equality.

94. In *Indian Drugs & Pharmaceuticals Ltd. & Ors. v. Punjab Drugs Manufacturers Association & Ors.* (1999) 6 SCC 247 constitutional validity of the policy of the Government of the State of Punjab was challenged whereby directions issued to the purchasing authorities that certain medicines used in the government hospitals and dispensaries were to be purchased from public sector manufacturers only was quashed by the High Court while allowing writ petition. Whereas Rajasthan High Court has dismissed a similar writ petition. Both the matters were decided by this Court. This Court relied upon the decision in *Rai Sahib Ram Jawaya Kapur v. State of Punjab,* AIR 1955 SC 549 (quoted above) and observed that such restriction could be imposed by framing policy by exercising powers of the State under Article 162 of the Constitution. Therefore, the contention of the appellants in regard to creation of monopoly and violation of the

fundamental rights under Articles 19(1)(g) and 19(6) was turned down. This Court has observed thus:

> "16. It is clear from the various judgments referred to above that a decision which would partially affect the sale prospects of a company, cannot be equated with creation of monopoly. In Ram Jawaya Kapur AIR 1955 SC 549 and Naraindas's [1974] 4 SCC 788 cases, the Constitution Bench also held that the policy restrictions, as discussed above, can be imposed by exercise of executive power of the State under Article 162 of the Constitution. Therefore, the contention of the appellants in regard to creation of monopoly and violation of the fundamental right under Articles 19(1)(g) and 19(6) should fail. The judgment cited above also show that preference shown to cooperative institutions or public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution. We have noted above that this Court in the cases of Oil & Natural Gas Commission v. Association of Natural Gas Consuming Industries of Gujarat (1990) Supp SCC 397 ; Krishna Kakkanth (1997) 9 SCC 495 and Hindustan Paper Corpn. Ltd. v. Govt. of Kerala (1986) 3 SCC 398, has held that the preference shown to cooperative institutions or public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution.
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> 19. For the above reasons, we are of the opinion that the High Court was right in coming to the conclusion that by the impugned policy, there was no creation of any monopoly nor is there any violation Of Articles 14, 19(1)(g) or 19(6) of the Constitution. In view of the above, we are of the

> opinion that these appeals should fail and the same are dismissed accordingly. No costs.
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> *CA Nos. 3723 and 3744 of 1988:*
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> 20. These appeals are preferred against the judgment and order of the High Court of Punjab and Haryana dated 3-6-1988 made in Civil WP No. 6144 of 1987 wherein the High Court was pleased to allow the writ petition filed by the respondents in these civil appeals, quashing the policy decision of the State of Punjab whereby the State had directed its authorities concerned to purchase certain medicines from the public sector undertakings only. We have today in CA Nos. 4550-51 of 1989 held that a similar policy decision issued by the State of Rajasthan does not amount to creation of monopoly nor is there any violation of Article 14 or 19(1)(g) of the Constitution. The facts giving rise to the writ petitions before the Punjab and Haryana High Court from which the above civil appeals have arisen being the same, we allow these civil appeals and set aside the judgment and order of the Punjab and Haryana High Court dated 3-6-1988 made in Civil WP No. 6144 of 1987. Consequently, the said writ petition stands dismissed. No costs."
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> (emphasis supplied)

95. In our considered opinion such stipulation for free treatment does not amount to restriction under Article 19(6) on the right enshrined under Article 19(1)(g) and even otherwise it was not necessary to enact a statutory provision by the Government in view of existing liability as per policy/rules/statutory provisions as to ethical standards and other statutory provisions in force.

In Reference to question No.4 – decision in Social Jurists v. Govt. of NCT

96. In the decision rendered by Delhi High Court in *Social Jurists, A Lawyer Group v. Government of NCT of Delhi*, (supra), there were 20 hospitals as respondents. Out of these 20 hospitals, 18 hospitals were allotted land by Delhi Development Authority (DDA) and in the case of Veerawali and Vimhans hospitals, the land was allotted by Land and Development Office (L&DO). The Head of L&DO allotted the lands to the aforesaid two hospitals on concessional rates. Out of remaining 18 hospitals, 16 hospitals were provided lands on the condition of free patient treatment specifically mentioned in the lease deed. However, according to remaining two hospitals *i.e.*, Escort Heart Institute and Research Centre and Dharam Shila Cancer Foundation and Research Centre, who were also allotted land by DDA, there was no condition requiring them to provide free patient care and treatment to the poor sections of the society. Though in the letter of allotment, the said condition was specifically incorporated. The terms and conditions of the lease deed certainly did not contain the stipulation of free treatment, however, in view of the conditions of

letter of allotment, the High Court of Delhi in paragraphs 47 and 48 observed thus:

