

MANU/BH/0429/1987

Equivalent Citation: 1988PLJR754

**IN THE HIGH COURT OF PATNA
(FULL BENCH)**

Civil Writ Jurisdiction Case No. 4476 of 1986

Decided On: 04.12.1987

Appellants: **Bihar State Health Services Association and Ors.**
Vs.

Respondent: **The State of Bihar and Ors.**

[Alongwith Civil Writ Jurisdiction Case Nos. 4537, 5047, 5120 and 5165 of 1986]

Hon'ble Judges/Coram:

Udai Sinha, S. Ali Ahmad and S.B. Sanyal, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Basudeo Prasad, Chandramuli Kumar Prasad and N.K. Prasad Sinha, for the petitioners in CWJC No. 4476/86, Mr. Sunil Kumar, for the petitioners in CWJC No. 5637/86, Ms. Kanak Verma and Mr. Prabhat Kumar, for the petitioners in CWJC No. 5047/86, K. P. Verma and Kishore Kumar Sinha, for the petitioners in CWJC No. 5120/86, S.P. Mookehrjee, Arvind Kumar Singh, Shanti Pratap and Rajesh Kumar Singh, for the petitioners in CWJC No. 5165/86

For Respondents/Defendant: R.B. Mahto (A.G.) and N.P. Sinha (G.A.) with Alak Niranjana, N.K. Sinha, Subodh Prasad, R.N. Choudhary and A.K. Mishra Badri Narain Singh, Sheopuian Singh and Mrs. Sujata Mukherji

For Committee of the Doctors: Mr. Indu Shekhar Prasad Sinha

JUDGMENT

Udai Sinha, J.

1. This is a batch of writ applications challenging the validity of a Government resolution banning private practice of doctors, who are teachers of nine Medical Colleges in this state. As the ban has created mixed reactions among different classes of citizens, several others have joined issue, pro and con. C.W.J.C. No. 4476 of 1986 is the main writ application in which the central issue has been pointedly focussed. The annexure sought to be quashed is Annexure-1 to this writ application. All through the judgment wherever there is a reference to the Government resolution, it will be referred to Annexure-1. It was issued on 30.9.1986. It is essential to quote it in extenso. It reads thus:

बिहार सरकार,
स्वास्थ्य विभाग ।
पटना, दिनांक-20 सितम्बर, 86
संकल्प

विषय—राज्य के सभी मेडिकल कॉलेज अस्पतालों में पदस्थापित सभी कोर्ट के चिकित्सकों (शैक्षणिक एवं

गैर-शैक्षणिक) के सभी पदों को दिनांक 2-10-1986 से गैर-व्यवसायिक घोषित करने के सम्बन्ध में ।

राज्य की जनता को बेहतर चिकित्सा सुविधा प्रदान करने के उद्देश्य से सरकारी चिकित्सकों के निजी व्यवसाय पर रोक लगाने का प्रश्न सरकार के विचाराधीन रहा है । सरकार ने सरकारी चिकित्सकों के निजी व्यवसाय पर फेज-बाइज रोक लगाने के सम्बन्ध में गत वर्ष ही नीतिगत घोषणा की थी । फलतः सरकार ने प्रथम चरण में राज्य के सभी 9 मेडिकल कॉलेज एवं अस्पतालों के सभी कोटि के चिकित्सकों के पदों को गैर-व्यवसायिक घोषित करते हुए उनके निजी व्यवसाय पर दिनांक 2-10-1986 के प्रभाव से रोक लगाने का निर्णय लिया है ।

2. राज्य के सभी मेडिकल कॉलेज अस्पतालों के सभी कोटि के चिकित्सकों के निजी व्यवसाय पर रोक लगाने के फलस्वरूप ऐसे चिकित्सकों को, निजी व्यवसाय से वंचित होने के कारण, उन्हें उनके मूल वेतन का 40 प्रतिशत अधिकतम (600/- सौ) रुपया प्रतिमाह की दर से अव्यवसायिक भत्ता भुगतेंगे ।

3. वर्तमान में राज्य के मेडिकल कॉलेज एवं अस्पतालों में पदस्थापित जिन चिकित्सकों को निजी व्यवसाय करने की छूट है और इसके एवज में उनके मूल वेतन से 10 प्रतिशत की कटौती होती है, दिनांक 2-10-86 के प्रभाव से उनके निजी व्यवसाय पर रोक लगाने के फलस्वरूप उक्त राशि की कटौती नहीं होगी ।

4. राज्य के मेडिकल कॉलेज एवं अस्पतालों में पदस्थापित चिकित्सकों के निजी व्यवसाय पर दिनांक 2-10-1986 के प्रभाव से रोक लगाने के बाद यदि कोई ऐसे चिकित्सक निजी व्यवसाय करते पाये जायेंगे तो नियम संगत प्रक्रिया का अनुसरण करते हुए सरकार उनके विरुद्ध आवश्यक अनुशासनिक कारवाई करेगी ।

5. यह आदेश दिनांक 2-10-1986 से प्रभावकारी होगा । आदेश-आदेश दिया जाता है कि सर्वसाधारण की जानकारी के लिए इसे राजकीय गजट के अगले अंक में प्रकाशित किया जाये ।

बिहार राज्यपाल के आदेश से,

(के० के० साहा)

सरकार के सचिव, स्वास्थ्य विभाग, बिहार, पटना ।'

Copies of this resolution were sent to Government printing press for publication in the Bihar Gazette, as also sent to Accountant General, Patna and Ranchi for information and necessary action. Summarising the resolution in English it means that the question of better medicare of the people of the State by banning private

practice by Government doctors was under consideration of the Government for sometime. In the previous year itself Government had made a policy declaration of banning private practice by Government doctors phase wise. In consequence thereof as a first step Government has declared the post of doctors attached to all the nine Medical Colleges in the State on and from 2.10.1986 as non-practising. As a consequence of the ban, doctors of all categories would be receiving 40% of their basic salary, with a maximum of Rs. 600/- per mensem as non-practising allowance. The 10% deduction from the salary of such doctors would be discontinued with effect from 2.10.1986. Any doctor posted in the said nine colleges would be liable to disciplinary proceeding, if he indulged in private practice after 2.10.1986. The petitioners are Bihar State Health Services Association and thirty six teacher doctors of the nine Medical Colleges. C.W.J.C. No. 4537 of 1986 has been filed by Pre-Clinical and Para-Clinical teachers of Mahatma Gandhi Memorial Medical College, Jamshedpur. This College prior to its takeover by State Govt. in August 1986 was a private managed institution. They have also supported the stand of the teacher doctors and have prayed for quashing Annexure-1. In the alternative their stand is that the resolution does not affect them. While adopting the arguments advanced on behalf of the petitioners in the main writ application (C.W.J.C. No. 4476 of 1986), it has been contended that since no decision has been taken in regard to their absorption in Government service, the Government resolution contained in Annexure-1 cannot affect their right to private practice.

2. C.W.J.C. No. 5047 of 1986 is another application by two citizens of Patna, supporting the stand of the doctors and praying for quashing the Government resolution. Their stand is that the hospitals attached to nine Medical Colleges in the State are in shambles and if the private practice of the teacher doctors is banned, they are likely to resign and walk out of the institutions which will leave the hospitals in worse conditions-worse than what exists today. It has been contended that poor people who will have to go to the Government hospitals, will be much worse off for the reason that the best medicare will not be available to them. Their stand is that the teacher doctors are not responsible for the utterly depressing condition in the hospitals. Rather, the Government is responsible for it and, therefore, the ban placed on private practice by teacher doctors is arbitrary and irrational. The petitioners of this application also have supported the case of the teacher doctors.

3. C.W.J.C. No. 5120 of 1986 has been filed by three citizens of this State. Their stand is that the Government resolution banning private practice by doctors of the Medical Colleges is a retrograde and anti people step. It is likely to increase hardship of the common man. Prayer has, therefore, been made for quashing Annexure-1.

