Mool Chand Khairati Ram Trust Vs Union of India
 Sitaram Bhartia Institute of Science and Research Vs Govt. of NCT of Delhi and Others

Court: Delhi High Court

Date of Decision: April 28, 2014

Acts Referred: Constitution of India, 1950 â€" Article 13, 13(2), 13(3), 13(3)(a), 14
Delhi Development Act, 1957 â€" Section 22, 22(3), 56(2)(j)
Income Tax Act, 1961 â€" Section 2(15), 3

Citation: (2014) 211 DLT 258

Hon'ble Judges: S. Ravindra Bhat, J; R.V. Easwar, J

Bench: Division Bench

Advocate: Shanti Bhushan, Sr. Adv., Ms. Misha, Mr. Karan Sachdev, Ms. Ritu Bhalla and Mr. Kartik, in W.P.(C) 1478/2012 and CM Appls. 3251 And 7183 of 2012, Mr. Rajeev Sharma, Mr. Uddyam Mukherjee and Mr. Sahil Bhalaik, in W.P.(C) 3737/2012 and CM Appl. 7842/2012, Mr. Lalit Bhasin and Ms Ratna Dwivedi Dhingra, in W.P.(C) 3792/2013 and CM Appl. 7082/2013, Mr. Sunil Kumar Bharti and Mr. Himanshu Bhandari, in W.P.(C) 7183/2013 and CM Appl. 15455/2013, Advocate for the Appellant; Jatan Singh, CGSC and Mr. Soayib Qureshi, Mr. Naginder Benial and Mr. Mudit Gupta, Advocates for UOI in W.P.(C) 1478/2012 and CM Appls. 3251 and 7183 of 2012, Mr. Sunil Kumar and Mr. Rajiv Ranjan Mishra, Advocates for UOI in W.P.(C) 3737/2012 and CM Appl. 7842/2012, Mr. Rajiv Bansal, Ms Khusboo Garg, Mr. Ankit Sharma and Ms Debdutta, Advocates for DDA in W.P.(C) 3792/2013 and CM APPL. 7082/2013, Ms. Zubeda Begum, Advocate for UOI in W.P.(C) 3792/2013 and CM Appl. 7082/2013 and W.P.(C) 7183/2013 and CM Appl. 15455/2013, Mr. Rakesh Mittal and Mr. Kamlesh Anand, Advocates R-2 in W.P.(C) 7183/2013 and CM Appl. 15455/2013, Advocate for the Respondent

Final Decision: Allowed

Judgement

1. These are four writ petitions filed under Article 226 of the Constitution of India with a common prayer for issue of a writ of certiorari or any

other appropriate writ, order or direction declaring certain orders passed by the Government of India directing the petitioners to strictly follow the

policy of providing treatment free of cost to 25% OPD patients and 10% IPD patients and further incorporating conditions in the terms and

conditions of the lease/allotment of the land purporting to give effect to the judgment of this Court in the matter of Social Jurist vs. GNCT, Delhi

[W.P.(C) No. 2866/2002 dated 22.03.2007].

W.P. (C) No. 1478/2012

2. This is a petition filed by Moolchand Khairati Ram Trust, (""Moolchand"") which runs the Moolchand Khairati Hospital and Ayurvedic Research

Institute at Lajpat Nagar, New Delhi. The facts which give rise to the present petition in brief are as follows. On 10.06.1949, in a meeting which

took place between the Ministry of Finance and Ministry of Rehabilitation, a decision was taken to allot land on incentives rates to institutions of

secular and non-communal character to meet the needs of the situation intended to give incentive to all genuine charitable trusts and institutions to

open schools, hospitals, etc. Broadly, the decision noted that the land would be made available for schools and hospitals, which should be run for

the good of the public without any profit motive and that the premium chargeable for the land in Delhi would range from Rs. 2,000/- to Rs. 5,000/-

per acre. The annual ground rent chargeable was @ 5% on the premium. The decision was confirmed by the Government of India vide letter dated

19.09.1949 and by a Cabinet decision said to have been taken on 17.01.1964. Accordingly, nine acres of land was allotted to the petitioner on

17.04.1951 by a letter issued by the Government of India for the construction of the hospital. The premium and the annual ground rent payable

was as noted above; the land was given on 99 years lease. A lease deed dated 06.11.1967 was entered into between the President of India acting

on behalf of the Union of India and the petitioner. It would appear that in June, 2000 a Committee was constituted by the Government of Delhi

headed by Justice A.S. Qureshi to review the existing free treatment facility extended by the charitable and other hospitals, which were allotted

land on concessional terms/rates. The Committee submitted its report to the Lt. Governor, Delhi on 22.05.2001. In the year 2002, W.P. (C) No.

2866/2002 was filed by a group called Social Jurist before this Court seeking a direction that the hospitals to whom lands were allotted at

concessional rates or free of cost in Delhi to be identified and to ensure that the conditions of allotment were complied. After obtaining the details

of the patients who were treated free of charge in all the hospitals and after issuing several directions, by judgment dated 22.03.2007 (""the main

judgment"" or ""Social Jurist"") this Court held that all the 20 hospitals involved in the writ petition and all other hospitals identically situated shall

strictly comply with the condition of free patient treatment to indigent/poor persons of Delhi, i.e. 25% OPD and 10% IPD patients to be treated

completely free of charge in all respects.

3. On 04.04.2007, the Directorate of Health Services (""DHS"") issued guidelines to Moolchand on the subject of free treatment facilities to patients

of the economically weaker sections category pursuant to the directions issued by this Court in its judgment and directed the petitioner to follow

the guidelines. In response thereto, by letter dated 20.04.2007, Moolchand informed the DHS that it was not a hospital similarly or identically

situated as the 20 hospitals which were involved in the earlier litigation and, therefore, the directions cannot be complied with. On 17.07.2007 this

Court passed an order in C.M. No. 9246/2007 in W.P.(C) No. 2866/2002 and directed all the hospitals, which were granted land on

concessional rates to abide by the order of free treatment passed by this Court till such time the order was varied by any competent court.

4. By a letter dated 21.1.2008 the Land and Development Officer (""L&DO"") sought implementation of the directions issued by this Court in its

order dated 22.2.2007 and directed Moolchand to provide free treatment to the poor sections of the society. This was opposed by the said

petitioner on the ground that it was arbitrary and ultra vires and was opposed to the principles of natural justice. It was further pointed out that the

petitioner did not fall within the category of hospitals such as VIMHANS, where the land was allotted at concessional rates or under a specific

condition of free treatment to the patients. In a series of letters/representations written to the DHS, L & DO and the Union of India, the petitioner

reasoned why the directions issued to it cannot be complied with. It was emphasised in these letters/representations that the land was allotted not

on any concessional basis and the allotment did not contain any conditions with respect to free treatment of patients.

5. Several show-cause notices were thereafter issued by the L&DO for non-furnishing of original/duly certified copies of the building plans and for

not adhering to the condition of free treatment to the poorer sections of the society. In the meantime, on 01.09.2011 an order was passed by the

Supreme Court dismissing SLP(C) No. 18599 of 2007 challenging the judgment of this Court in the case of Social Jurist (supra). It was clarified

that 25% OPD and 10% IPD patients have to be given free treatment without charging anything, but that will not come in the way of the concerned

hospital making its own arrangements for meeting the cost of the treatment and medicines either through its own funds or resources or by way of

sponsorship etc.

6. The contentions and submissions of the petitioner before the L&DO did not find favour with the latter which passed the impugned order on

2.2.2012. Besides reiterating its view that the petitioner was covered by the judgment of this Court in the case of Social Jurists (supra), it was

observed that the Government of India had taken a policy decision on the basis of the judgment of the Supreme Court that all the hospitals which

have been provided land by the L&DO have to strictly follow the policy of providing free treatment. The petitioner was informed and directed as

below:

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 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

7. The conditions mentioned in para 5 above and which were incorporated in the terms and conditions of the lease/allotment are 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. This 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 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 govt. 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 referral desk should be ensured within two weeks from the issue of this letter and the Director/Incharge 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 has no income or has income below Rs. 4000/- 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 patients 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 now 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 provision of Contempt of Court

Act read with Article 215 of the Constitution of India.

8. Before proceedings to refer to the facts of the other writ proceedings and the rival contentions it would be necessary to reproduce the minutes

of the meeting held on 10th June, 1949 between the Ministry of Finance and the Ministry of Rehabilitation regarding allotment of sites at

concessional rates to charitable institutions:-

Government of India

Ministry Of Rehabilitation

Minutes of The Meeting Held in the Room of Shri K.R.K Menon, Secretary To The Government of India, Ministry of Finance, on the 10th June,

1949 AT 12 Noon, Regarding Allotment of Sites AT Concessional Rates to Charitable Institutions.

Present:-

1) Shri K.R.K. Menon, Secretary to the Govt. of India, Ministry of Finance.

2) Shri Mehr Chand Khanna, Rehabilitation Adviser, to the Ministry of Rehabilitation,

3) Shri Shankar Prasad, ICS, Chief Commissioner, Delhi.

4) Shri Ram Gopal, Joint Secretary to the Govt. of India Ministry of Finance (Rehabilitation)

5) Shri S. Ratnam, Joint Secretary to the Govt. of India. Ministry of Finance

6) Dr. Tara Chand, M.A. Ph.D., Assistant Secretary to the Govt. of India, Ministry of Rehabilitation.

The Chief Commissioner made a reference to the Finance Secretary''s d.o. letter dated the 24th May, 1949, addressed to him regarding allotment

of sites at concessional rates to charitable institutions. In the letter the Finance Secretary had laid down the following safeguards before making

allotment of sites:

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.

2) Recognition by an appropriate authority to the Government should be a condition precedent the allotment of land to schools, hospitals etc.

3) In the case of land allotted to educational institutions, no residential buildings should permitted except perhaps a limited number of quarters for

caretakers and the like. If there are hostels attached to institutions warden''s quarters may, of course, be permitted. Apart from this no residential

building for other member staff should be allowed to be built on the land leased on special rates. This condition should be insisted upon to prevent

any possible abuse. In case of land allotted to Hospitals, necessary quarters for resident staff of course will have to be settled in advance before

land is leased.