> “47. The first letter of allotment issued to both these hospitals contained the term of free treatment to poorer sections. The relevant terms of the letter has been referred by us supra. Without execution of any document, the hospitals had in furtherance to the letter of allotment accepted the terms and conditions of the letter including this condition and (a) paid the money demanded in terms of the letter of allotment and (b) took possession thereof, without any protest or reservation.
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> 48. In other words, a party's right had to be controlled in accordance with the terms of letter of allotment and, therefore, a complete contract existed between the parties. The terms and conditions of the letter of allotment empowered the authorities to add or impose such other conditions which the allottee was obliged to agree having taken benefit thereof. The terms and conditions of the Lease Deed certainly does not contain the condition of free treatment to poorer sections of the Society but the same was part of the letter of allotment itself and they would be applicable to the allotments mutatis mutandis particularly when there is no conflict between them and they duly are supplement to each other."

97. The High Court of Delhi also referred to Rules 5 and 21 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. Rule 5 deals with rules of premium for allotment of Nazul land to certain public institutions, whereas Rule 20 deals with

allotment to certain public institutions. Rule 5 provides that the Authority may allot Nazul land to schools, colleges, universities, hospitals, other social charitable institutions, religious, political, semi-political organizations and local bodies for remunerative, semi-remunerative or unremunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time. Rule 20 (a) (i) provides that no allotment of Nazul land to public institution, referred to in Rule 5 shall be made unless, according to the aims and objects of public institution, it directly sub-serves the interests of the population of the Union Territory of Delhi. Rule 20 (c) provides that public institution should be a non-profit making character. There is no such stipulation running contrary to the aforesaid provisions. The condition of free patient treatment to the poor with reference to Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, was examined by the High Court of Delhi, the relevant portion is extracted hereunder:

> "56. The condition of 25% free patient treatment to the poor thus is a condition which has been imposed in furtherance to the policy of the Government which in turn is in strict consonance to the spirit contained in Rules 5 and 20 of the Rules

and the Constitutional mandate. The DDA had specifically incorporated this condition at/after the time when on the tall representations and negotiations made by the hospitals and their undertaking to abide by such conditions, was repeatedly accepted that it issued the letter of allotment containing these terms. On facts of the case and in law, they cannot abrogate themselves from completely satisfying the condition of 'free patient treatment'.

57. The letter of allotment, thus, is a concluded contract between the parties and the Lease Deed, as per the language of the letter of allotment, is executed in compliance to one of the terms of that letter and as contemplated under the Nazul Land Rules.

58. The hospitals cannot pick up the document of lease in exclusion to preceding and subsequent documents which complete the rights, privileges, and obligations between the parties in relation to the allotment. In the case of Union of India and v. Jain Sabha, New Delhi (supra), the Supreme Court had clearly held that an offer extended by an allotment letter/revised offer once accepted, would bind the parties and that for reconsideration of the action, the allottee could only make a request to the authorities for a sympathetic consideration and cannot breach the terms of the allotment. The Court specifically observed as under:

> ".....The allotment of land belonging to the people at practically no price is meant for serving the public interest i.e., spread of education or other charitable purposes; it is not meant to enable the allottees to make money or profiteer with the aid of public property."

98. The High Court held that it was not open to hospitals to wriggle out of their contractual, statutory and public law obligation. There was no scope for reading and confining the rights and obligations of the parties in isolation.

99. The recommendation made in the report of Justice Qureshi Committee was also considered by the High Court of Delhi, the relevant part is extracted hereunder:

> "66. The Lieutenant Governor of Delhi had constituted a special committee being Justice Qureshi Committee for this purpose. This committee after taking into consideration various aspects including workability of this condition had recommended that 10% IPD and 25% OPD patients should be treated free in all respects in every such hospital. Such patients belonging to the poor strata of the society should not be required to pay any charges. The relevant part of the report of the committee reads as under:
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> > "1. Most of the representative of the hospital submitted that 25% beds earmarked for poor patients were excessive since the cost of medicines was too high. It was agreed that it should not be more than 15% in any case, but 10% would be ideal. Therefore, committee recommended 10% indoor beds free for poor patients for all-purpose including medicines and consumables. The free treatment services should be available to 25% of total OPD patients. This condition should be applicable to all the hospitals that have been allotted land by the govt.