4. C.W.J.C. No. 5165 of 1986 is another application supporting the cause of the teacher doctors. This application is by assistants of teacher doctors, viz, compounders, sweepers etc. attached to the doctors, associated with their private professional engagements. In brief, their stand is that if the private practice is banned, they will be out of employment because the doctors, will close down the shutters of their private clinics. This application also thus has been filed in support of the teacher doctors.

5. In C.W.J.C. No. 4476 of 1986 Rash-triya Chetana Parishad, a private Organisation of the State has intervened and has supported the decision of the State Government to ban private practice by teacher doctors of the Medical Colleges. It was submitted at the Bar on their behalf by Mr. Badri Narain Singh that the Organisation known as "Rashtriya Chetana Parishad" had been advocating the ban on private practice by

doctors even prior to the coming into being of Annexure-1. The interveners have thus opposed the case of the petitioners and have supported the action of the State Government.

6. It is conceded on all hands that the hospitals attached to the Medical Colleges in this State are in a deplorable condition. The petitioners alleged several causes for the existing state of affairs. According to them, the private practice by them had nothing to do with the deplorable state of affairs. It was contended that they were utilising their spare time in treating patients, who did not go to the hospitals because of the deplorable state of affairs or who could not manage to obtain admission in the Wards or Outpatients 'Department of those hospitals. This, according to them, did not interfere with the appropriate discharge of their functions in the hospitals.

6A. A Bench of this Court constituted a three man Committee to visit the hospitals and report on the conditions therein. The Committee comprised of Dr. A.K. Sen, General Practitioner, Dr. U.N. Shahi, Retired professor of Surgery and Dr. Shiva Narayan Singh, Retired Professor of Medicine. The Committee was asked to report on the following matters:

- (1) Whether stoppage of private practice in the present state of affairs will be prejudicial to the ailing patients of the State.
- (2) What should be the time gap essential in public interest for implementation of the order.
- (3) What improvement in the hospital attached to nine medical colleges are necessary to be made for its efficient functioning.
- (4) Whether infrastructure of the hospital is sufficient to admit the additional inflow of patients as a result of the ban on private practice of the petitioners and their proper treatment.
- (5) What short and long term changes in the hospital are suggested for adequate and efficient treatment of the patients in the hospital indicating priority and approximate expenditure.
- (6) Any other valuable suggestion incidental to and connected with the questions at issue.

The Committee met on several dates. It visited seven of the Medical College hospitals in the State. It appears that they did not visit Ranchi Medical College Hospital and the hospital attached to Mahatma Gandhi Memorial College at Jamshedpur. At page 14 of their report they observed as follows:

The Committee is of the opinion that all these hospitals referred to above are not functioning satisfactorily. They do not have true Campus with compound wall, gates controlling entrance of persons, cattle, dogs, pigs, goats etc. Number of their buildings are dilapidated and falling. Cracks in some new ones are coming up. They are full of dirt, filth, garbage strewn in their premises and all over, unauthorised occupants are many.

.....some doctors and other members of the staff work with zeal whereas several others come late and disappear early.....

Causes may be many but the situation is sad and distressing.

At pages 25 and 26 they observed as follows:

Attendance on time, responding to calls for emergency, regular teaching, under graduate and postgraduate, are currently casualties, in a significant part of the scenario. this has to be corrected. Stimulation of work ethos by persuasion personnel examples and group pressure should be brought into play. Reasonable amount of discipline has to be ensured.

At page 27 the Committee recommended as follows:

It would be advisable to separate the teacher Hospital from the General Hospital and Emergency Hospital wherever possible by establishing separate general hospitals and Emergency hospital with highly qualified persons in the cities where the Medical College Hospitals are in existence." And-again--

(iii) It has long been felt that the separation of the Medical teaching cadre from the general health cadre is essential in the interest of Medical Education and care of the patients in the Medical College Hospitals.

At page 31 the Committee recommended accommodation of different types of teachers and clinicians as on full time, non-practising basis on high pay; on part time basis and as on honorary basis. They observed that subsequent developments have proved that ban on private practice in the past had not been observed by large number of officers, and Government was unable to implement its own order. In that view of the matter, in their opinion, the question of prejudice or otherwise of interest of ailing patients as a result of ban on private practice was hypothetical.

7. Every body in this town has had the occasion to observe the conditions prevailing in Patna Medical College Hospital. To say the least, it is the rock-bottom of cleanliness and efficiency. But I would like to quote the findings of the Committee for fear of laying open to the charge of importing our personal knowledge.

The hospital is lying in ruins with several dilapidated buildings, unauthorised occupation by various types of people like pavement dwellers, vendors, undesirable persons, urchins, cattle, dogs, Bathing ghats, temples, Makabra, schools and residences mingled with the hospital premises. The approach to the Indira Gandhi Institute of Cardiology is difficult to negotiate. On account of encroachment by pavement dwellers, the hospital being in the heart of the city, all kinds of musical instruments, notices, songs on loudspeakers disturb the peace of the hospital. Many of the wards have structural problems. Many of them having leaking roofs and burst pipes.

In short, there is callous apathy, inefficiency and negligence of the authorities concerned on all fronts which must include doctors. The water supply is deficient in several parts of the hospital. The electric supply is frequently interrupted for hours. Wards are mostly empty, but the roads and premises bad aimlessly moving crowds.

8. The Nalanda Medical College Hospital also in the town of Patna was no better. There is no incinerator for burning rubbish and garbage, consequently garbage and dirt are lying all over the place. The wards were largely vacant. Out of the total strength of 702 beds, the average of occupancy was only half. The Committee could

not visit other hospitals in the State. But needless to say, none of them present any better picture.

9. The Committee made some suggestions for improvement. The second and third suggestions were as follows:

(2) The medical administration should be strong enough to ensure attendance of different employees on time.

(3) The employees should develop work culture and there should be arrangement for the assessment of the work of different categories of persons working in these institutions. Death Committee consisting of the treating clinician, concerned Head of the Department, Head of the Department of Forensic Medicine, the Superintendent and the Principal should be formed to inquire into any death in the hospital.

The above second and third recommendations have been made on priority basis for improving the state of affairs. In my view, development of work culture is the most important aspect and should be the first matter to be taken care of. It is the want of this work culture which has reduced the Patna Medical College Hospital, one time a premier hospital of the country into shambles. The sorry state of affairs in the hospitals suits the teachers in furtherance of their private practice. Touts rule the roost. The touts are no other than non-clinical staffs, class III and IV officers of the hospital. Conceded, there is shortage of medicines in the hospital, but when the patient is allured to private clinic of a teacher doctor he is no better off. There also he has to purchase medicines and all necessary surgical items from the open market. Besides he places himself in the hands of touts, who swindle him in the situation now in the hospital, it is difficult to say whether the doctors are responsible for the loss of work culture or others are responsible and the doctors are mere helpless cogs in the wheel. The question now is, which came first, the chick or the egg-not an easy question. But the ring has to be broken. According to the constraints of administration and finances, action has to be taken to set matters right. Government has chosen to tackle the matter from the front of teacher doctors. The problem is not easy to solve, but an effort must be made. In my view, it is not the function of the judiciary to be throwing a spanner in every wheel of Governmental functioning. For the last thirty years Government experience, in the matter of efficiency in the hospitals, with the doctors enjoying private practice, has not been a happy experience. Things are going from bad to worse every day. It is in the fitness of things, therefore, that an experiment should now be made at restricting private practice of teacher doctors in the Medical College hospitals. The Committee appointed by this court observed that the doctors were late in turning up at the hospitals. That was the state of affairs in the two premier hospitals of this town of Patna. They did not have the occasion to observe the hospitals of seven other Medical Colleges. The situation must be much worse in other Medical College Hospitals. Late turn out of teacher doctors in the wards has become phenomenal. That is because of their engagement in private practice. They cannot turn up in the wards on time because they are engaged in private practice. No wonder they do not bother to turn up in hospital on time. The dedication is completely wanting. Acting to time is always a first step towards developing work culture. If private practice is gone, such of these who continue in Government service the choice will be their attendance on time is in all probability likely to improve. If the doctors turn up on time, the compounders, technicians and sweepers are likely to turn up on time. The incentive of the hospital staff to work as touts will disappear. I dare say the ban on private practice would be a giant stride

towards developing work culture. These have bearing on the question whether the step taken by the State Government is rational and has any nexus with the object to be attained.