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 again any class of people on any ground, while make admission. It was also agreed that institutions like Arts and Crafts Society

and other non profit making bodies should be included under the terms ""charitable institution"". The test should be that the institution should be run

for the good of the public without any profit-motive.

3. The Chief Commissioner, found it difficult to accept the second safeguard, viz. That recognition by an appropriate authority of the Government

should be a condition precedent to the allotment of land. On the other hand, he was of the opinion that recognition need not be the condition

precedent of allotment of land under the present conditions. It was agreed that the following conditions should be fulfilled before allotting land""-

i) the appropriate authority should satisfy itself that the institution has sufficient resources for opening schools, hospitals etc.

ii) the plans submitted by the institution should be thoroughly examined and approved.

iii) a definite period should be specified within which the charitable trust/institution will have to erect a suitable building otherwise the lease will

terminate and the Government will have the right to resume possession of the land.

4. The third safeguard mentioned by the Finance Secretary was generally agreed to.

5. The Chief Commissioner, then raised the most important point viz. the premium and the ground rent chargeable to the charitable institution. At

present, according to the policy laid down by the Government of India, in the late Department of Education Land"s letter No. F.26-28(4)/42-

F&L, dated the 25th July, 1943 the premium charged is too high, to be easily payable by any charitable institution much less by any displaced

institution from Pakistan. According to that formula, any charitably institution will have to pay a premium at the rate of about Rs. 25000/- to Rs.

35,000/- per acre plus ground rent at the rate of 5% on the premium per ann. This is obviously too high.

6. After further discussion, it was agreed that the premium chargeable on land allocated to charitable institutions in Delhi should vary from Rs.

2,000/- to Rs. 5,000 per acre, depending on the location of land. Besides, the ground rent at the rate of 5% on the premium per annum should

also be charged. This reduction, it was thought would meet the needs of the situation as it was intended to give an incentive to all genuine charitable

trusts and institutions to open schools, hospitals etc. in this province.

The Chief Commissioner also pointed out that while all land to any charitable trust, there were adequate safe and land was allotted after very

careful scrutiny.

7. It was agreed that the decisions arrived a meeting should be communicated to the Ministry of Works Mines and Power.

Sd/-

(Dr. Tara Chand)

16.6.49

W.P. (C) No. 3737/2012

9. The petitioner, the St. Stephens Hospital (""Stephens"") established a hospital at Kashmiri Gate, Delhi. Lands were allotted to St. Stephens

Hospital Society by the L&DO and the Delhi Administration between the years 1970 and 1992. The allotment letters/agreements of

lease/perpetual lease deeds were executed by the President of India in terms of Article 299 of the Constitution of India. As in the case of

Moolchand (WPC No. 1478/2012), in Stephens" case too, the Government of NCT of Delhi sought to enforce the directions issued by this Court

in its order dated 17.7.2007 under which the hospitals run by charitable trusts were directed to provide free treatment to 25% OPD and 10% IPD

patients free of costs. Stephens filed an application before this Court for clarification and review of the earlier judgment of this Court in WP(C) No.

2866/2002 dated 22.3.2007 (in the case of Social Jurist) and in this application the petitioner contended that the lands were not allotted at

concessional rates and there was no condition that the petitioner should treat patients free of cost either in the allotment letters or in the perpetual

lease deeds and therefore the directions issued by this Court in the case of Social Jurist (supra) were not applicable to it. The application did not

find favour. Thereafter on 10.5.2012 the DHS, Delhi directed the petitioner to immediately enforce the free care treatment scheme; this was

followed up by another letter dated 23.5.2012 directing the petitioner to comply with the order of this Court dated 30.4.2012 under threat of

action being taken in case of non-compliance. The L&DO, however, had earlier passed an order on 2.2.2012 which is the same as in the case of

Moolchand (supra).

10. The contention of the petitioner is that land to the extent of 1.37 acres was first allotted by letter dated 6.6.1970 and land measuring 2331 sq.

yds was allotted by letter dated 23.2.1972. Both the letters were issued by L & DO and in these letters the petitioner was required to pay for the

land @ Rs. 5,000 per acre as premium + annual ground rent at 5% thereon. In the counter affidavit it is stated that the rates prevalent at that point

of time for socio cultural institutions was around Rs. 2,500/- per acre and thus the land was allotted to the petitioner almost free of cost. On

13.10.1989 the Government of Delhi allotted plots of land measuring about 3 acres. In the perpetual lease deeds there was no clause for free ship.

W.P.(C) No. 3792/2013

11. The petitioner is Sita Ram Bhartiya Institute of Science and Research, a registered society (""Sitaram Bharatiya""). On 30.03.1984 it applied to

DDA for allotment of 3 acres of land for establishing a multi-disciplinary research complex in New Delhi. DDA allotted 1.52 acres of land at Rs. 6

lakhs per acre on 22.10.1984. Sitaram Bharatiya requested, on 27.10.1984 the DDA to charge concessional rate of Rs. 10,000/- per acre for the

land allotted. The request was rejected. On 02.09.1985 DDA entered into a Lease Deed with Sitaram Bharatiya in respect of another plot of land

of 1.46 acres for a consideration of Rs. 8,76,000/-. As in the other two writ petitions, based on the judgment of this Court in the case of Social

Jurist, directions were that Sitaram Bharatiya, is one of the entities mentioned in the list drawn up by DDA to whom land was allotted at

concessional rates. It was asked to comply with the directions given by this Court regarding free treatment of patients. Sitaram Bharatiya, by letter

dated 30.06.2012 informed the DHS that it was making arrangement to comply with the order even as it would move to get a better understanding

with the DDA; it also informed the steps being taken by it as per the directions issued by the DHS. On 18.04.2013 DHS sought an examination of

the records, books of accounts and other material of the petitioner by a chartered accountant appointed from the office of the Comptroller and

Auditor General purportedly in pursuance of the directions of this Court. The accounts to be examined pertained to the period of 2 years from the

date on which possession of the land was taken by Sitaram Bharatiya. On 04.05.2013, the said petitioner wrote to the DHS stating that there was

no condition in the lease document to provide free treatment to the economically weaker section category. In a subsequent letter the petitioner also

informed the DHS that it is not identically situated as the 20 hospitals with regard to which this Court had earlier issued directions. Finally on

20.05.2013 the DHS wrote to Sitaram Bharatiya stating that it was identically situated as the 20 cases with which this Court was concerned in the

case of Social Jurist (supra) and rejected its request for deleting its name from the list drawn up by the DDA, of hospitals designated to provide

free treatment. Sitaram Bharatiya seeks quashing of the letters issued to it by the DHS on 24.05.2012, 07.06.2012, 28.06.2012, 18.04.2013,

29.04.2013 and 20.05.2013.

12. In support of the petition, it was argued that the allotment letter dated 22.10.1984 in respect of 1.52 acres of land did not stipulate any

condition about free treatment of the economically weaker section of the society. Reliance was also placed on paragraph 4 of the counter affidavit

filed by the DDA, in which the latter categorically averred that Sitaram Bharatiya''s request for charging a concessional rate of Rs. 10,000/- per

acre for the land was examined and rejected by letter dated 20.11.1984. It is accordingly argued that there was no question of the petitioner being

subjected to the condition regarding free treatment of the poor patients.

W.P.(C) No. 7183/2013

14. The petitioner is the Foundation for applied research in cancer (""Foundation""). It was established on 26.10.1986 and registered under the

Indian Trust Act and the Registration Act. Its primary objective is to establish, maintain and grant aid in cash or in kind to hospitals, medical

schools, medical colleges, diagnostic centre and other similar charitable institutions for the benefit of students and for the benefit and use of the

public in general.

15. On 24.01.1990, the DDA allotted plot No. B-33/34, measuring 0.9 acres at Rs. 28.50,000/- per acre provisionally with annual ground rent at

2.5% per annum on the total premium for the land which was situated in the Mehrauli Qutub Institutional Area of New Delhi. On 22.10.1991 the

premium was revised to Rs. 39,00,000/- per acre on the basis of the revision carried out by the Ministry of Urban Development and the

Foundation was asked to deposit Rs. 10,67,486/- as the differential premium. This amount was paid by it, which is not denied. Earlier the DDA

had issued a no-objection certificate for the construction of the hospital. In August, 1992, the Foundation represented to the Lt. Governor of Delhi,

who is ex-officio Chairman of the DDA and submitted that as per the notification of the Government of India dated 11.09.1991, the price of the

land allotted to it was fixed at Rs. 3.25 lakhs per acre but it was allotted @ Rs. 28,50,000/- per acre and sought refund of the excess amount. This

request was refused. The Foundation came to know that even in respect of the land allotted in Qutub Institutional Area, the concessional rate was

Rs. 3.25 lakhs per acre whereas the land was allotted to it for Rs. 39 lakhs per acre. Apparently there was no representation with regard to this

land to the DDA.

16. In the year 2004, the hospital constructed by the Foundation and named as Rockland Hospital started functioning. On the basis of the

directions issued by this Court in the case of Social Jurist dated 22.03.2007 and on the basis of subsequent directions issued on 17.07.2007, the

Foundation was directed to treat poor patients as laid down by this Court. As in the case of Sitaram Bhartiya [before this Court in W.P.(C) No.

3792/2013], the petitioner was directed to submit its records, books of accounts, etc. Orders were passed by this Court on 30.05.2012

restraining the respondent from taking any coercive steps against the petitioner pursuant to the directions of this Court in terms of the judgment

dated 22.03.2007 in W.P.(C) No. 2866/2002.

17. In the present writ petition challenging the action of the respondents taken on the basis of the judgment of this Court in the case of Social Jurist

(supra) and the subsequent letters and show-cause notices issued to the petitioner, the contentions are the same as in the other writ petitions,

particularly that of Sitaram Bhartiya in W.P.(C) No. 3792/2013. The contention is that the plots were allotted to the petitioner at the market rent

and, therefore, the condition now sought to be imposed on the petitioner to render free medical treatment to the poor sections of the society is bad

in law.

18. The respondents contest the same on the ground that the land was allotted by the DDA only at a concessional rates and that the Foundation

not being the owner of the land has to abide not only by the terms and conditions of the allotment letter dated 24.01.1990 and the perpetual Lease

Deed but is also obliged to follow the requirements of DDA and GNCT, Delhi as per the changing needs of the society.