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> 3. The free treatment should be totally free and not partly free and should be uniform for all hospitals that have been allotted land by the Government.
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> 4. It is also suggested that all those institutions should provide the free services to the extent of 10% also who have not been allotted Government land. Even Nursing Homes should provide 5% of their beds for poor and needy patients.
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> 5. In consideration of persistent violation of expressed and implied terms by the institutions, the allotment of land should be cancelled and should be reallotted by a new lease deed on new and uniform terms and conditions for thirty years, on commercial rates of ground rent, to a new management in which Government should have at least 3 nominees nominated by Lt. Governor having wide experience of rendering free services. The renewed lease must clearly mention that the lease is not transferable and any contravention would result in automatic cancellation."

100. The Government of NCT of Delhi accepted the recommendation of the Justice Qureshi Committee as reasonable and took the decision that it should be enforced. However, Union of India stated that the matter was under its consideration and they had not taken a final view in the matter. At the relevant time, the similar view was expressed by Maninder Acharya Committee that the condition of free treatment of poor strata of society should be reasonable, but its

implementation should be strictly enforced and in the event of default, strict action should be taken. The High Court in *Social Jurist*s (supra) has further observed with respect to land in Delhi and allotment of vital assets thus:

> "95. No right exists without any obligation and no obligation can be dissected from the duty tagged with it. Right should correlate to a duty. The wider interpretations given to Article 21 read with Article 47 of the Constitution of India are not only meant for the State but they are equally true for all who are placed at an advantageous situation because of the help or allotment of vital assets. Such assets would be impossible to be gathered in a city like Delhi where the land is not available in feet, much less in acres, which the State at the cost of its own projects had provided land at concessional rates to these hospitals. The principle of equality, fairness, and equity would command these hospitals to discharge their obligations of free patient treatment to poor strata of Delhi."

101. The aforesaid decision in *Social Jurists* (supra) was questioned before this Court by way of several special leave petitions filed by Dharamshila Hospital & Research Centre etc. and Sundar Lal Jain Charitable Hospital also challenged the abovesaid decision by preferring SLP (C) No.5630 of 2008. The said special leave petitions were dismissed by reasoned order dated 01.09.2011. The order in entirety is extracted hereunder:

"The special leave petitions are dismissed.

25% OPD and 10% IPD patients have to be given treatment free of cost. The said patients should not be charged with anything. But that will not come in the way of the concerned hospital making its own arrangements for meeting the treatment/medicines cost, either by meeting the cost from its funds or resources or by way of sponsorships or endowments or donations."

102. Thereafter, the Government of India on 2.2.2012, issued the impugned order with respect to the policy of free patient treatment to indigent/poor persons of Delhi to be followed by the private hospitals allotted land by Land & Development Office on concessional rates. The said order is reproduced hereinbelow:

"Government of India
Ministry of Urban Development
Land & Development Office
Nirman Bhawan, New Delhi

No.L&DO/L-II-B-18(107)/2012/42-47 Dated 2/2/2012

Order

SUB: Policy of free patient treatment to indigent/poor persons of Delhi to be followed by the private hospitals allotted land by Land & Development Office on concessional rates – regarding.

Land & Development Office, Ministry of Urban Development, Govt. of India had allotted land to the registered societies and trusts on concessional rates for establishment of hospitals. As per the Government policy for allotment of land in force in 1943, a charitable institution was required to pay a premium at the rate of about Rs.25,000/- to Rs.35,000/- per acre. In 1949, the policy was reviewed and it was felt that these prevailing land rates were on the higher side. It was then decided that land should be allotted to Charitable Trusts and Institutions for opening schools and hospitals at a nominal premium ranging from Rs.2,000 to Rs.5,000/- per acre depending on the locality in which the land is situated subject to an annual ground rent of 5% of the premium. In order to avail the concessional rate, the institution should be non-profit making and function for the welfare of the public.