10. It was vehemently contended on behalf of the petitioners that the decision to place a ban on private practice by teacher doctors of the nine Medical Colleges was irrational and arbitrary. It, therefore, must be struck down. It was contended that there were several private clinics of teacher doctors and if private practice was banned, hospitals cannot cope with the extra rush of patients. As to the rationality of the steps taken by the Government, it is difficult to subscribe to the view of the petitioners. Commission after Commission and high power Bodies have been recommending for decades for banning private practice of teachers. The Sixth Joint Conference of the Central Council of Health had recommended that the private practice of Government doctors be banned all over the country as early as possible. In paragraph 2 of the petition by the State for vacating the order of stay passed on 1.10.1986 it has been stated that the National Conference recommended that in order to maintain proper standard of medical students, it was essential to have whole-time teachers in Medical Institutions. This Conference took place from 27th to 30th August, 1979 at New Delhi. Time and again the Medical Council of India has been recommending change over of teaching staff from part time/Honorary and practising to whole-time and non-practising staff. Annexures R, R/1 and R/2 bear ample testimony to this assertion on behalf of the State. It is true the State Government has been banning private practice and resiling from that position. That however, was not attributed to any want of propriety of placing the ban but may have been on account of various pulls and pressures. Private practice by teacher doctors has been banned in the Central Health Services, in the States of West Bengal, Uttar Pradesh, Kerala, Tamil Nadu, Haryana and Maharashtra.

11. It was submitted on behalf of the petitioners that the hospitals as they are at the time in a sorry state of affairs, are almost death traps. Even if it is conceded that it is so, can it be denied that teacher doctors also have not contributed largely to this state of affairs? Their existence in the colleges and hospitals attached thereto has not made any difference in the medicare provided in the hospitals. In this situation, if the doctors are forced to the position of resigning their teaching job, will the situation get worse? In my view, not. If the situation is dingy and dogs roam about in the Wards, who gains by such state of affairs? No one but the teacher doctors. Who runs the hospitals-no one but doctors. It is true as contended by learned counsel for the petitioners that Government is responsible for this state of affairs, but are teacher doctors apart from Government? Certainly not. They are as much part of the Government as any officer in the Secretariat. I have not the least doubt that the present day set up in the Medical College Hospitals is certainly partly responsible for the existing state of affairs. Government has decided, may be in small way, to improve matters. It is not the business of the judiciary to be throwing a spanner in the field of every Governmental activity. Business of the State has to be carried out by the Executive and unless the limits are transgressed, we have no business to go on rejecting every attempt at improving matters specially, in the matter of health care.

12. It is conceivable that the teacher doctors of the Medical Colleges, who have amassed enormous practice may not stick to the teaching terms-well and good. Certainly some doctors will be available to take up teaching work without right of private practice with dedication to research and with dedication to give their best to medical students and patients.

13. It is true that Wards are congested, bed linens, blankets, pillows etc. are inadequate dirty, filthy and worn out. In short, they are in bad and in deplorable state of affairs. But situation in other branches of Governmental activities is not much better. The situation in the hospitals also is of the same standard as in other walks of life. For that reason should every Governmental activity be ordered to be closed down by the Courts? The Expert Committee also did not suggest that there should be no ban on private practice of teachers. It only suggested that this is not the right occasion. In the face of various Commissions and recommendations at various levels, I am unable to see much force in the view of the Expert Committee, appointed by this Court, that the ban should not be enforced at the moment. The leap to ban private practice has to be taken, why not now, and let us see how the Medical Colleges and the hospitals attached thereto function.

14. Is the policy underlying ban on private practice irrational or arbitrary? It must be conceded that the right to practise any profession, trade or business can be regulated in the interest of general public. If public interest calls for interference with fundamental rights, Government would be failing in its duties in not interfering with a fundamental right. With that background, Government employment was provided with the condition that the whole time of a Government servant shall be at the disposal of the Government. There is certainly a clash between the individual interest of teacher doctors and the interest of the society at large. Courts must lean in favour of the interest of the society and are bound to ignore the interests of a handful of teacher doctors. The question of banning private practice of teachers in Medical Colleges had been the subject matter of consideration by several Commissions all over the country. As far back as 1946 the Bhore Committee recommended that private practice be banned. Later in 1948 the same was the view of Kher Committee. Their recommendations were emphasized and supported by Mudaliar Committee in 1961 and by the U.P. Rationalisation Committee in 1964-65 and the Verma Commission in 1975. In 1976 the Indian Medical Council strongly recommended that Government doctors should be prohibited from indulging in private practice. The consistent view of a large body of Educationists as well as eminent persons in the medical world has been that Government doctors should not be allowed to do private practice. The impugned Government resolution is a step in realisation of fulfilment of the recommendations of the various Committees and Commissions. In that background, the banning of private practice appears to be a step in the right direction. The submission that it is irrational and arbitrary has only to be stated to be rejected. The policy enshrined in Annexure-1 is manifestly in public interests and in conformity with the directive principle contained in Article 47 of the Constitution. The Government decision does not prohibit a doctor from doing private practice, but once he has chosen to submit to the dictate of the Government by applying for a job subject to the rules framed by Government, it does not lie in his mouth to say that he has been deprived of his fundamental right. The step taken by the State Government by promulgating the impugned resolution (Annexure-1) was in conformity with the recommendation of the Medical Council of India in its resolution of the 24th March, 1976. The recommendation of the Indian Medical Council was approved by the Central Government in terms of section 33 of the Indian Medical Council Act, 1976. The recommendation was to change over the teaching staff of all Departments of Medical Colleges from part-time/Honorary and practising to whole-time and non-practising staff. The approval of the Central Government is to be found in Annexures-R/1, R/2 and R/3 of the counter-affidavit filed on behalf of the State. Section 33(k) of the Indian Medical Council Act empowers the Indian Medical Council to make regulations with the previous sanction of the Central Government which may provide for the standards of staff, equipment, accommodation, training and other facilities for

medical education. In pursuance of this the Indian Medical Council framed regulations which received sanction of the Central Government. It was, therefore, obligatory for all Governments to place a ban on private practice which would be an index of the standard of staff, their training and other facilities for medical education.

14(a) Commission after Commission have been recommending ban on private practice of teacher doctors. The entire country, except some in Bihar, is of the view that such ban on private practice is in the interest of the people.

In the background of recommendations of several wise men of the country, can it be contended for a moment that the State Government had not applied its mind to the prevailing conditions in the hospitals. The submission urged on behalf of the petitioners that the ban has been prompted on the mistaken belief in the existence of non-existing facts or circumstance, does not merit serious consideration. It has only to be stated to be rejected.

Mr. Basudev Prasad, learned counsel for the petitioners submitted that if the State Government was really serious about medicare, it should seriously consider a cadre of teachers in Medical Colleges and a separate cadre for doctors in hospitals. Certainly there are hospitals without being affiliated or connected with Medical colleges, but can a Medical college be disassociated from a hospital? If a teacher doctor is not associated with any hospital can anyone really suggest for any moment that that teacher will be worth anything if he is not associated with a hospital. One has only to imagine what kind of doctors such teachers will produce. Teaching in the Medical Faculty is not like teaching in law college. He will be nothing but a stagnant pool. With all respect to the members of the Committee appointed by this Court, I do not see much sense in that recommendation.

15. The most vehement submission urged on behalf of the petitioners is that having obtained the medical degree and having been registered as medical practitioners, it is the fundamental right of the petitioners whether, they are teachers or in any other capacity to do private practice. It was urged that it was their fundamental right to undertake private practice as a doctor and this right had the protection of Article 19(1)(g) of the Constitution in terms of which every citizen has the right to practise any profession, or carry on any occupation, trade or business. Reliance has been placed on section 15 of the Indian Medical Council Act, 1956 which so far as is relevant reads as under:

15. Right of persons possessing qualifications in the Schedule to be enrolled--(1) Subject to the other provisions contained in this Act, the medical qualifications included in Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register,--

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority.