Petitioners" contentions

18. Mr. Shanti Bhushan, learned senior counsel on behalf of Moolchand, argues that the impugned order of 02.02.2012 is unsustainable for the

reason that it seeks to impair their rights under the lease deeds and allotment letters issued to them, without authority of law. It is submitted that the

enjoyment of the lease deeds as well as the organization of the business or activity or commercial activity of managing a hospital is within the

exclusive domain of the petitioners and is subject to other provisions of law. Once the allotment letters were issued, the lease premia paid, the

conditions complied with and the lease deed executed, the respondents were not authorised to dictate the manner of enjoyment of the property

except in accordance with existing provisions of law. The petitioners" pointed argument in this regard was that the impugned order of the Central

Government and the NCT of Delhi lacked the sanction of a law. Learned senior counsel in this context relied upon the judgments of the Supreme

Court in Kharak Singh Vs. The State of U.P. and Others, ; Bijoe Emmanuel and Others Vs. State of Kerala and Others, ; Gainda Ram and

Others Vs. M.C.D. and Others, and Union of India (UOI) Vs. Naveen Jindal and Another, , for the proposition that without the provision of

enacted law, a mere executive measure or instruction cannot regulate the enjoyment of a fundamental right. In this case, the exercise of freedom

under Article 19(1)(g), by the impugned order to the extent it mandated free treatment of 25% of the OPD and 10% IPD patients, was untenable

in this regard. Learned counsel submitted that to deprive a citizen or one entitled to exercise the freedoms guaranteed under the Constitution,

especially the rights under Article 19(1)(g) and Article 300(A), the State should necessarily enact a statute. It cannot seek to regulate the conduct

of business by imposing restrictions on the citizens or commercial activity or the enjoyment of property that such rights afford.

19. Learned counsel emphasized that none of the decisions relied upon by the previous Division Bench is an authority on the point that without law,

or bereft of contractual terms, the lessor-in this case, the Central Government/DDA-can nevertheless fall back upon a reservoir of unarticulated

power to stipulate fresh conditions, unilaterally. Learned could also relied upon the judgment reported as Bishambhar Dayal Chandra Mohan and

Others Vs. State of Uttar Pradesh and Others, , to say that executive action under Article 162, without recourse to enacted law could not curtail

the rights of citizens, both under Part III and under Article 300A.

20. It was argued that the order of the subsequent Division Bench of this Court dated 17.07.2007, to the extent it sought to equate all charitable

organizations or hospitals with those hospitals who were parties to the lease deeds, or with allotments that contained specific stipulations with

regard to free treatment, is not binding. In this regard, it was pointed out that the general direction contained in the later order of the High Court of

17.07.2007 (in an application moved in the WP 2866/2002, the writ petition of Social Jurist) to the effect that after hearing the learned counsel for

the State and the writ petitioner, the Court felt ""even otherwise considering the judgment we find the following modifications can be made.

Accordingly we direct that all hospitals which have been granted land on concessional rates abide by the order of free treatment till such time it is

varied by any competent Court"" was made without hearing the parties likely to be affected and also without considering the background in which

the impugned judgment was delivered. Elaborating on this submission, it was stated that the order of 17.7.2007 had pointedly referred to the

specific stipulations contained in the allotment letters and/or lease deeds of the 20 hospitals that were parties to the previous writ proceedings

leading to the judgment in Social Jurist. The judgment of the Division Bench was in the context of the materials made available to the Court, where

the allottees or lessees were made aware, with consensus ad idem on the lease terms, and held to the bargain, i.e. to provide medical access to a

number of their patients. Such stipulation was not made in the case of the petitioners who too had enjoyed their leases/allotments for many years-in

at least one case, for nearly six decades. In these circumstances, the direction of 17.07.2007, was made in ignorance of the terms of the impugned

judgment to the extent that it sought to equate lessors who were burdened with the condition of providing concessional medical aid with other

lessees, such as the petitioners, who were not subjected to such condition; the decision passed was made sub-silentio of the relevant facts and law.

Consequently, the order of 17.07.2007 could not be said to bind the petitioners and such other class of lessees who were not subjected to

stipulations as in the case of 20 lessees who were in the Court when the judgment was delivered. It is also submitted that the dismissal of the SLP

by the Supreme Court (in the order of 1.9.2011) in the case of others could not in any manner alter the circumstance as far as the present

petitioners are concerned. They were never heard by this Court in the original proceedings leading to the main judgment on 22.3.2007, or in the

proceedings leading to the order of 17.07.2007.

21. Most importantly, argued counsel the circumstances of the petitioners'' cases were entirely different. It is argued that even assuming that the

petitioner or some others were allotted lands at concessional rates, their cases are dissimilar to those hospitals in whose lease deeds/allotment

letters there was a specific stipulation with respect to extending free treatment. In fact, equating the two would be arbitrary and discriminatory. Had

the respondents intended that the petitioners should be subject to such conditions, it was incumbent upon them to incorporate those conditions at

the stage of grant of allotment or execution of the lease deed. Not having done so, the only lawful manner of doing so thereafter was through

agreement with the petitioner. It is nobody''s case, argues counsel, that the impugned orders were preceded by any consultation or agreement by

the petitioner. They are nothing but unilateral imposition of conditions that infringe on the right to enjoyment of property and the right to carry-on

trade or occupation.

22. It was further submitted, the difference between concession asked for and incentive given by the Central Government and by the State

Government appears to have been lost sight of by the respondents. The grant of land in early 1950s was subsequently made to the petitioners to

enable them to set up hospitals or medical facilities more by way of incentive and not as a concession. In the case of Moolchand, learned counsel

submitted, the hospital was established in lieu of an existing medical institution or facility in what is now Pakistan. The Trust was allotted land after

partition so that it could carry-out its charitable activities of providing treatment to patients who approached it. It was submitted that the policy

which prevailed at the time of allotment to the petitioners was such that institutional allotments were only made on concessional basis. In other

words, neither the L&DO nor the DDA had framed policies to enable purchase or acquisition of land for setting-up a hospital at market rates. The

petitioners as well as the other 20 concerns (in whose cases the judgment was delivered on 22.03.2007) had applied and were allotted land at the

prevailing rates. It is not in dispute that the petitioners complied with the terms of the lease and had also paid the premia regularly. In these

circumstances, in the absence of any power with the State or any of its authorities such as DDA, to impose conditions after the execution of the

lease deed, the condition spelt-out in the impugned order are arbitrary.

23. Learned counsel also relied upon the provisions of the DDA (Disposal of Nazul Land) Rules, 1981 (hereafter ""Nazul Rules""), to say that none

of the conditions in this Regulation or the DDA Act, 1957 authorizes the issuance of directions of the kind contained in the impugned orders. It was

argued that the impugned judgment of 22.03.2007 was made expressly applicable to 20 hospitals and other similar or identically situated hospitals.

The conditions or directions in the judgment were categorical. The findings of the Division Bench were based upon the submissions contained in the

lease deed or the conditions held to be binding upon some of the hospitals on account of their being expressly stipulated in the allotment letters,

even if not in the lease deeds themselves. In some instances, - out of the 20 hospitals-the institutions had undertaken to bind themselves to such

conditions. The petitioners further were not subjected to any of those restrictions or conditions. They were legitimately entitled to say that the

hospitals established and run by them are neither similar nor identical to these 20. In these circumstances, the mere mention of allotment to them at

concessional rates or that they are Trusts or that they are charitable trusts would not put them on par with those 20 institutions.

24. Lastly, it was argued that the impugned order is also unsustainable for the reason that it was not preceded by any consultative process. In this

regard, learned counsel submitted that the impugned order seeks to impose substantial restrictions on the exercise of the petitioners'' rights under

Article 19(1)(g) and the enjoyment of the property which are the subject of lease and allotment letters under Article 300A. Apart from the other

submissions, the least that was expected of the State and other agencies was to afford reasonable opportunity and present the petitioners with such

diverse material as was used by them to impose what are grave restrictions. In support of this argument, learned counsel relied upon the decisions

reported as K.I. Shephard and Others Vs. Union of India (UOI) and Others, and Asit Kumar Kar Vs. State of West Bengal and Others, .

25. Mr. Rajeev Sharma, learned counsel appearing on behalf of Stephens, contended that mere executive action under Article 73 read with Article

298 of the Constitution of India, cannot infringe any citizen''s fundamental rights under Article 19(1)(g) or under Article 300A and in support of this

contention cited the following authorities:-

(a) Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab,

(b) Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another,

(c) State Bank of Madhya Pradesh V. Thakur Bharat Singh (1967) 2 SCR 454

(d) Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others,

(e) Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others,

(f) M/s. Seven Hill Bytes Pvt. Ltd and Another Vs. The State of West Bengal and Others,

(g) Scorpion Express Pvt. Ltd. Vs. The Union of India (UOI) and Others

(h) Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another,

26. Learned counsel appearing on behalf of the petitioners in W.P.(C) 3792/2013 and W.P.(C) 7183/2013 - Sitaram Bhartia, Dr. Lalit Bhasin,

submitted that the lease document contained no clause to amend or alter an existing condition and that the allotment letter provided only for

alteration of the conditions and not for inserting a fresh or further condition. He pointed out that the judgment of this court in Delhi Development

Authority Vs. Lala Amar Nath Educational and Human Society and another, was not brought to the notice of this court in Social Jurist (supra). His

other contention was that the Supreme Court in Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others,

has held that the right to medical care, and not free medical care, is protected by Article 21. Moreover, the petitioner"s request to the DDA for

charging concessional and not market rates for the land was specifically rejected and this is admitted in the counter-affidavit filed by DDA. Mr.

Sunil Kumar Bharti, learned counsel appearing for the petitioner in WP(C) No. 7183/2013 i.e. Foundation also submitted that the land was not

allotted at concessional rates and that in response to the application under the Right to Information Act filed by the petitioner, it was informed that

the ""land was allotted at institutional rates"". It was contended that the transactions, having been completed and possession having been given to

these institutions long ago, the respondents cannot now, without any semblance of legal authority, insist on fulfilment of certain stipulations as a

condition for continuing the lease deed. This amounts to depriving the right to property under Article 300A and also dictating the manner in which

the petitioner"s rights under Article 19(1)(g) are to be exercised.