2. Thereafter, the allotments of land were made by the Land & Development Office at the rate of Rs.2,000/- to Rs.5,000/- per acre to 5 hospitals, namely (1) Sir Ganga Ram Hospital, (2) Mool Chand Khairati Ram Hospital, (3) St. Stephen's Hospital, (4) Veeranwali International Hospital (Delhi Hospital Society)/PRIMUS ORTHO and (5) R.B. Seth Jassa Ram Hospital (initial allotment of land was made by DDA and after that an additional strip of land 773 sq. yds. was allotted by L&DO), during the period 1951 to 1976 in accordance with the said policy and at the rate of Rs.10,000/- per acre to one hospital namely VIMHANS as per the prevailing concessional rate in 1981 keeping in mind that these hospitals were genuinely charitable in nature and would provide free treatment for the poor patients and function for the welfare of the public. Out of these 6 hospitals, the lease deed of two hospitals namely, Veeranwali International Hospital (Delhi Hospital Society)/PRIMUS ORTHO and VIMHANS had the free treatment condition to the extent of 70% of total beds whereas, in respect of remaining four

hospitals, conditions for free treatment have not been provided.

3. The Govt. of NCT of Delhi has issued guidelines for the provision of Free Treatment facilities to patients of EWS category in private hospitals in pursuance of directions issued on 22.3.2007 by the Hon'ble High Court of Delhi in WP (C) No.2866/2002 in the matter of Social Jurist vs. GNCT Delhi, which inter-alia includes as follows: -

i. The conditions of free patient treatment shall be 25% of patients for OPD and 10% of beds in the IPD for free treatment. The percentage of patients will not be liable to pay any expenses in the hospital for admission, bed, medication, treatment, surgery facility, nursing facility, consumables, and non-consumables etc. The hospital charging any money shall be liable for action under the law and it would be treated as a violation of the orders of the court. The Director/M.S./member of the trust or the society running the hospital shall be personally liable in the event of breach/violation/default.

ii. The hospital shall maintain the records which would reflect the name of the patient, father's/husband's name, residence, name of the disease suffering from, details of expenses incurred on treatment, the facilities provided, identification of the patient as poor and its verification done by the hospital.

iii. The hospital shall also maintain details of reference from Government hospital and the reports submitted by the private hospital to Government hospital in the form of feedback of treatment provided to the patient. The records so maintained shall have to be produced to the Inspection team, constituted by the Delhi High Court, as and when required for its verification and quarterly details should have to

be sent to Directorate of Health Services (DHS), Govt. of NCT of Delhi (GNCTD) under intimation to the office of Land and Development Office.

iv. The details shall have also to be made available to the Monitoring Committee constituted by Govt. of NCT of Delhi also as and when required.

v. Every private hospital shall have to establish a referral centre/desk functional round the clock, where the patients referred from Govt. hospital would be able to report. The referral desk shall be managed by a nodal responsible person whose name, telephone, e-mail address and fax number is to be sent to the Govt. Hospitals, DHS and should be prominently displayed. The hospital shall also display the facilities available at the hospital and the daily position of availability of free beds quota so that the patients coming directly to the hospital would know the position in advance.

vi. In case of any change in the nodal person, the same should also be intimated within 24 hours to Govt. Hospitals and DHS, the list of which shall be provided shortly.

vii. The establishment of the referral desk should be ensured within two weeks from the issue of this letter and the Director/In charge of the hospital shall be personally liable in the event of default.

viii. The hospital shall send daily information of availability of free beds to the DHS, GNCTD twice a day between 9 AM – 9.30 AM and at 5 PM-5.30 PM on all working days and also to the concerned nearby Govt. hospital to which the private hospital is proposed to be linked for general and for specialized purposes. The details of geographical linkage, the telephone numbers/fax numbers and the name of the nodal officer of Govt. hospitals shall be intimated shortly. In case no information is received within the stipulated time from the private hospitals then it shall be presumed that the beds are available in private

hospitals and the patient referred shall be accommodated.

ix. The patient referred by Govt. hospitals or directly reporting to the private hospital shall be admitted if required, and be treated totally free. As per court's directions, these patients shall not incur any expenditure for their entire treatment in the hospital.

x. After the discharge of such patients provided with the treatment, the hospital shall submit a report to the referring hospital with a copy to the DHS, GNCTD indicating therein the complete details of treatment provided and the expenditure incurred thereon.

xi. The criteria of providing free treatment would be such persons who have no income or have income below Rs.4,000/- per month for the time being which can be revised from time to time.

xii. Besides admission of the patient referred from Govt. hospitals, the hospital shall also provide OPD/IPD/Casualty treatment free to the patients directly reporting to the private hospitals and would inform the nearest Govt. hospital and to the DHS within two days of his/her admission.

xiii. The patients admitted in any other manner, not covered by the above guidelines shall not be entitled for claiming compliance of the conditions imposed.