(b) shall practise medicine in any State;

It was contended that the fundamental right to practice, viz, a doctor's profession, could be restricted only in term of Sub-Article (6) of Article 19 of the Constitution.

Sub-Article(6) reads as follows:

(6) Nothing in sub-clause (a) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of general public, reasonable restrictions on the exercise of the right conferred by the said-clause, and in particular nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to--

(i) the professional or teaching qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

It was conceded that the right to practise could be cut down by the State Government in the interest of general public, but that right can be cut down only by law. The Government decision contained in Annexure-1, the impugned annexure is not law and, therefore, in the absence of any law, the petitioners have the unbridled right to exercise their right of private practice, i.e. the profession of doctors. Thus contended learned counsel for the petitioners.

16. In my view, section 15 of the Indian Medical Council Act does not create any right for doctors to practise. It only bans practice as a doctor by anyone except a person enrolled in terms of section 15. All that it conveys is that there is no restriction on practice of medicine by doctors enrolled in terms of section 15 and no more. That right to practise has been taken away by Annexure-1. Whether Annexure-1 is law or not is a different question with which we shall concern ourselves later.

17. The Bihar and Orissa Medical Act 1916 contemplates setting up of a Council by the name of "The Bihar Council of Medical Registration". In terms of section 15 of the said Act, a register of medical practitioners has to be maintained by the Registrar of the Council. It is his duty to "make necessary alterations in the address or appointment, the registered qualifications or titles of practitioners and to erase the name of any practitioner who has died." I have already quoted earlier the provisions of section 15 of the Indian Medical Council Act, 1956. The two provisions read together, it must be conceded, do not prohibit Government doctors registered as medical practitioners to practise medicine. If there is no restriction on private practice by Government doctors, what is its nature? It is a right or is it a privilege. The attitude of the State is that it is only privilege. According to them, every Government servant entering Government service undertook to be bound by the rules of service. In terms of the service conditions a doctors could indulge in private practice only with the sanction/permission of the State Government. In that sense according to learned Advocate General, it was a privilege. If it is a privilege no law is needed to withdraw that privilege. It can be withdrawn even by a resolution. If however, the Government doctors have a right, they cannot be divested thereof except by law.

18. It cannot be doubted that restraints can be placed upon that right, if it is not consistent with the provisions of Article 19(6) of the Constitution. I shall assume for the sake of argument that the impugned Government resolution, Annexure 1 is not law. It does not restrict the right of a medical practitioner to practise. But the real

question is whether there is the right in any person registered as a medical practitioner to be appointed in Government employment or can a Government employee say that he cannot be bound by service conditions. There is no such right. The real question, therefore, is to find out whether officers in Government employment have the right to indulge in private practice. It must be conceded that right to enter Government employment is entirely different from right to practice. Again it is the right of every qualified person to be considered for appointment. It cannot be doubted that the Government has the right to lay down the terms of employment. What is being regulated is the right of employment of the doctors and the incidents of employment, in this connection, Rule 55 of the Bihar Service Code 1952, which lays down the general conditions of service, is rather significant. It reads as follows:

'55. Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Government which pays him, and he may be employed in any manner required by proper authority without claim for additional, remuneration whether the services required of him are such as would ordinarily be remunerated from general revenues or from a local fund or from the funds of a body incorporated or not, which is wholly or substantially owned or controlled by the State Government or Government of India, which operates, or would operate in Bihar, even though its headquarters may be outside the State.

It is not in controversy that the rules in the Bihar Service Code have been framed in exercise of powers under Article 309 of the Constitution. The Bihar Service Code which is in force at the moment was framed in 1952. Thus when the petitioners entered Government employment, they bound themselves by Rule 55. Every moment of the day, therefore, is at the disposal of the State Government. In what way those 24 hours can be spent can be regulated by the State Government. By banning private practice Rule 55 has been enforced in a negative manner. Just as there is power to command do this or that, it must be conceded the power to command its employees to say do not do this or do not do that'. Such an injunction would be consistent with Rule 55 of the Service Code. Conceded there are working hours prescribed, but that is only a matter of convenience. The Government wants them to remain free so that the employee may be available whenever he may be required by Government. Government also wants that they should have some rest, have some family life. The permanent power of the Government to order any of its employees to turn up at any time of the day cannot be disputed for a moment. The period or periods beyond the usual routine of daily work is/are at the disposal of the Government. Rule 55, therefore, must be taken as a condition of employment of the teacher doctors. Rule 55 is law consistent with Article 19(1)(g) and Article 19(6) of the Constitution. In the face of this rule, if the petitioners have been permitted to indulge in private practice, they could not clothe themselves with that right. The right claimed by them was nothing, but mere privilege. Being privilege, it could be withdrawn any moment by the State Government. No law is needed to withdraw a privilege. That can always be done by executive order. In that view of the matter, it is not necessary to consider whether Annexure-1 the Government decision was law or not. Even if it is not law it has a binding effect, any body disregarding it will do so at his own risk. That saves us from lot of discussions about the nature of law and whether Annexure fulfils those requirements.

19. Faced with this situation, learned counsel for the petitioners submitted that rule 55 of the Bihar Service Code came into being in 1956, but the right to practise was

there from before the Constitution came into being and, therefore, that right must be deemed to have been sanctified by Government Notification dated 15.4.1950. The submission is fallacious. If rule 55 came into being in 1956, so did the Indian Medical Council Act. That also was enacted in 1956 on the 30th December, 1956. Our attention was drawn by learned counsel for the petitioners to a Government Notification dated the 15th April, 1950 published in the Bihar Gazette, Part II dated the 26th April, 1950. It reads as follows:

The 15th April, 1950. No. 3555 3L-27/504-In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Bihar is pleased to make the following rule, namely:--

All enactments, rules and orders, whether made under any enactment, or otherwise, which regulated the recruitment and condition of service of persons appointed to public services and posts in connection with the affairs which are now the affairs of the State of Bihar and which were in force immediately before the 26th January 1950. Shall, until provision is made by or under an Act of the State Legislature to regulate such recruitment and conditions of services be in force as if they had been made by virtue of the powers under the said proviso.

By order of the Governor of Bihar

Sd/-L.P. Singh

Chief Secretary, Bihar.

On the basis of the above Notification, it was contended that Government servants posted on practising posts had right to practise and that was the law prior to the Constitution. No law having been enacted after the introduction of the Constitution, negating the teacher doctors of their right to private practice, legal sanction must be accorded to the right of private practice to teachers doctors. I have indicated earlier that section 15 of the Medical Council Act did not create any right of private practice. It only prohibited non-enrolled person from indulging in medical practice. It left the field open for the registered practitioners registered as such. But that is no creation of the right.

20. I am unable to find any substance in this submission for yet another reason. Even before the Constitution came into being, every servant of the Government was employee of the Government for all the 24 hours. Rule 60 of the Bihar and Orissa Service Code, First Edition, 1929 read as follows:

60. Unless in any case it be other-wise distinctly provided, the whole time of a Government servant is at the disposal of the Government which pays him, and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenue, from a local fund, or from the revenues of an Indian State.

Thus at all times every Government servant took employment subject to the condition that every moment of the day was at the disposal of the Government. No where was it distinctly provided otherwise. It is thus obvious that he had no right to any employment, occupation, vocation or any other category of business since he was a

whole time employee. It is futile to suggest that any doctor employed in Government service in this State had/has a right to private practice. It is another matter that Government did not stop it or described some as holding non-practising posts, and some as practising posts, but none of them could practise as of right. That was a mere concession, a privilege.