Respondents" contentions

27. Mr. Jatan Singh, counsel for the Central Government in WP(C) Nos. 1478/2012 and 3737/2012, argued that the petition has to be rejected at

the threshold and stated that not every right is capable of enforcement under Article 226. He relied upon the decision of the Supreme Court in

Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, and argued that the Court should be conscious of the larger public interest

while exercising its power to grant discretionary relief under Article 226. It should be only to further interest of justice and not merely to make out a

legal point.

28. Arguing that the petitioner''s submissions are meritless, it was stated that the means and objects, for which the Trusts were set up, were clearly

charitable. Learned counsel also relied upon the minutes of the meeting dated 10.06.1989 which led to the lease deed in the case of Moolchand. It

was argued that this clearly showed that the said Trust was granted land on the basis of its aims and objectives which were charitable and to

provide treatment to poorer sections of the society and further the public good. In terms of Clauses 14 and 16 of the lease deed of 24.04.1968,

the Trust was obliged to manage the hospital to the satisfaction of the lessor, i.e. the Central Government. This, submitted counsel, enable the

lessor to give such directions as to the proper management of the Trust and its activity, including the direction to give free treatment. Learned

counsel submitted that the expression ""satisfaction and management"" ought to be given a wide meaning, having regard to the larger public purpose.

29. Learned counsel relied extensively on the main judgment in Social Jurist, by the Division Bench dated 22.03.2007 to say that the

considerations which weighed with the Court while directing free treatment-a proportion of the hospitals facilities'' to be made available on

concessional basis in accordance with the impugned order, are no different from those which were considered by the Court. It was submitted that

the absence of specific conditions in the lease deed or the allotment letters did not in any manner alter the nature of the obligation cast upon the

petitioners to provide free treatment since they are beneficiaries of allotment-(a) of land on concessional basis; and (b) being charitable institutions

set-up with the stated purpose of providing medical aid to poorer and needy sections of the society.

30. Learned counsel relied upon the decision of the Supreme Court reported as Union of India (UOI) and Another Vs. Jain Sabha, New Delhi

and Another, and argued that where public property is given to institutions practically free, stringent conditions have to be attached with respect to

the user of the land. It was submitted that even though the observations of the Supreme Court were in the context of allotment of land on

concessional basis to schools, the same consideration would apply in the case of land allotment to hospitals. Learned counsel also relied upon the

judgment reported as Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and

Kashmir and Another, and argued that the Central Government cannot act in a manner as to benefit a private party at the cost of the State. Its

actions have to be guided by public interest, especially while disposing off largesse or public property. Therefore, the imposition of the conditions

impugned in this case is both reasonable and fair.

31. Counsel relied heavily upon two decisions-one of the Supreme Court reported as State of Punjab and Others Vs. Ram Lubhaya Bagga Etc.

Etc., . It was submitted that the right to public health, which is part of Article 21 casts an obligation on the State to secure access to health facilities

under reasonable conditions. Learned counsel, placing reliance on the said decision, argued that no State has unlimited resources to spend on any

of its projects and that the provision of facilities through mechanisms such as the impugned order are not only reasonable but warranted. Reliance

was next placed upon another Division Bench ruling of this Court in UOI and Another Vs. Jor Bagh Asscn. Regd. and Others, . It was submitted

that in the said ruling, this Court had upheld the right and authority of the Central Government, acting as lessor, to impose damages in certain

circumstances whenever the property leased was misused. Urging that this decision is decisive, in as much as it rejects the argument of the

petitioners that in the absence of enacted law, the Central Government does not possess any power to regulate Fundamental Rights, it is argued

that owner of the property, the Central Government''s right to direct the manner of utilization and use of its property without recourse to law is

justified and within the constitutional framework. Learned counsel for the Central Government also relied upon the contents of the Qureshi Report

to say that only such of the petitioners who were beneficiaries of allotment of land at concessional rates and whose objects required them to

provide charity, were covered in list of institutions that were made subject to the impugned order. Charitable purpose as defined in section 2(15) of

the Income Tax Act includes medical relief and relief of the poor and the words ""relief of the poor"" should take colour from the words ""medical

relief"" obligating the petitioners to treat poor patients free of cost; moreover, Article 21 of the Constitution has been interpreted to include the right

to good health. It was lastly urged that the policy document of 1949 clearly spells out the government''s position in this regard; the letter of

allotment is in pursuance of the policy and preceded the lease document and thus when the lease document was executed, the petitioners were

clearly under the obligation to provide medical relief to the poor patients free of cost.

Contentions of DDA

32. Mr. Rajiv Bansal and Mr. Ankit Sharma, learned counsel for the DDA-which is a party in the two writ petitions by the Sitaram Bhartia and

Foundation relied upon provisions of Nazul Rules, particularly Rules 4, 6, 8 and 20. It was submitted that under Regulation 4, the DDA stipulates

what class of applicants can be allotted Nazul lands; the Regulation 6 provides that such allotments can be at pre-determined rates in five

categories of cases, and all other allotments, i.e. for commercial or industrial purpose etc. could be made only on payment of premium as

determined or by auction or tendering process. Reliance was placed upon Regulation 20(1)(c) for the submission that unless public institutions

(such as the Foundation and Sitaram Bhartiya undoubtedly were) were of non-profit making character, no allotment of Nazul Land could be made.

Urging that this aspect is crucial, learned counsel for the DDA submitted that in order to ensure that no profiteering is indulged in, the respondents

have acted within their authority, in directing a proportion or percentage of the IPD and OPD facilities be made available on free and concessional

basis. It was submitted that in the case of Sitaram Bhartia i, the land allotted after the Nazul Rules were guided by the Union Government''s letter

of 24.08.1983 which had fixed Rs. 6 lakhs per acre as ""no profit no loss"" basis for transfer of land. This clearly demonstrated that land was

allotted on concessional basis. In these circumstances, argued the impugned orders could not be faulted.

33. Ms. Ferida Satarawala and Ms. Zubeida Begum, on behalf of the Govt. of NCT of Delhi argued that the order of 17.07.2007 which is really

the basis for issuance of impugned orders has not been challenged in any manner known to law. It, therefore, cannot be challenged in this indirect

manner of questioning the impugned orders which have merely implemented the directions contained in Social Jurist. It was argued additionally that

the Government of NCT of Delhi drew a list of hospital and institutions that were similar or identical to the 20 hospitals which were the subject

matter of the previous judgment of 20.03.2007. At that stage also, none of the petitioners approached the Court claiming to be aggrieved. In these

circumstances, it is not open for them to contend that they are not similar to the said 20 hospitals. It was argued that the terms of the lease in case

of many of the petitioners expressly places restrictions upon them, such as the one directing them not to change the objectives spelt-out in the

memorandum or articles of association when permission of the appropriate government was sought. It was emphasized that apart from the

concessional rates of land at the time of allotment, the petitioners also rely upon State assistance or aid in the form of Customs duty exemptions for

hospital equipment which is vital for their functioning. Being recipients of such exemptions or beneficiaries of State largesse, the petitioners cannot

complain of violation of their Fundamental Rights. It was argued that in any event, the restrictions contained in the impugned orders are fair and

reasonable.

34. The argument of Mr. Sunil Kumar appearing for the UOI in WP(C) No. 3737/2012 (St. Stephens) was confined to prayer (b) of the writ

petition. He submitted that if it is found that the land was allotted at concessional rates to the petitioner-which would mean that the petitioner was

placed in an identical situation as the 20 hospitals before this court in Social Jurist (supra)-that should settle the issue in favour of the respondents.

Analysis and Conclusions

Can executive instructions impose restrictions upon the right to profession or vocation guaranteed under Article 19(1)(g)

35. It is not disputed by the respondents that the right to carry on trade, business, profession or occupation, guaranteed by Article 19(1)(g) is

sought to be exercised by the Petitioners, who are either trusts, or societies, through their members. This right is of course, subject to reasonable

restrictions which the state may, in its discretion impose. Kharak Singh (supra) was a case where the Supreme Court had to decide whether a

police regulation in the nature of a departmental instruction, without statutory sanction could be said to be a ""law"" for the purpose of Art. 19(2) to

(6). The Constitution Bench answered the question categorically in the negative, observing that:

Though learned Counsel for the respondent started by attempting such a justification by invoking s. 12 of the Indian Police Act he gave this up and

conceded that the regulations contained in Ch. 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 cls. (2) to (6) of Art.

19, in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Art. 19(1), nor would the same be ""a procedure

established by law"" within Art. 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.

36. In Bijoe Emmanuel, (supra) the grievance was that the state, through circulars, sought to compel every pupil to join the singing of the National

Anthem. The petitioners had urged that their faith did not permit them to participate in the singing of the national anthem and that such compulsion,

through executive instructions, was impermissible. The Court upheld their contentions and stated that:

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 Art. 19(1)(a) and Art. 25(1). We have

referred to Art. 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Art. 19(2,) which provides that nothing in Art.

19(1)(a) shall prevent a State from making any law if such law impose reasonable restrictions on the exercise of the right conferred by Art. 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 Art. 19 to regulate the exercise of the right to the freedoms guaranteed by Art. 19(1)(a) to (e) and (g) must be ''a law''

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

37. In State of Madhya Pradesh and Another Vs. Thakur Bharat Singh, the question involved was whether an order affecting the right of a citizen

protected by Article 19(1)(d) to move freely throughout the territory of India, or reside anywhere, could be impaired by an executive order. The

Court rejected the state''s contention and held that the order made in that case backed statutory sanction and was therefore void. The same

reasoning persuaded the court to hold, in Bishambar Dayal Chandra Mohan (supra) that seizure of wheat by executive order amounted to

deprivation of property without authority of law and therefore, contrary to Article 300A of the Constitution:

The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such

power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is

subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300A. The word ""law"" in the context of Article 300A

must mean an Act of Parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law.