xiv. As per directions of the court, all the hospitals stated in the judgment and/or all other hospitals identically situated shall strictly comply with the term of free patient treatment to indigent/poor persons.

xv. No benefits shall be applicable to such hospitals that had provided free treatment fully or partially in the past with the higher conditions as applicable for that time with regard to any set off of the expenses or otherwise on that ground.

xvi. The above revised conditions i.e. 25% free OPD patient's and 10% free IPD beds and treatment

on these beds shall be prospective from the date of pronouncement of judgment.

xvii. Such hospitals which have not complied with the conditions at all and persist with the default, for them the conditions shall operate from the date their hospitals have become functional.

xviii. An Inspection Committee constituted by the High Court would also inspect any of the private hospitals. The Inspection Committee shall, have to be entertained and would be facilitated to carry out physical inspection of the hospital where the free treatment has been provided and would also be shown the records of having provided free treatment. The said committee has been given the liberty to revive the petition or for issuance of any directions from the court and wherever necessary for action against violators/defaulters under the provisions of Contempt of Court Act read with Article 215 of the Constitution of India.

4. The Hon'ble Supreme Court of India while dismissing the bunch of Special Leave Petitions in the SLP Civil No.18599/2007 vide its order dated 1.9.2011 has ordered that:

> "25% OPD and 10% IPD patients have to be given treatment free of cost. The said patients should not be charged anything. But that will not come in the way of the concerned hospital making its own arrangements for meeting the treatment/medicines cost, either by meeting the cost from its funds or resources or by way of sponsorships or endowments or donations."

5. The Hon'ble Supreme Court has affirmed the aforesaid directions passed by the Hon'ble High Court of Delhi. The Government of India has taken a policy decision on the basis of the judgment passed by the Hon'ble Supreme Court that all the six hospitals which

> have been provided land by Land & Development Office must strictly follow the policy of providing treatment free of cost to 25% OPD and 10% IPD patients. The Government of India further incorporates the aforesaid conditions mentioned in the para 3 (i) to (xviii) above as a part of the terms and conditions of lease/allotment.
>
> 6. Non-observance or violation of any of the above-said guidelines shall mean or be construed as violation of the terms of lease/allotment.
>
> (Mahmood Ahmed)
> Land & Development Officer"

103. It was also submitted that decision in *Social Jurists* (supra) is not at all applicable to the Trust. We have examined the case thoroughly and we find that condition of free treatment had been the primary objective, which would be applicable to hospitals in question and to all other similarly situated hospitals, whether they were party to the aforesaid decision or not. The decision rendered in *Social Jurists* (supra) would be applicable to similarly situated institutions having been rendered in the public interest institution and affirmed by this Court by a reasoned order.

104. It is not the case of unilateral imposition of the condition of free treatment on the hospitals. The inquiry was conducted, hospitals were heard and evidence was recorded by Justice Qureshi Committee

and thereafter recommendation made in the report had been accepted. The hospitals were required to show cause. Pursuant thereto, the reply had been filed. Thus, the decision cannot be said to be unilateral.

105. It is apparent that before imposing the conditions in lease deeds, a High Level 10-Member Committee for hospitals in Delhi was constituted, headed by Mr. Justice A.S. Qureshi regarding the working of the hospitals and nursing homes in Delhi, to review the existing free treatment facilities extended by the charitable and other hospitals who had been allotted land on concessional terms/rates pre-determined by the Government, and to suggest suitable policy guidelines for free treatment facilities for needy and deserving patients uniformly in the beneficiary institutions, in particular, to specify the diagnostic, treatment, lodging, surgery, medicines and other facilities that would be given free or partially free; to suggest a proper referral system for the optimum utilization of free treatment by deserving and needy patients; and to suggest a suitable enforcement and monitoring mechanism for the above, including a legal framework. The Committee held various meetings, conducted

enquiries, various hospitals were heard including Moolchand Kharaiti Ram Hospital. The Government observed that there were resistance and persistent refusal of the management of Moolchand Kharaiti Ram Hospital to send a reply to the questionnaire and to submit the documents which they were required to submit at the end of the enquiry. The first visit made to Moolchand Kharaiti Ram Hospital was on 16.1.2001 and the second on 21.3.2001. Various other hospitals were also visited. The Committee observed that there was no legal, social or moral justification for allowing such money-making commercial concerns. The land was allotted for a charitable purpose and to do charitable service which has now been totally replaced by exploitative commercial hospitals.