21. The submission urged on behalf of the petitioners that the petitioners had right of private practice, is unfounded for yet another reason. Rule 12 of the Bihar Government Servant Conduct Rules, 1956, 1972 Edition banned any Government servant from engaging himself in trade or business. That rule so far as is relevant reads as follows:

12. Private trade or employment-- (1) No Government servant shall, except with the previous sanction of the Government engage, directly or indirectly in any trade or business or undertake any employment:

Provided that a Government servant may, without such sanction undertake honorary work of a social or charitable nature to the condition that his official duties do not thereby suffer, but he shall not undertake, or shall discontinue such work if so directed by the Government.

The above rule is numbered as Rule 16 in the Bihar Government Servant Conduct Rules 1976. This leads us to the question whether the profession of doctors is trade or 'business'. Learned Government Advocate rightly submitted that the activity of private practice was 'business'. This submission on behalf of the State was equally and emphatically contested by learned counsel for the petitioners. It was submitted that it is not 'business'. We must, therefore, apply ourselves to consider whether private practice of doctor can be held to be 'business'.

22. It is well known that where an expression has not been defined by law, light may be sought from the dictionary. Where a word has several meanings, the one which advances the object of the provision should be preferred. In *M/s. New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*, MANU/SC/0353/1962 : A.I.R. 1963 SC 1207 Shah, J observed as follows:

It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid.

In *Kunwar Singh and others v. The Delhi Administration*, MANU/SC/0077/1964 : A.I.R. 1965 SC, 871 it was laid down that it is the duty of the Court in construing a Statute to give effect to the intention of the Legislature. V.R. Krishna Iyer, J in *The State of Haryana and others v. Sampurana Singh and others*, MANU/SC/0521/1975 : A.I.R. 1975 SC, 1952 observed at page 1955 that--

Unfortunately, judicial decisions construing the language of the law have resulted in stultifying the objectives of the enactment leading to further amendments.

And again at paragraph 10 his Lordship observed that:--

It is settled law that Courts should favour an interpretation that promotes the general purpose of the Act rather than one that does not.

What holds good in regard to interpretation of Statute should hold good in the matter of interpretation of Government decision/resolution as well.

Thus we have to see whether private practice by doctors is 'business' or not. The Shorter Oxford English Dictionary gives the meaning of 'Business' as follows:--

(1) The State of being busily engaged in anything: diligence.

(2) Activity, briskness.

(9) That about which one is busy; function, occupation ME. b. That with which one is concerned at the time; often spec, the errand on which one comes.

(10) Stated occupation, profession, or trade.

(11) Occupation; esp. serious occupation, work.

(18) Trade, commercial transactions or engagements.

(19) A commercial enterprise as a going concern.

Phrases, a. To mean b.: to be in earnest c. Man of b. 1. One engaged in public affairs.

2. One engaged in mercantile transactions.

3. A man skilled in business and

4. An attorney.

From the above, I have not the least doubt that engaging in profession of a medical practitioner is business. In the mercantile sense it means any concerted activity with the objective of earning profit. But the larger implication of the word is state of being busily engaged in anything. It takes in its sweep occupation or profession as well. All business may not be profession but all profession is business. The observation of the Supreme Court in Barendra Prasad Ray and others v. The Income-tax Officer 'A' Ward, Foreign Section and others: MANU/SC/0282/1981 : A.I.R. 1981 SC, 1047 as regards the meaning of the word 'business' must be taken to be authoritative. It rather settles the issue. In that case the Supreme Court was called upon to consider the expanse of the word 'Business'. It observed as follows:--

15. The expression 'business' does not necessarily mean trade or manufacture only. It is being used as including within its scope professions, vocations and callings from a fairly long time. The Shorter Oxford English Dictionary defines 'business' as 'stated occupation, profession or trade' and 'a man of business' is defined as meaning 'an attorney' also. In view of the above dictionary meaning of the word 'business' it cannot be said that the definition of business given in Section 45 of the Partnership Act, 1890 (53 & 54 vict. c. 39) was an extended definition intended for the purpose of that

Act only. Section 45 of that Act says:--

The expression 'business' includes every trade, occupation, or profession.:

16. Section 2(b) of the Indian Partnership Act, 1932 also defines "business" thus:

'business' includes every trade, occupation and profession'.

16A. The observation of Rowlatt, J. in Christopher Barker & Sons. v. Commr. of Inland Revenue, (1919) 2 XE 222 at p. 228, 'All professions are businesses, but all businesses are not professions.....' also support? the view that professions are generally regarded as businesses. The same learned Judge in another case Commr. of Inland Revenue v. Marine Steam Turbine Co Ltd., (1920) 1 KB 193 held:--

'The word 'business' however is also not in another and a very different sense, as meaning an active occupation or profession continuously carried on and it is in this sense the word is used in the Act with which we are however concerned.'

17. The word 'business' is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income, We are of the view that in the context in which the expression 'business connection' is used in section 9(1) of the Act, there is no warrant for giving a restricted meaning to it excluding 'professional connections' from its scope.

It is not open to this Court to hold that profession is not 'business'. All professions are 'businesses' although all businesses may not be professions. The distinction sought to be made between 'profession' and 'business' is rather ephemeral in the present context. In the present case, as well, I am of the view that "there is no warrant for giving a restricted meaning to the word 'business' as excluding the profession of doctors". I hold that doctors profession is 'business' within the meaning of rule 12 of the Bihar Government Servant Conduct Rules.

23. The legal effect of rule 12 must be that doctors in Government employment have no right to private practice as doctors. Their rights in terms of the Indian Medical Council Act cannot be affected Qua doctor but Qua Government servant it can certainly be restricted. There is thus no infringement of Article 19(1)(g) of the Constitution. That right has been taken away by law. The concession granted to them to work was a privilege The privilege could enure only till the employer sanctioned it. Annexure-1 must be held to be withdrawal of that sanction depriving the petitioners of their privilege to private practice. The intention of the Government is that the teachers of the Medical Colleges should dedicate themselves to research, and advancement of learning during hours in which they are not employed in the hospitals. He should also have some rest. It has been decided that such doctors shall not engage themselves in any private practice. Even in regard to social or charitable work Government has the power to direct teacher doctors or for the matter of that any Government employee not to undertake such work or to discontinue such work if

so directed by Government. The restriction enshrined in rule 12 takes away the right conferred by Article 19(1)(g) of the Constitution.

24. In the view that I have taken the submissions urged on behalf of the petitioners that rule 16 of the Bihar Government Servant Conduct Rules 1976 being a rule enacted after the Constitution came into force on the 26th January, 1950, it should be interpreted in the context of fundamental rights guaranteed under Article 19(1)(g) of the Constitution does not merit serious consideration. The rule was there much before the 26th January, 1950. In that background, it is not necessary to consider the Wight of the decisions of the Supreme Court in *V. Sasidharan v. M/s Peter and Karonakar and others*: MANU/SC/0022/1984 : A.I.R. 1984 SC, 1700. The Secretary Madras Gymkhana Club Employees' Union v. The Management of Gymkhana Club : MANU/SC/0227/1967 : A.I.R. 1968 SC. 554, *M/s L. M. Chitale and another v. The Commissioner of Labour* : MANU/TN/0192/1963 : A.I.R. 1964 Madras, 131 and *Sankaranayana Pillai v. The Executive Officer Panchayat Board Ayikudi* : MANU/TN/0130/1966 : A.I.R. 1966 Madras, 262 relied upon by learned counsel for the petitioners. The meaning of the word "business" must be held to have been settled beyond controversy by the Supreme Court in the decision of *Barendra Prasad Ray* (supra).

25. Even if it is conceded for the sake of argument that teacher doctors had the right of private practice, that was taken away as far back as 1965 when a Pay Revision Commission recommended payment of Non-Practising allowance to doctors. The recommendation was accepted and implemented by the State Government by resolution No. P.R. G2-2/65- 67F dated 10.3.1965. Thus every post in Bihar Health Services became non-practising. Some posts were left as practising posts. Those who filled such posts had to suffer 20% deduction from their salary subject to a maximum of Rs. 350/-. Every person holding such posts went through it. This would amount to tacit acceptance of the fact that the basic character of a post filled by a doctor was non-practising and it was a privilege which could be withdrawn by Government at any time.