38. Naveen Jindal (supra) was likewise a case where the Flag Code, a set of executive instructions, imposed restrictions on the usage of the

National Flag. The Supreme Court ruled that the right to fly the national flag was an integral part of the right to freedom of speech and expression,

and that the Code was violative of that right, as it was devoid of statutory backing. The Court observed:

...Flag Code concededly contains the executive instructions of the Central government. It is stated that the Ministry of Home Affairs, which is

competent to issue the instructions contained in the Flag Code and all matters relating thereto are one of the items of business allocated to the said

Ministry by the President under the government of India (Allocation of Business) Rules, 1961 framed in terms of Article 77 of the Constitution of

India. The question, however, is as to whether the said executive instruction is ""law"" within the meaning of Article 13 of the Constitution of India.

Article 13(3)(a) of the Constitution of India, reads thus:

13. (3)(a) ""Law"" includes any Ordinance, order bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of

law.

29. A bare perusal of the said provision would clearly go to show that executive instructions would not fall within the aforementioned category.

Such executive instructions may have the force of law for some other purposes; as for example those instructions which are issued as a supplement

to the legislative power in terms of Clause (1) of Article 77 of the Constitution of India. ...An executive instruction issued by the appellant herein

can any time be replaced by another set of executive instructions and thus deprive Indian citizens from flying National Flag. Furthermore, such a

question will also arise in the event if it be held that right to fly the National Flag is a fundamental or a natural right within the meaning of Article 19

of the Constitution of India; as for the purpose of regulating the exercise of right of freedom guaranteed under Article 19(1)(a) to (e) and (g) a law

must be made.

39. The reason that Article 19 and 21 can only be restricted through legislation, or statutorily backed executive action is because legislative, as

opposed to executive power, is that legislative power embodies the will of the people. As reasoned in Naveen Jindal, if a democratic exercise of

power was not mandated to be the only permissible manner of imposing restrictions on fundamental rights, then these rights could easily be

sacrificed at the altar of executive fiat. It must be noted that Article 13, in relevant part reads:

Article 13 Laws inconsistent with or in derogation of the fundamental rights

(1) xxx

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this

clause shall, to the extent of the contravention, be void

(3) In this article, unless the context otherwise requires,-

(a) ""law"" includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law;

(b) xxx

(4) xxx

40. Article 13(3) thus defines law for the purpose of Article 13(2), in order to preclude the possible argument that only an enacted legislation shall

be void to the extent of the contravention with rights in Part III. As Seervai notes in his commentary on the Indian Constitution (p. 237, vol. 1, 3rd

Ed.), the purpose of Article 13(3) i.e. the express inclusion of ""order, bye-law, rule, regulation and notification having the force of law"" within the

definition of ""law"" is thus to ensure that, all references to ""law"" in part III should mean direct exercise of legislative power as well as all state action

ordinarily falling in the category of subordinate delegated legislation. This is intended thus to widen the scope of state action that can be impugned

for violating rights protected under Part III. However, that is not to say that all manner of executive action can be used to impose restrictions on

fundamental rights.

41. At this juncture, it is necessary to distinguish Ram Lubhaya Bagga (supra) from this case. In Ram Lubhaya Bugga, the petitioners, members of

the state services, challenged the government policy on reimbursement medical expenses stating that it did not protect the right to health under

Article 21, which includes the right to a meaningful life with dignity. The court spelt out the facts stating that ""the common question which has come

up for consideration is the entitlement towards medical expenses of the Punjab government employees and pensioners as per the relevant rules and

the Government policy."" The complaint was that the new policy prescribed limits in respect of amounts that could be claimed as reimbursements by

government servants, who were entitled to medical treatment in public hospitals, in the event of emergency medical treatment in private hospitals.

The court after discussing the terms of the new policy and analyzing its previous decisions stated that:

Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the

State to secure health to its citizen as its primary duty. No doubt government is rendering this obligation by opening Government hospitals and

health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists,

and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep; maintenance and cleanliness has to be beyond

aspersion. To employ best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff

for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at then try point but also during the whole

tenure of their service. Since it is one of the most sacrosanct and a valuable rights of a citizen and equally sacrosanct sacred obligation of the State,

every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way allocation of

sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its

social, political and economical goal for every return there has to be investment. Investment needs resources and finances. So even to protect this

sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

The Supreme Court recognized that the right to health is not absolute, under Article 21 and the state''s policy could be subject to budgetary

constraints. It was observed that ""having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the

appellant''s decision to exclude the designated hospital cannot be said be such as to be violative of Article 21 of the Constitution... For the

aforesaid reasons and findings we uphold governments new policy dated 13th February, 1995 and further hold it not to be violative of Article 21

of the Constitution of India.

42. Thus, what was under challenge there was the omission of the State to protect a condition of employment, of the State of Punjab''s employees''

right to claim reimbursement in the event of medical treatment in certain contingencies in private facilities. In this case however, a positive act of the

State is being challenged for violating a right of freedom/non-interference. This distinction can be more clearly made out by recognizing the positive

and negative content of the rights in Part III. That the Court made observations in the course of a petition challenging an executive act in Ram

Lubbaya Bugga for not protecting, by a positive act, an existing right (while ultimately holding that the policy restricting the employees'' right to

claim amounts was not unreasonable) does not translate to the proposition that a non-statutorily backed executive act can permissibly restrict the

exercise of a right. Furthermore, in that judgment, the Supreme Court was not concerned with a scheme or executive act which compelled private

hospitals to give free or concessional treatment to public servants, or members of the public; the latter, on approaching the private hospitals, had to

pay the rates required by such establishments; the precise issue before the Supreme Court being whether the State''s refusal to reimburse its

employee fully after they had incurred the expenditure violated their right under Article 21. The policy was expressly upheld. This Court is baffled

how that decision supports the respondents.

43. The respondents'' invocation of Kasturi Lal (supra) in this regard would be unmerited. Kasturi Lal is an authority on the point that government

action in distribution of state largesse (i.e. both the terms on which it distributes largesse as well as recipients it chooses for the largesse) must

satisfy the test of reasonableness and must not be capricious or arbitrary. This judgment was based in the idea that the constitutional power

exercised by a welfare state must be in public interest. Thus, the Court also upheld the corollary of this principle i.e. state action benefiting a private

party at the cost of the State, would be both unreasonable and contrary to public interest. To elaborate on this test of reasonableness, the Court

relied on State of Madras Vs. V.G. Row, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and EP Royappa v. State of Tamil

Nadu.

44. The rights in question in Kasturi Lal (as well as in R.D. Shetty, Royappa etc.) differ from those in issue in this case. The test of reasonableness,

the underlying principle in Kasturi Lal, derives its basis in Article 14 of the Constitution. The test itself was evolved as one meant to check

executive/administrative action, as the Court found that the necessary corollary of equality in Article 14 was the requirement of reasonable and

non-arbitrary executive action. In this case however, the rights in question are those of Article 19(1)(g) and Art. 300A, both of which expressly

advert to the term ""law"" as being the only permissible manner of imposing a restriction on their exercise. In other words, Kasturi Lal, as well as the

previous decision in R.D. Shetty and subsequent judgments which have relied on those cases-are authorities for the proposition that while dealing

with state properties, contracts, leases, or distributing largesse which are in the nature of public assets or resources, the State is bound by norms

which it evolves for award of such contracts, distribution of largesse, etc; furthermore, those norms have to be fair and reasonable and cannot be

deviated from. Departure from such prescribed norms, procedure or rules, or disposal of largesse or award of contracts in the absence of any

norms or guidelines would be arbitrary. The radical distinction between those set of cases and the facts of this case are that the State had already

awarded leases, charged amounts and imposed agreed conditions. Decades later, it seeks to impose fresh set of conditions which in reality impair

the rights of the petitioner, to enjoy those leases and restrict the nature of their carrying on business or profession. Whilst in Kasturi Lal the issue

was at the stage of award of contract or sale of assets, the present cases involves imposition of conditions unilaterally much after concluded

contracts were entered into. It is therefore, held that the reliance placed on Kasturi Lal and Ram Lubhaya Bagga are of no assistance to the

respondents.

45. In Jor Bagh Association (supra) it was urged that the obligation of the lessee to use the land and building for a residential purpose and

construct the building strictly in terms of the sanction was under pain of forfeiture of the lease and if the two or any one of the obligations was

breached, the Lessor (Central Government, through the L& DO) could terminate the lease and additionally make an assessment with respect to

the damages payable for breach of the terms of the lease and recover it. The petitioners had argued that the lease was a government grant under

the Government Grants Act 1895; the stipulations in Sections 2 and Section 3 of the Act were that the terms of a grant would take effect

according to their tenor and the government had the unfettered discretion to impose any condition, limitations or restrictions in the grant,

notwithstanding any contrary provision of a statute or of common law. It was contended that L&DO had no power under the grant i.e. the

perpetual lease deeds executed, to levy any damages for any kind of misuse or unauthorized construction. The Division Bench was of the opinion

that the statutory grant, under the Government Grants Act, in fact contained a condition enabling the recovery of damages since the alternative to

such interpretation of the contract would have meant that the Lessor had to necessarily determine or cancel the lease (for breach of its terms) and

re-enter possession, a drastic and extreme measure:

The perpetual lease in question is a government grant and the term of the grant, vide Clauses-2(4) and 2(5), oblige the lessee not to misuse the

premises or to construct, without the sanction of the lessor, and if the lessee does so, vide Clause-3 of the perpetual lease-deed, the lessor is

entitled to determine the lease and effect re-entry. Now, where a party is in breach of a condition or a covenant under a contract or a grant, the

contract or the grant becomes determinable at the option of the party wronged, and law gives an option to the party wronged, to seek

compensation (for the wrong committed) and as a result, to forego the right to determine the contract or the grant. Indeed, if the view taken by the

learned Single Judge it to be accepted, it would mean that the lessor cannot waive the right to determine the grant upon breach of a condition or

conditions thereof and the sequitor would be, that the lessor would be left with no remedy other than to determine the grant and re-enter the

premises, a situation which would be most detrimental to the interest of the lessee/grantee. We clarify that the power to condone a breach is an

inherent power of the lessor and need not be expressly manifest in the grant.