106. With respect to Moolchand Kharaiti Ram Hospital, Justice Qureshi Committee has discussed the matter in extensive details. It has been observed that initially the Trust was truly charitable. It was granted 9 acres of prime land situated on the Ring Road in Lajpat Nagar in South Delhi. Initially the hospital continued to serve as a free Ayurvedic hospital for patients in OPD and IPD sections. It also carried on the research for Ayurvedic medicines. Later on the trustees

decided to introduce Allopathic treatment also. The Allopathic Section has been upgraded with air-conditioned deluxe and super-deluxe rooms which are called Wards. Presently the Allopathic section covers about 90% of the hospital activities and the Ayurvedic section is reduced to about 10%. There is only nominal Ayurvedic treatment of patients in OPD and IPD, which had originally 4 wards. Now it is reduced to only one ward in which there are very few patients. There were only 4 or 5 Ayurvedic patients in the ward on 21.3.2001. The manufacturing of Ayurvedic medicines is also considerably reduced. After noting in detail the statements of various witnesses working in the hospital, and after analysing them, the Committee has found that the Moolchand Kharaiti Ram Hospital has acted not only contrary to the wishes of its founder but also violated the terms and conditions regarding free treatment to the poor, openly both in letter and spirit. The management of hospital does not consider it to be a charitable hospital at all. The land would not have been allotted to Trust if it was not charitable. Be that as it may, nonetheless the land has been allotted for charitable purpose to the hospital. Their stand was that the word 'poor' was not defined in the lease deed or anywhere else, was adversely commented upon. Some adverse comments were also

made with respect to the interpolation in the Will. We are not considering the aforesaid question of interpolation in the instant matter as nothing turns on it. The Committee observed that if the hospital was not saved immediately it may be too late because it appears to be in the process of being sold out. The facts are writ large along with the statements of witnesses recorded in the course of the inquiry. In addition, the High Court of Delhi during the course of hearing of *Social Jurists* (supra) has also constituted a Committee headed by Shri N.N. Khanna and also considered the same and thereafter the decision had been rendered in S*ocial Jurists* case (supra).

107. Reliance has been placed on behalf of Moolchand Kharaiti Ram Trust to the decision rendered in *Asit Kumar Kar v. State of West Bengal & Ors.*, (2009) 2 SCC 703, wherein it was observed that no adverse orders to be passed against a party without hearing him. On this account, it was contended that the Court could not have passed the adverse order against the hospitals, who were not heard in the matter of *Social Jurists* (supra). It was also contended that a contempt petition was filed by Union of India, which was dismissed

on the ground that the hospitals in question were not impleaded as a party to the writ petition, that does not help the hospitals in question. We have examined the matter on merits in the present case afresh unfettered by previous decision and have found Government's order dated 2.2.2012, to be absolutely proper.

108. Reliance has also been placed on *Delhi Development Authority & Anr. v. Joint Action Committee Allottee of SFS Flats & Ors.*, (2008) 2 SCC 672, wherein it was held that novation of contract cannot be done unilaterally, and the new terms must be brought to the knowledge of the offeree and his acceptance thereto must be obtained. It was further observed that when a contract has been worked out, a fresh liability cannot be thrust upon a contracting party and it was beyond the scope of the original terms contained in the offer letter and the allotment letter, in which the imposition of extra charges was not contemplated. In factual matrix being different decision has no application to the instant case as it was stipulated right from the beginning in the policy/rules that land to such institution has been given for charitable purposes of hospitality, research etc. at concessional rates and/or with non-profit motive. It

is not the case of new obligation being fastened at the time of renewal of the contract.

109. However, we make it clear that the hospitals in question and other similarly situated hospitals, shall scrupulously observe the conditions framed in the order dated 2.2.2012 and in case any violation is reported, the same shall be viewed sternly and the lease shall be cancelled. We are constrained to pass this order as there had been resistance to wholesome policy violation of the afore-conditions contained in order dated 2.2.2012. Such violation cannot be permitted to prevail. We hereby direct the Government of NCT of Delhi to file a periodical report to this Court within a period of one year from today with respect to compliance of conditions by the respondents-hospitals and other similar hospitals in Delhi, not only governed by the decision of *Social Jurists* case (supra), but also governed by this judgment.

110. Resultantly, in our considered opinion, the judgment and order passed by the High Court are not sustainable and the same is liable

to be set aside and is hereby quashed. The appeals are accordingly allowed. Parties to bear their own costs.

.....J.
(Arun Mishra)

.....J.
(Uday Umesh Lalit)

July 9, 2018
New Delhi.