26. The posts of Principal, Superintendent and Deputy Superintendent were also non-practising posts. No one has ever considered it worth challenging the declaration of posts of Principal Superintendent, Deputy Superintendent, Professors of Anatomy; Physiology etc. as non-practising, on the footing that having been enrolled as a doctor in terms of Indian Medical Council Act and Bihar and Orissa Medical Act created a right or fundamental right of private practice. These again impliedly meant that the posts were Non-Practising and it, was upto the Government to permit practice or not. Doctor teachers engaged in Non-Clinical Departments were not allowed to practise, but since 1983 they were given option to remain in non-practising or to do private practice after obtaining permission from the Government. Such doctors on the non-clinical side in the Medical Colleges, who were allowed by the Government to do private practice were under obligation to deduction of 10% from the basic pay. These conditions having been accepted by every teacher doctor since 1965, it is difficult for them to turn round in 1986 and contend that a teacher doctor had any right to private practice. Their indulging in private practice was obviously privilege. Since for the last forty years and over Government has been branding some posts of teachers as non-practising. This in itself is a pointer to the fact that a doctor teacher like any Government servant has no right to private practice. Any post can be branded as practising or non-practising as suits Government.

27. There is yet another aspect of the matter. Learned counsel for the petitioners did not dispute that in regard to employment of doctors in Government service some posts are practising and some are non-practising. Some of the non-practising posts to enumerate are Director of Health Services and other doctors posted in Secretariat, Superintendents of Hospitals etc. It cannot be disputed that the posts are interchangeable. Assuming that a doctor is filling a post which is branded as practicing he can any day be transferred to the Secretariat as Deputy Director of Health Services or Director of Family Planning Officer or a Director of Health Services. If they had right of private practice, then despite the fact though they filled non-practising posts, they would be entitled to practise. That would be the logical result, if it was conceded that teachers in Medical Colleges, or for that matter in Government employment have a right of private practice. Mr. Basudeva Prasad or any of the counsel for the petitioners did not contend and rightly that despite the fact that a doctor filled a non-practising post, he would have the right of private practice. If a doctor can be transferred from a practising post to a non-practising post and a non-practising post to a practising post, it follows that as of right no doctor can indulge in private practice. It was not disputed that Government should transfer any of petitioner Nos. 2 to 25 to the post of Superintendent of any hospital, Deputy Director of Health or a Director of Health. It was rightly conceded that they had no right to stick to the teaching post in the Patna Medical College and Government would be well within its power to transfer any of them to non-practising post. This, is another clear pointer to indicate that no doctor in Government employment has right of private practice much less any fundamental right Qua Government employment. If any Government employed doctor wishes he may walk out from Government employment and his right of private practice would remain unfettered but being in Government employment with undertaking to be 24 hours servant, he cannot claim a right of private practice. Privilege they had. That privilege has been recalled.

28. The Pay Revision Commission made certain recommendations in regard: to doctors in 1965. The recommendations were accepted by the State Government. Part of the recommendations need to be reproduced here:

HEALTH DEPARTMENT

The Medical and Public Health Cadre will be combined and will be called the 'Health Service'. The Cadre will consist of duty posts on the administrative side and teaching posts calculated on the basis of actual requirements of deputation to the teaching side. The holders of teaching posts will be treated to be on deputation to the teaching branch for the time during which they are employed as teachers and will be in the teaching posts on officiating basis. If they cease to be teachers and revert to the Administrative Branch, they will draw pay according to their position in the cadre, that is, they will be either Civil Assistant Surgeons, Selection grade officers, Civil Surgeons, Senior Medical officers or holders of equivalent posts or Deputy Director, Additional Directors and Directors. If anyone Junior in the cadre to a person on the teaching side draws pay in the administrative post in scale higher than drawn by the person on the teaching side other than as purely casual or temporary arrangement in exigencies of public service, the latter will be permitted to draw the pay he would have drawn but for his deputation to the teaching side.

Teaching Side:--

(a) Principals of Medical College--There will be whole-time non-practising scale. The Principal may continue to teach in his subject part-time and do clinical work in the hospital in addition to the full complement of professors sanctioned in the particular department in order that he may continue to have contact with teaching and clinical work.

(b) Professors of Medical College--There will be non-practising scale, 25% of the total posts of professors will be treated as selection grade posts.

(c) Lecturers--There will be Non-Practising scale of pay.

(d) Junior Teachers--They will get basic non-practising pay for Civil Assistant Surgeons plus special pay of Rs. 75 per month. On the teaching side there will be no special pay or other allowance except for Junior Teachers, as mentioned below. If a person of the teaching side is allowed private practice, the remuneration drawn by him at any time will be the non-practising pay admissible minus 20% of that pay subject to a minimum of Rs. 115 and maximum of Rs. 350.

From the above, it will be seen that the holders of teaching posts are to be treated as on deputation to the teaching branch till such time when they are employed as teachers and would be in the teaching posts on officiating basis. The petitioner doctors, therefore, are holding teaching posts on officiating basis only. They can be reverted/recalled to the administrative side at any time. It will further be seen from the above that if a person of teaching side is allowed private practice his remuneration will be non-practising pay minus 20% of that pay subject to a minimum of Rs. 115/- and maximum of Rs. 350/-.

29. To concede, right of private practice to doctors in Government employment would lead to startling results. A lawyer enrolled as such and appointed to the judicial service would claim right of private practice despite his filling a judicial office. Enrolment as an Advocate certainly gives a person a right to practise, but that right is abandoned by the incumbent and cut down by the employer the moment he accepts Government employment. The position of doctors in Government employment is not different from erstwhile lawyers being elevated to judicial service. The analogy between the practice of a doctor is on the same footing as the practice of a lawyer, Both would be 'business' within the expression mentioned in rule 16 or the Bihar Government Servant Conduct Rules. For all the reasons, mentioned above, I have considerable difficulty in holding that doctors in Government employment have a right of private practice. They had a privilege. That privilege has been withdrawn by Annexure-1. There can be no question of a fundamental right in that regard.

30. Learned counsel for the petitioners contended that the practice of doctors is 'profession'. On it was contended 19(1)(g) was deliberately omitted from Rule 12 of the Government Servant Conduct Rules, 1956. Article 19(1)(g) recognizes the right of all citizens to practise any profession or to carry on any occupation, trade or business. Rule 12 prohibits a Government servant from engaging in trade or business or undertaking any employment. There is no reference to 'profession' in that rule. On that basis it was submitted that 'profession' is something different and class apart from 'business' and, therefore, the profession of a doctor did not come within the mischief of rule of the Government Servants Conduct Rules. I regret, I have some

difficulty in accepting this submission. The words 'profession', 'occupation', 'trade' or 'business' are not mutually exclusive. They have been used to cover the widest possible field. I am unable to accept that they are mutually exclusive. It cannot be doubted that a doctor or a lawyer's practice is 'profession' as well as 'occupation'. Similarly, several sets of activities are trade as well as business. A partnership firm indulges in trade as well as in business. A teacher carries on an occupation as well as a profession. In my view, therefore, all the four expressions must be given their widest possible meaning. I have discussed earlier the various meanings or adjuncts of the expression 'business'. On that basis, I am definitely of the view that the non-use of the expression 'profession' in rule 12 of the Bihar Government Servants Conduct Rules 1956 is not exclusive of the business carried on by them. The word 'business' has been used in various situations in various senses, but it is cardinal rule of interpretation that if several ideas are attributable to one expression and if any of them subserves the law maker, there is no reason to cut down the meaning of that word. In my view, 'profession' is included in business'. Rule 12, therefore, prohibits doctors from doing private practice-call it 'profession' or call it 'business'.

31. The impugned Resolution (Annexure-1) thus is not infringement of Article 19(1) (g) read with Article 19(6) of the Constitution.