33. This is the error committed by the learned Single Judge.

34. The Office Order No. 23/1976 dated 31.03.1976 has been misread by the learned Single Judge as the source of the power of the lessor to

condone breaches by levying a penalty. The source of the power, as held by us herein above, is the law, which recognizes an inherent right in the

lessor/grantor to condone a breach of the lease/grant, but upon a term. It is then for the lessee/grantee to opt for the lesser evil. The office order in

question brings transparency to the manner in which the damages for condoning the breach of a condition or conditions of a lease/grant shall be

determined. In a democratic set up, where the Rule of Law is supreme, transparency brought about by guidelines to guide the manner in which

discretion should be exercised is to be welcomed. The office order precisely does so.

46. The Court recognized earlier, in its judgment that there was a power, under Clause 3 of the lease (a statutory grant) to levy assessments, which

in its opinion included the power to levy damages for condoning a breach of the terms of lease. The nature of discourse in that judgment was

entirely different from the facts of the case, where none of the terms of lease, or any contemporaneous document (including the allotment letter)

imposed the kind of obligations which are sought to be read into it for the first time, or unilaterally introduced without recourse to any power in the

Lease deeds. Thus, the judgment in Jor Bagh does not help the respondents.

47. The respondents'' contention was that as paramount Lessor, the Central Government can impose any condition or obligation upon the lessee;

inspiration was drawn from certain general conditions, enabling the lessor to oversee that the conditions of the lease were complied with properly.

Particular reliance is placed on conditions such as clauses 14 and 16 (of the lease deed) in the case of Moolchand Hospital. It is argued, with

reference to the main judgment in Social Jurist, that similar arguments about lack of statutory backing in respect of the conditions imposed on the

20 hospitals was rejected.

48. For an appreciation of the respondents'' contentions, it would be necessary to set out some portions of the main judgment in Social Jurist,

which set out the factual matrix and relevant discussion with regard to the quota or proportion set apart for free or concessional medical treatment

to members of the public:

Firstly, we would deal with the matters in issue in WP(C) No. 2866/2002. 20 hospitals according to the Government and the public authorities are

those hospitals upon whom the condition of limited percentage of free patient treatment has been imposed while allotting the land to these hospitals

on concessional rates. The details of these 20 hospitals with whom we propose to deal in this order are as under....

*** *** ***

6. Out of the above 20 hospitals, land has been allotted by DDA to 18 hospitals while in the case of Veerawali and Vimhans hospitals, land has

been allotted by the L&DO. To the hospitals to whom the land has been allotted by L&DO, it is the pointed case of the authorities that the land

was allotted at concessional rates i.e. much cheaper than the market rates and the condition of free patient treatment was specifically incorporated

in the letter of allotment.

7. In the case of Vimhans, land measuring about 3.5 acre in Nehru Nagar, New Delhi was allotted by the L&DO to the Trust and it was

specifically pointed out that the allotment is subject to the terms and conditions given in the Memorandum of Agreement and perpetual lease which

shall also be inclusive of the other conditions. The condition with regard to free patient care reads as under:

2(xi) At lease 70% of the beds must be available free of charge to deserving patients belonging to economically weaker sections and the charges

for the remaining 30 % should also be reasonable and got approved by the Government.

(xii) There should be two nominee of the Govt. on the executive committee of the hospital to look after Government interests with regard to land

management/utilisation thereof and also to ensure that it is utilised for the purpose laid down in the memorandum of a Article of association of the

institution. In case there is no provision for this in the Trust deed or memorandum of article association of the institution, the same should be

amended to provide for two Govt. nominees of the body of the institution.

8. Similarly 2 acres of land was allotted in Chanakayapuri, New Delhi to Veerawali hospital to be run by Delhi Hospital Society where the relevant

condition reads as under:

*** *** ***

11. A clause will be inserted both in the "Agreement for Lease" and the "Perpetual Lease" that in the event of dissolution of the society the leased

premises with building on that land shall be transferred, with the prior approval of the government to an institution having similar aims and objects

failing which it will revert to the Government of India without payment of any compensation what so ever.

13. Out of the proposed 100 beds, 70 will be free beds to be occupied cent percent and remaining 30 will be paying beds.

*** *** ***

The remaining 18 hospitals were allotted land by the DDA. Out of which, 16 are the ones in whose cases, undisputably, the condition of free

patient treatment in relation to free beds as well as OPD was specifically incorporated. On the contrary, during the pendency of this petition, they

had either made statements, given undertaking before the court or written to the authorities concerned that they would abide by the condition of

free patient treatment as incorporated in their lease deed/letter of allotment. However, the remaining two hospitals who were also allotted land by

the DDA, as already noticed, i.e. Escort Heart Institute & Research Center and Dharam Shila Cancer Foundation & Research Center have

seriously contested enforcement of this condition against them. According to them, there is no specific condition requiring them to provide free

patient care and treatment to the poorer sections of the society and in fact they are super-specialized hospitals and this condition would be

incapable of being performed by them. According to them, the condition is impracticable and legally not enforceable against them and at no point

of time, they had agreed to abide by such a condition.

*** *** ***

19. On the contrary and in addition to the above noticed contentions, it is also argued by the learned Counsel appearing for the hospital that the

rates were in no way concessional but were determined rates as per the policy of the DDA and they have not acquired any advantage out of such

allotment and the condition cannot be enforced upon them. There is no dispute to the fact that the first letter of allotment was issued on 30.3.1990

which contained the condition of free patient treatment. The very opening paragraph of the allotment letter along with the relevant clauses can be

usefully reproduced at this stage:

With reference to your letter dated 5.1.90 on the subject noted above, I am directed to inform you that it has been decided to allot on perpetual

lease hold basis a plot of land measuring 2.0 acres for comprehensive Cancer Care & Research Centre in East Delhi to Dharamshila Cancer

Foundation & Research Centre on usual terms and conditions as given in the agreement for lease/perpetual lease which shall also include the

following:

xxx xxx

3. The Foundation & Research Centre will serve as general public hospital with at least 25% of the beds reserved for free treatment for the

weaker sections of the Society.

4. The OPD of the hospital will provide free services to the patients falling in the indigent category.

5. The Foundation & Research Centre shall take part in the National Health programme for which its services may be called by the Directorate of

Health Services/Ministry of Health.

6. The Foundation & Research Centre shall earmark a separate area for Maternity and Child Health Centre which will be available free of cost for

the community.

*** *** ***

47. 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 mutates mutandi particularly when there is no conflict between them and they duly are supplement to each other.

*** *** ***

54. A bare reading of Rule 5 shows that the lands under these provisions can be allotted to Institutions including the hospitals at the rates which

may be determined from time to time. Such allotment is controlled entirely by use of an expression of negative language that no allotment of Nazul

land to public institutions be made unless they comply with the conditions of Rule 20, which includes that they would operate on no-profit making

character and it directly subserves the interest of the population of Delhi. The legislative intent of public convenience and health endure on the part

of the State to achieve its social goal of public equality and individual dignity which is not the hypothesis but is a precept discernly apparent. Rule

43 of the Rules and even other Rules contemplate execution of a Lease Deed, the terms of which are not be in conflict with the form "C" of the

Form in case of these Rules and obviously and definitely opposed to the substantive Rules. Nothing has been brought during the lengthy argument

addressed before us to show that any of the terms and conditions are violative of Form "C" or the provisions of Nazul lands. In furtherance to all

this, the Government has been framing its guidelines on land management and disposal of Institutional lands. These policies, of course, have been

amended from time to time but certain conditions have always formed part of these principles. In relation to the allotment of land to private

hospitals, Clause 7.6 of the guidelines are relevant, which reads as under:

Allotment of land to private hospitals:

7.6 On the suggestion of Director General Health Services, Govt. of India and Delhi Admn. the following conditions are incorporated for allotment

of land to private hospitals at concessional rates as determined by Govt. of India from time to time:

i) The institute shall serve as general public hospital with at least 25% of the total beds reserved for free treatment for weaker sections and other

255 will be subsided.

ii) A representative of Delhi Administration will be made a member of the registered society responsible for the administration of the project.

55. 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''.

*** *** ***

Here the letter of allotment, which is the very foundation of allotment of land to the allottee, even if it is treated as a grant, places a specific

obligation upon the allottee to carry out the conditions of ''free patient treatment'' condition.

*** *** ***

60. The basic principle enunciated in the various judgments relied upon by the parties is that the Government grants would be governed by the

tenor of the grant. The tenor, as we have already explained, would mean the terms and conditions of the grant per se. The letter of allotment, the

Lease Deed which itself was executed in furtherance to the condition of the letter of allotment, the representations made by the hospitals prior to

the execution of the Lease Deed and undertakings given even subsequent thereafter, would have to be looked into and the conditions stated in the

letter of allotment could be the conditions of allotment which were undoubtedly and unconditionally accepted and acted upon by the hospitals. The

arguments that allotment of additional land for carrying on the main project for which initially the land was allotted, would not take such allotment

beyond such condition. The provisions of the DDA Act read with Nazul Land Rules leaves no scope for doubt that the condition of free patient

treatment is squarely applicable to all allotments. It is not in dispute before us that the lands allotted to the hospitals are Nazul lands and are

covered under the provisions of Nazul Land Rules. This condition is, thus, backed not only by the specific terms and conditions of allotment but by

the command of the statutory rules and even the government policies as declared in the guidelines on land management and disposal. Reliance of

the hospitals exclusively on the Lease Deed is contrary to the basic rules of interpretation of documents as no secondary document could be relied

upon in preference and, in fact, while completely ignoring the principle and basic document, that is the letter of allotment. The language of the Lease

Deed and terms of the allotment letter does not help the hospitals to wriggle out of their contractual, statutory and public law obligation. There is no

scope for reading and confining the rights and obligations of the parties in isolation. The Lease Deed in no uncertain terms has to be held as

ancillary to the letter of allotment. We have already noticed that generally where in the allotment letter such a condition is missing, those were the

lands which were provided for other purposes, than for extension of the hospitals or as patient care buildings. They related to green areas, staff

quarters etc. Even where the condition is not specifically stated in respect of the hospitals, it being continuation of the original project and in view of

the statutory scheme and public policy of the government, the condition would have to be read into such allotment. Any breach to the contrary

would be obstructive of the very object of institutional allotment by DDA and the Government and in fact would be contrary to a very laudable

purpose for which these hospitals came into existence as per their own documents. They were contemplated to be public charitable trusts and

were to work for the benefit of poorer sections of the society to a much higher percentage than even specified in the letters of allotment.