32. Learned counsel for the petitioners then contended that the impugned resolution was hit by Article 14 of the Constitution inasmuch as private practice by teacher doctors has been banned, but other Government doctors have been permitted to continue practice. Thus the resolution was violative of Article 14 of the Constitution. I regret, this submission has only got to be stated to be rejected. It cannot be doubted that Article 14 permits reasonable classifications and discrimination. On the basis of such classification the teachers of the nine Medical Colleges constitute a special class. State Government was, therefore, well within its right to introduce ban on private practice by Government doctors by stages, in phase wise manner. Banning private practice by all the doctors in the State may have been meant hardship to citizens at large. Government could, therefore, certainly while banning private practice by teacher doctors let alone other doctors in Government service. The implementation of a policy can always be done phase-wise depending upon the finances, and the administrative capacity/exigency to implement decision. It will not be an easy problem to prevent teacher doctors from indulging in private practice in a clandestine manner. Government cannot, therefore be restrained from implementing the policy banning private practices in stages. No one has suggested that private practice by other Government doctors will not be banned. What and how a policy can be effected administratively is for the Executive to decide. The judiciary would be transgressing its limits if it lost sight of administrative and financial constraints. Policy making is the business of the Executive. So long as the formulation of the policy or its implementation does not infringe any of the provisions of the Constitution, I see no reason for the judiciary to interfere in the implementation of that policy. Courts alone are not the sole judge of the welfare of the people. The judiciary has been commanding its field of activity. No harm in that, yet there are limitations on judicial activities. In my view, therefore, Annexure-1 does not contravene Article 14 of the Constitution.

33. Learned counsel for the petitioners relied upon State Government orders referred to in Manual of Appointments of and Allowances of Gazetted officers in Bihar, 1958. Statement V shows the non-practising post of Civil Medical Department excluding that of the Directors of Health Services (D.M.S.) who were allowed to draw non-practising compensatory allowance. It refers to Government orders from 1943 onwards. They

refer to the posts of Deputy Inspectors General of Civil Hospitals Bihar (now Deputy Director of Health Services (Medl.) Bihar, Superintendent, Patna Medical College Hospital, Principal Darbhanga Medical College, Professor of Anatomy, Lecturer of Physiology, Casualty Officer, Patna Medical College Hospital, Civil Assistant Surgeon, Indian Medical Hospital, Kanke and several other posts held by doctors. These notifications date from 1943 till 1951. On the basis of these Government orders it was contended that they showed that posts were practising posts and non-practising thus recognising the right to practise. I regret, they point unmistakably to the conclusion that Government could declare any post as practising or non-practising just as it suited Government. The fact that some posts were declared non-practising by the State Government itself is indicative of the fact that Government at all times had the right to declare any post as non-practising, i.e. to take away the privilege of private practice enjoyed earlier by doctors. It is thus idle to contend that doctors in Government employment have the right of private practice.

34. Learned counsel for the petitioners were eloquent in contending that there was no nexus between the object sought to be achieved and the act of the State Government in placing a ban upon private practice by teacher doctors. I have quoted the impugned notification earlier. The objective is to provide better medicare to people of State. It was contended that in respect of teachers there was no question of providing better medical treatment, as teachers their job was to teach. That had nothing to do with better medicare, I regret, this is a very narrow view of the matter. Medicare has short term and long term implications. The shorter implication is the immediate treating of patients received in hospitals. That objective can be fulfilled in the short term by attending to the patients immediately, but the long term view of the matter is to provide good education in the classes and the wards so that good doctors are produced. If good doctors are produced, better medicare can be provided to the ailing masses. It is only work with dedication that can provide the best medical attention. If the teachers do not show dedication in teaching, if their time is not devoted to studies at home and if their time beyond ward hours is spent in private practice teaching in the class room is bound to suffer. It has now become common for teachers to miss their classes or to turn up late in the ward. When they should be in the class and wards they keep themselves engaged in private practice. In my views, therefore, medicare cannot be improved unless teaching and that too with dedication is effected. It is true that teachers doctors, at the moment are at the top of the profession but with the want in dedication the medicare in the Medical College hospital is at rock bottom. As they are not able to give their very best to the classes and to the wards, they should make room for others with a dedication. Relieving the suffering masses provides its own satisfaction. Any number of dedicated doctors can be found who are not too anxious about minting money. Every one is not a mammon worshipper. Teachers of renowned Medical College Hospitals in this country like All India Institute of Medical Science, Delhi and Christian Medical College Hospital, Vellore do not enjoy the right of private practice. Similarly, there are several hospitals all over the country where doctors do not have the right of private practice. They are content with their salary provided to them. But there is no failing in attending to patients nor in improving their proficiency every day. It is therefore, idle to think if the present day doctors are not allowed private practice, which may result in their walking out, the ailing patients will be thrown into a death trap. In my concluded opinion, there is direct nexus between the banning of private practice and the objective of providing better medicare.

35. It was submitted that the order banning private practice had been stayed on 1.10. 1986, but the order for stay was vacated on 24.10.1986. Learned counsel for

the petitioners submitted that within the last eight months Government has not done anything either to improve the state of affairs in the hospitals nor has it been able to implement its decision by taking action against doctors, who have indulged in private practice. I regret, this also is an entirely irrelevant issue. The malady is so serious and deep that it is no joke to improve matters within the short time of eight months. There is no 'Open Sesemme' about it. The state of affairs in the hospitals have created vested interest. Doctors and staff of the hospitals are interested in the decision not being implemented. On top of it is the pendency of this writ application. This may be a good ground for not taking action against errant teacher doctors. The Government would not be knowing which way the High Court would go. They may very well have postponed their coercive action until the decision of this Court. I for one cannot hold them guilty of any delinquency, if they have not initiated a departmental proceeding against any doctor for having contravened Annexure-1, I would only like to add that if the High Court took one year to dispose of the writ applications, are we justified in expecting better result from the Government by not initiating the departmental proceedings against errant teachers, who have not stopped private practice.

36. It was also submitted that the salary envisaged to the teacher doctors was a pittance, which was irrational, and also amounted denial of any salary thus infringing the fundamental right to them. I regret, the pay structure is not a matter for this Court. It is for the Executive to decide. It is true that the doctors have become used to enormous practice running into lacs of rupees a month. Certainly it cannot be advocated that that should be the salary paid to the teacher doctors. Government has decided to extend them the salary admissible in terms of the U.G.C. Scale plus 40% thereof with a maximum of Rs. 600/-. This is certainly better than other services. If any doctor considers it inadequate as a Government employee, he is free to walk out of the colleges and search the lac of rupees by private practice. In order to earn big money they must take big risks through private practice, and not to do so astride the shoulders of Government employment. Granting a thousand rupees more or less to them will not satisfy them. Certainly their emoluments can be improved but, in my view, the emoluments provided are not irrational. The scale of salary provided to them does not stand unfavorably to the teacher doctors of All India Institute of Medical Science, New Delhi or Christian Medical College Hospital, Vellore. I wish they develop the dedication and work culture which is found in these two institutions.

37. My conclusions, therefore, are that doctors in Government service, be they employed in colleges or be they employed elsewhere, never had nor do they have any right of private practice. Neither there is any fundamental right nor there is any statutory right. They have been accorded from time to time the privilege of private practice. That privilege was withdrawn by impugned Annexure-1. Since 1929 at least doctors in Government employment have been 24 hours employees of the State. "Business" by Government servants is not permitted by rule 12 of Government Servants Conduct Rules, 1956. It is open to Government to direct them how those 24 hours shall be spent. Government expect them to devote themselves to educational studies, research etc. and to rest for a time so that they are not drained out when they come to the wards and the class rooms. Government expect them to turn up in time and remain till such time as prescribed by rules and Medical ethics. The ban on private practice of teacher doctors has direct nexus with providing better medicare to patients. The impugned Annexure-1 is neither arbitrary nor irrational. It has the support of a large body of right thinking citizens in the country. The Government decision is not discriminatory vis-a-vis other doctors in Government employment. The Government decision is for better medicare. If the conditions in the hospitals are

too damaging, the doctors of such hospitals have played no mean part in the deteriorating conditions. The ban is a step in the right direction. I hope Government will strain all efforts to implement it with determination.