*** *** ***

64. On behalf of some of the hospitals, the contention raised was that neither they are bound by the condition nor the condition was practicably

implementable in their cases. We have already rejected both these contentions. In regard to some of the hospitals, particularly the hospitals to

whom the land has been allotted by the L& DO (UOI), the percentage of free treatment to be provided to the poorer section of the society is

70%. These hospitals are super-specialty hospitals. For example, VIHMANS which deals with neurological problems. This hospital has placed on

record the documents and even had shown to the authorities that it has been running into losses of crores of rupees every year and finds it very

difficult to survive despite heavy donations and contributions given by the different persons or bodies. This aspect can certainly be not ignored in its

entirety. The condition besides being reasonable has to be one which can be implemented without frustrating the very object of the scheme. If these

super-specialty hospitals are required to treat 70% of the patients free while providing them free admission, bed, nursing care, doctor visits,

treatment, surgery and all consumables and non-consumables medicines etc., then in all probability, they would not be able to survive and they may

have to shut such hospitals. If that happens, the very object of formulating such a policy would stand defeated. Thus, it is in the interest of all

concerned, that this condition should be reasonably construed. The condition enforceable against different hospitals has different percentage. It

varies from 10% to 70% for IPD and 25% to 70% for OPD. This immense discrimination as well as the possibility of closing the hospitals,

compelled the authorities concerned to reconsider this condition and the scope of its enforcement.

49. It is evident from the extracts of Social Jurist that in each case, either conditions of allotment, or the stipulations in the lease deed obliged the

lessee-hospital to provide access to significant percentage of the IPD and OPD facilities. In one case, it was even to the extent of 75%. In some

cases, in addition to stipulations to extend free medical facilities to the extent of spelt out percentages, in the allotment, the hospitals had also given

undertakings to the respondent authorities. The Division Bench ruled that neither the lease conditions violated provisions of the Government Grants

Act, 1885, nor were the hospitals right in contending that absence of such condition in the Lease Deed (though the condition existed in the

allotment letter) absolved them from adhering to such conditions. In other words, the Court held the 20 hospitals before it, to the extent they were

parties to allotment letters or lease deeds, mandating such free treatment, were bound by it, and could not wriggle out of their duty to follow it.

Effect of the order of the Supreme Court dated 1.9.2011

50. The order of the Supreme Court dismissing the SLP filed against the judgment of the High Court dated 22.3.2007 in Social Jurist is found to

be of no help to the respondents. This order merely confirms the judgment of the High Court in Social Jurist. As discussed, Social Jurist was

rendered only in the cases of the 20 lessee-hospitals who, either through conditions of allotment, or the stipulations in the lease deed were bound to

provide access to significant percentage of the IPD and OPD facilities. Thus, the order of the Supreme Court too only is binding on those 20

hospitals. In any event, it being an order that does not ""declare law"", it cannot be considered to bind this Court in respect of 4 other hospitals under

Article 141 of the Constitution of India.

Effect of the order of the High Court dated 17-07-2007

51. The respondents rely on the order of 17-07-2007 in an application filed in the main writ proceedings, to say that it enlarged the scope of the

main judgment in Social Jurist, to include those hospitals whose leases did not contain any restrictive stipulation-in regard to extending free or

concessional medical facilities, or those whose allotment letters did not contain such stipulations, if the lands were allotted to them on concessional

basis. The petitioners contest this submission firstly urging that they were never heard or given opportunity and that the tenor of the main judgment

and the discussion was contextual to the 20 hospitals being subjected to those restrictions (i.e. to provide a percentage of their facilities on free or

concessional basis to patients).

52. For a better appreciation of the controversy, it would be relevant to extract the order dated 17-07-2007:

C.M. No. 9246/2007 in W.P. No. 2866/2002

An application for directions has been moved by the Government of NCT of Delhi to clarify:-

(a) that all hospitals which have been granted land on concessional rates abide by the order of free treatment till such time it is varied by any

competent Court,

(b) the Special Committee appointed by this Court be headed by Principal Secretary, Health and Director of Health Services along with a

representative from Finance Department and the presence of the Chief Secretary may be dispensed with,

(e) it may be specified as to whether the Director General Health Services (DGHS) which is the authority of Union of India is to implement the

directions or the Director Health Services of Govt. Of NCT is to ensure implementation of directions.

(f) Issue necessary directions stating that a representative from the Govt. Of NCT of Delhi be included in the Inspection Committee formed by this

Court for proper implementation, control and checking of the Hospitals which are under the Control of Health-Department Govt. of NCT.

We have heard the counsel for the State as also Mr. Ashok Aggarwal who has no objection to the prayer above said being granted. Even

otherwise considering the Judgment, we find the following modifications can be made. Accordingly, we direct that all hospital which have been

granted land on concessional rates abide by the order of free treatment till such time it is varied by any competent Court.

The Special Committee formed by this Court now shall be headed by Principal Secretary, Health and Director Health Services along with

representative from the Finance Department and the presence of the Chief Secretary is dispensed with. It is also specified that the Director Health

Service of NCT of Delhi shall ensure implementation of the directions made by this Court in the Judgment. It is also directed that Mr. Ashok Rana

Medical Superintendent Nursing Home Delhi shall be included as one of the members in the Inspection Committee formed by this Court for proper

implementation, control and checking of the hospitals which are under the control of Health Department Govt. of NCT of Delhi along with Mr.

Ashok Aggarwal and Ms. Maninder Acharya and the Medical Superintendent Dr. Chakarborty.

53. A very important aspect which the respondents did not bring to the notice of the Court but transpired during the hearing was that in the

subsequent order of 10.08.2007 (in CM 10661/2007 in W.P. (C) 2866/2002 leading to the judgment in Social Jurists delivered on 22.3.2007),

the Bench which made the order on 17.7.2007 recognized that the said order could not be applied across the board without a hearing. This is

evident from this order to the following effect:-

CM. No. 10661/2007

This application has been moved to bring to our attention that a child, namely, Sony, D/o Shri Dhayan Singh, R/o D-53, MCD Colony, Azadpur,

Delhi, aged 9 years, had been referred to Bara Hindu Rao Hospital under the economic weaker section category. The child was not treated at

Bara Hindu Rao Hospital but was referred to Escorts Heart Institute and Research Centre, which also refused to take care of the child on account

of the child suffering from an infectious disease. It is prayed that the hospitals be directed to comply with the directions of land allotment and to give

appropriate treatment to the child.

Today, learned counsel for Escort Heart Institute and Research Centre is present and submits that the child has been admitted to Bara Hindu Rao

Hospital and is being treated for the infection. He submits that as far as her heart condition is concerned, Escorts Hospital will depute a team of

heart specialists, who will attend to the child and take care of her condition at Bara Hindu Rao Hospital. He also assures this Court that the child, if

cleared of the infection is referred to Escorts Heart Institute and Research Centre for any further treatment in respect of heart condition, the same

shall also be afforded to her, as required.

Having received this undertaking from learned counsel for Escorts Hospital, we feel that the child will be adequately looked after. We, however,

direct the Medical Superintendent, Bara Hindu Rao Hospital to join the team of specialists of the Escorts Hospital during examination of the child.

The child shall be examined by the specialists today.

The application stands disposed of.

It appears that further arguments are required to be addressed in respect of the hospitals which do not have a stipulation in their lease deed or the

allotment letter regarding free treatment. Since one of us, i.e., Sodhi, J., is due to retire shortly, it would be appropriate that the matter be heard by

another Bench, of which Hon''ble Mr. Justice H.R. Malhotra, is a member. The matter be placed before Hon''ble the Chief Justice for setting down

the matter to be heard, for directions, since Mr. Bhasin is pressing for interim relief. List on 14th August, 2007 before the appropriate Bench.

Copy of the order be given dasti to learned counsel for the parties under the signatures of the Court Master.

54. From the above order of 10.08.2007, it is clear that the view expressed by the subsequent Bench after the main judgment stood modified as

the Court was of the opinion that further hearing was required, in order to impose a condition to require the hospitals to give free or concessional

treatment in cases where the lease deeds or allotment letters did not contain such stipulation. The reliance placed on the order of 17.7.2007 by the

respondents to justify the impugned order is, therefore, without any foundation.

55. This Court is also of the opinion that the words ""Even otherwise..."" used in the later order of 17.07.2007 to say that societies and institutions

allotted lands on concessional rates too were under an obligation to provide concessional or free medical facilities identically with those mandated

for the 20 hospitals, is premised on no reasoning at all. Each of the lease deed/allotment letters (the deed of 1968 in the case of Moolchand;

allotment letters dated 6.6.1970, 3.7.1972 and 19.7.1976 as well as the lease deeds dated 14.8.1970 and two deeds of 9.1.1979) nowhere

mentioned that the institutional allotment made to these societies or bodies were upon the condition that they had to provide free treatment to a

class or section of the patients or those approaching them. These lease deeds also do not reserve any manner of right enabling the lessor/Central

Government to unilaterally change the conditions or allotment or terms of the lease. The general conditions such as clauses 14 and 16 in the case of

Moolchand and similar conditions in the case of other hospitals relied upon are of such character as to enable the preservations of the lessor''s

property and not to impose conditions on the enjoyment of the leased lands. In the case of Sitaram Bhartiya, the materials on record again point to

the fact that neither the allotment letter (22.10.1984) nor the lease deed (dated 2.9.1985) spell out any condition for free or concessional

treatment; nor they do reserve the right to the lessor to give directions to the allottee/lessee with regard to the functioning of the lessee with respect

to its hospital services. In other words, the right to how to manage and provide facilities is not within the domain of the lessor. Most importantly in

the case of Sita Ram Bhartiya and the Foundation for Applied Research (in the latter''s case the allotment letter being dated 24.1.1990 and the

lease deed being of 21.4.1995), the available materials disclose that the land was allotted or leased out at prevailing institutional rates and not on

concessional basis at all. In the case of Sitaram Bhartiya, the affidavit of DDA itself states that its request for allotment on concessional basis was

rejected. Likewise, the DDA''s affidavit in the Foundation''s case acknowledges that the request for concessional rates was rejected and

possession was given on the basis of the amount demanded, i.e., Rs. 39 lakhs at Rs. 28.5 lakhs per acre. In the case of the Foundation, the DDA

even demanded the balance of the enhanced rate on 27.10.1991 which was paid.

56. It is also apparent facially, from the order dated 17-07-2007, that unlike when the main judgment was delivered, the Court did not issue notice

to any third party or hospital, likely to be affected by its decision. Furthermore, the public interest petitioner did not express any reservation in

respect of the order-but that party was not likely to be affected, because in the first place, it had approached the court for enforcement of the

conditions in clauses in respect of the 20 hospitals whose lease or allotment conditions stipulated that they ought to provide concessional or free

medical treatment. Even the public interest litigant had not, in the first instance, demanded that all those allotted lands on concessional basis without

any condition to provide concessional/free treatment be directed to provide such facility. In these circumstances, without even a discussion as to

how the Govt. of NCT, DDA or the L& DO could issue directions in the absence of power, the Court proceeded to direct ""all hospitals which

have been granted land on concessional rates abide by the order of free treatment till such time it is varied by any competent Court."" Significantly,

the Bench which delivered the main judgment was different from the one which made the directions on 17-07-2007.

57. In this context, this Court is of opinion that the stipulate nature of the directions given on 17-07-2007 cannot be treated as binding, or as

precedent. The main judgment in Social Jurist did not decide, as a matter of law, that all allotments of lands made on concessional basis, regardless

of whether the conditions in lease/allotment contained requirements of free treatment to economically weaker sections, were to be subjected to the

same treatment and directions. The final directions were to extend the logic and directions of the judgment to those situated identically or similarly

to the 20 institutions. To the extent that the 17-07-2007 directions sought to extend its declaration or directions to other allottees, it assumed that

the main judgment logically led to such conclusion; however, the main judgment in Social Jurist was sub silentio on this aspect. The doctrine of sub-

silentio has been explained by the Supreme Court, in its recent judgment reported as Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam

State Electricity Board and Another, in the following manner:

It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, ''precedents sub-silentio and without

argument are of no moment''. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A

decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to

have a binding effect.

In Arnit Das Vs. State of Bihar, , the Supreme Court held:

20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be

a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This

is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

58. The Court is also additionally of the opinion that the allotment letters and lease deeds being conclusive on the rights and obligation of the

parties, further directions through the impugned order imposed unilaterally, would be justified only if the governing Statute or even the conditions of

lease deed enable such change. The difference between the cases before this Court and the 20 hospitals which were the subject matter of Social

Jurists matter (supra) is precisely this. In that case, there was no question of changing lease conditions unilaterally; what the public interest litigant

sought was the enforcement of the State and State authorities obligations to enforce the conditions of allotment or lease deed that required free or

concessional medical treatment. Members of the general public are not only interested but have every right to insist that the States'' resources are

optimized and utilized to the best possible ends. That the State has chosen to impose conditions in the allotment letters/lease deed which required

fulfilment of certain conditions to extend free or concessional medical benefits, in the case of 20 hospitals was certainly a matter of public law

where enforcement could be sought through judicial review. In the present case, however, what the Government is seeking to achieve is an

untenable and unauthorised alterations of concluded contracts with altogether different hospitals, and the enjoyment of benefits arising from them.

59. For the above reasons, this Court is of the opinion that the submissions of the respondents that all those who are beneficiaries of allotment or

leases at concessional rates and in whose cases, neither the allotment letter nor the lease deed contained any requirement to provide free medical

facilities were nevertheless obliged to extend such benefits, and that the Central Government/Government of NCT of Delhi had the power to issue

directions in that regard, are untenable.

On the Nazul Land Rules

60. The DDA had argued that the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, i.e. the Nazul Land Rules

enabled it to issue directions to provide concessional or free treatment. The Nazul Rules were framed in exercise of the powers conferred by

Section 56(2)(j), read with Section 22(3) of section 22 the Delhi Development Act, 1957. In terms of Rule 2(i),""nazul land"" means the land placed

at the disposal of the Authority and developed by or under the control and supervision of the Authority u/s 22 of the Act. Rule 5 enables allotment

of nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organizations and

local bodies for remunerative, semi-remunerative or un-remunerative purposes at the premia and ground rent as was to be determined from time to

time. The conditions which such institutions (mentioned in Rule 5) have to follow are that (a) according to the aims and objects of that public

institution- (i) it directly sub-serves 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. The institution should be a society registered under the Societies

Registration Act, 1860 (21 of 1860) or owned and run by the Government or any Local Authority, or is constituted or established under any law

for the purpose of establishment of hospitals, dispensaries or higher/technical education institutes. The last condition (c) is that ""it is of non-profit

making character"".

61. No doubt the Nazul Land Rules require that in respect of the class of institutions that the petitioners belong to, allotment could be made only

for the purpose of establishing and running schools, hospitals, etc. Rule 20(1)(c) also required the society to have a non-profit making character.

However, the sequitur that this authorized the DDA to insist that these institutions should have programmes earmarking a percentage of their

facilities for use on concessional or free basis, does not follow. The absence of such power in the Rules only reinforces the petitioners'' argument

that without a valid law, the conditions of their concluded leases could not have been altered unilaterally.

Charitable trust

62. One of the contentions raised by Mr. Shanti Bhushan in Moolchand was based on the concept of charitable object as it has been generally

understood and particularly in the context of section 2(15) of the Income Tax Act, 1961. The point made was that the idea of charitable object

does not mean that the charitable activity should be rendered free of charge; eleemosynary is not an essential ingredient of a charitable purpose. It

was accordingly contended by him that by not treating poor and indigent patients free of charge, the writ petitioners did not offend the idea of

charitable purpose or object. This was in response to the submission of the respondents that being charitable trusts of establishments for charitable

purposes, the petitioners could be compelled to achieve their objects through the impugned orders.

63. The definition of ""charitable purpose"" in the Income Tax Act, 1961 purports to follow the four main divisions of charity as enunciated by Lord

Macnaghten in his speech, now considered as classic, as member of the House of Lords in Commissioner''s for Special Purposes of Income Tax

Act V. Pemsel (1891) 3 TC 53 (HL). He observed that ""in its legal sense (charity) comprises four pre-divisions; trust for the advancement of

education; trust for the advancement of religion; and trust for the purposes of beneficial, community not falling under any of the preceding heads.

The English concept of charity could be different from the Indian concept. Under the Indian concept, certain purposes which are not considered

charitable in England are considered charitable objects. However, both in England and in India the common position was that if the purpose or

object of a trust is charitable, that it has to be paid for does not alter the charitable nature of the object. In In re Trustees of the Tribune (1939) 7

ITR 415, the Privy Council held that it is not necessary to constitute a charity that it should provide something for nothing, or for less than it costs,

or for less than its ordinary value. This position has been reiterated in Cawse (Surveyor of Taxes) V. Committee of the Lunatic Hospital (1891) 3

TC 39 (QB), Lord Nuffield as Ordinary Trustee of the Nuffield Provident Guarantee Fund V. Commissioner of Inland Revenue (1946) 28 TC

479 (KB), In re the Trustees of the Tribune (1939) 7 ITR 415 (PC), Commissioner of Income Tax, Bombay City Vs. Breach Candy Swimming

Bath Trust, Bombay, , Commissioner of Income Tax Vs. Pulikkal Medical Foundation Pvt. Ltd., .

64. This Court would like to emphasise the mandate of the Directive Principles and of Article 47 in particular, as stressed amply in Vincent

Panikurlangara Vs. Union of India (UOI) and Others, . However, any state action in pursuance of directive principles should be routed through the

proper procedural route i.e. through legislation or state action with legislative backing. As the Supreme Court noted in Society for Un-aided

Private Schools of Rajasthan Vs. Union of India (UOI) and Another,

85. Rights guaranteed under Article 19(1)(g) can also be restricted or curtailed in the interest of general public imposing reasonable restrictions on

the exercise of rights conferred under Article 19(1)(g). Laws can be enacted so as to impose Regulations in the interest of public health, to prevent

black marketing of essential commodities, fixing minimum wages and various social security legislations etc., which all intended to achieve socio-

economic justice. Interest of general public, it may be noted, is a comprehensive expression comprising several issues which affect public welfare,

public convenience, public order, health, morality, safety etc. all intended to achieve socio-economic justice for the people.

86. The law is however well settled that the State cannot travel beyond the contours of Clauses (2) to (6) of Article 19 of the Constitution in

curbing the fundamental rights guaranteed by Clause (1), since the Article guarantees an absolute and unconditional right, subject only to

reasonable restrictions. The grounds specified in Clauses (2) to (6) are exhaustive and are to be strictly construed. The Court, it may be noted, is

not concerned with the necessity of the impugned legislation or the wisdom of the policy underlying it, but only whether the restriction is in excess

of the requirement, and whether the law has over-stepped the Constitutional limitations. Right guaranteed under Article 19(1)(g), it may be noted,

can be burdened by constitutional limitations like Sub-clauses (i) to (ii) to Clause (6).

Thus, this Court only seeks to emphasise that while any endeavour to bring the Directive Principles to fruition is laudable, such effort must be by

way of legislation, especially when rights guaranteed under Part III are likely to be infringed through such effort. Examples of such legislations in

pursuance of Directive Principles are the Right to Education Act, The Essential Commodities Act, the Mahatma Gandhi National Rural

Employment Guarantee Act and the National Food Security Act etc. Whilst the State"s effort to maximise access to public health systems at no

cost or minimum cost is undeniably in the public interest, such objective has to be achieved within the framework of the Constitution, through the

route of legislation. In the present case, the route taken by the respondent does not accord with Constitution.

65. For the above reasons, the order of the L&DO dated 2.2.2012 impugned in W.P.(C) 1478/2012 and W.P.(C) 3737/2012, the impugned

letters from the Government of NCT-Delhi dated 24.05.2012, 28.06.2012, 07.06.2012, 18.04.2013, 29.04.2013 and 20.05.2013 in W.P. (C)

3972/2013 and the impugned letters dated 18.4.2013 and 29.4.2013 in W.P. (C) 7183/2013 are hereby quashed. The writ petitions are

accordingly allowed without any order as to costs.