38. C.W.J.C. No. 5120 of 1986:

Having disposed of the main thrust of the petitioners, I shall now take up the stand of three citizens of this State. They have challenged the impugned resolution (Annexures-1) of the Government banning private practice. To say the least they know not what they speak. The impugned decision is a step in the right direction. If some people like Ministers and Members of Parliament and Senior Government servants got preferential treatment, that is an aberration in the functioning of the hospitals. That is not the test of the validity of any Governmental action. Aberration will be there at all times. But that is an irrelevant consideration, (sic) (In this view.) therefore, there is no merit in this application. It shall be dismissed accordingly.

39. C.W.J.C. No. 4557 of 1986.

This is an application by teacher doctors of Mahatma Gandhi Memorial Medical College (In short M.G.M.M. College), Jamshedpur. They are posted on Pre-Clinical and Para Clinical teaching posts. It was submitted on their behalf that the question of their absorption as teachers in Government employment has not yet been decided by the Government. They are only Ad-hoc teachers and, therefore, Annexure-1 cannot affect the rights of such of the doctors for indulging in private practice. I regret, the submission is fallacious. Whether they are regular teachers of M.G.M.M. College or their employment is Ad-hoc, they are teachers all the same in a Medical College. Annexure-1 will, therefore, affect them as well. If Annexure-1 affects them adversely or does not suit them, they should better opt not to join the Government employment as teachers in that college. They cannot look to be employed and at the same time contend that they are not affected. Whether they are taken in or some body else is appointed teachers the College is very much a Medical College. The petitioners are teaching there. Annexure-1, therefore, will clearly affect them as well. The fact that they are Ad-hoc teachers is of no consequence. The petitioners of this application would be well advised to make their choice before the question of absorption is finally decided. Teachers employed in Pre-Clinical and Para clinical works have always been considered to be filling with promoted posts. They will, therefore, be in the same situation at least no better than those filling erstwhile practising teachers. In my considered opinion, therefore there is no merit in this application as well. It should be dismissed accordingly.

40. C.W.J.C. Nos. 5047 and 5165 of 1986

In the view that I have taken that teacher doctor have no right of private practice as also that the impugned Annexure-1 is not arbitrary and irrational, there is hardly anything to consider in these two writ applications. In fact, so far as compounders, nurses, sweepers etc. are concerned, they may have a better time if the doctors with whom they are attached give up their Government employment and take to private practice exclusively. I have not the least doubt that there is no merit in any of these two applications and must be dismissed accordingly.

41. Learned counsel for the petitioners in various writ applications endeavoured to draw upon the doctrine of promissory estoppel for assailing Annexure-1. I have failed to appreciate how the petitioners can bank upon the principle of promissory estoppel. The petitioners have not done anything to their detriment resting upon some promise

of the Government. They have at all times taken advantage of Government employment. There is no question of Government resiling from any of its promises.

42. Before I part I must refer once again to one aspect of the matter which was repeatedly dinned unto us by counsel for the petitioners that Government was incapable of implementing Annexure-1 as also incapable/incompetent to improve matters in the hospitals. I regret, we cannot use this stand to strike down a Governmental action. It is only a soothsayer who can say that Government can do and what it cannot. Time alone will show what can be achieved and what cannot. The expression 'Government' includes the petitioners as well. It may well be that this limb of the Government may prove stronger than the other limbs and Annexure-1 may fail in its objective, but what will happen in future cannot be the basis of a decision by a Court of Law. Casting such general aspersion upon functioning of the Executive is irrelevant and uncalled for. Recrimination by sweeping generalisation should be avoided at all costs. The legal presumption is that every Government tries to do its best. The Government may not succeed, but every action is trained in that direction.

43. The cases were heard on sixteen dates (two hours daily). We are beholden to the counsel for the parties for the assistance they rendered to as in unravelling various aspects of legal intricacies.

44. Having given my most serious consideration to all aspects of the matter, I have not the least doubt that there is absolutely no merit in these applications. They must be dismissed accordingly, but in the circumstances of the case without costs.

S. Ali Ahmad, J.

45. I had the advantage of perusing the judgment prepared by Uday Sinha, J. I agree with him that the application should be dismissed as in my opinion also the petitioners have not been able to substantiate that imposition of ban on the private practice of the doctors attached to the nine medical college hospitals, in any way, infringes their right guaranteed under Article 19(1)(g) of the Constitution of India or discriminates them adversely with the other doctors, who are under the employment of the State. In view of far reaching consequences of the case, I however, like to deal with one aspect of the matter which has not been noticed by Uday Sinha, J.

46. It is not disputed that after a long and protracted deliberation the Medical Council of India in its resolution dated 24th March 1976, recommended to the Central Government that for better medicare and for bringing about improvement in imparting of medical education the present system of having part-time/honorary and practising teachers should be given a go by and henceforth the teachers of the medical college hospitals should be whole-time employees without having any right to practice. It appears from Annexures R/1, R/2 and R/3 to the counter-affidavit filed on behalf of the State that the Central Government gave its approval to the aforesaid recommendation of the Medical Council of India. The moment approval was given by the Central Government to the proposal made by the Medical Council of India, it acquired statutory force and the State Government had no alternative but to enforce the aforesaid regulation. In case no ban was imposed on the private practice of the doctors of the nine medical colleges, a citizen could file an application in this Court for a mandamus directing the State Government to discharge its obligation by imposing the ban on the private practice of the doctors attached to the medical college hospitals and, perhaps, this Court would have been left with no choice but to issue a direction as prayed for. Now the State Government has issued the order

imposing ban on the private practice of the doctors attached to the nine medical college hospitals without any direction issued by the Court. The same cannot be challenged, if this Court in absence of Annexure 1 could have directed the State to impose the ban on private practice of the doctors. 48. Learned counsels for the petitioners have vehemently urged that conditions are not ripe for imposition of the ban and, therefore, the object of providing better medicare to the people of State will be frustrated. They also said that since there is no nexus between the object and the actions taken, therefore, the order as contained in Annexure 1 is arbitrary and should be quashed. Undisputedly, the condition and affairs in the nine medical college hospitals of the State are pitiable. This Court had earlier appointed a committee to look into the maladies of hospitals and to suggest remedial measures. The Committee consisted of three very eminent doctors of the State namely, Dr. A.K. Sen, Dr. U.N. Sahi and Dr. Sheo Narain Singh. These doctors, in spite of their busy schedule, inspected some of the medical college hospitals and have pinpointed the shortcomings. They have also suggested remedial measures, both on short term basis and on long term basis. The report is voluminous, but learned counsels for the parties in course of their argument made only casual reference to it, Learned counsel for the Commission also did not place it before us and as such, we did not have the occasion to apply our mind to it. It is, therefore, dangerous to issue any direction on the basis of the report. All the same the State would do well to study it objectively and take steps for implementing the suggestions as far as possible. The report also says that imposition of ban at the present stage on the private practice of the doctors attached to the nine medical college hospitals will not be in the larger interest of the ailing members of the society. before I deal with this aspect of the matter, I would like to bring on record my gratitude to Dr. U.K. Sahi and Dr. Sheo Narain Singh for their assistance they rendered to this Court by submitting the report. So far Dr. A.K. Sen is concerned, he undertook the herculean task of preparing the report in spite of his chronic cardiac ailment. I do not know if the inspection of the medical college hospitals and preparation of report acted as a catalyst to his death. I pay my homage to departed Dr. A.K. Sen.

47. There are nine medical college hospitals in the State. Their conditions are miserable. There are no lights. The roofs of the operation-theaters are leaking. There is water logging in the premises of the hospitals. Certain portions of the premises are occupied by undesirable elements and the atmosphere within the buildings and in the premises is not only suffocating but perhaps, poisonous also. The question then arises if it should be left like that or some steps should be taken to redeem the hospitals where proper medicare may be given to the ailing members of the society. Possibly no one will say that the situation may not be tackled and should be allowed to remain as it is. But there may be differences with regard to the manner in which the situation has to be tackled among those who advocate for taking remedial measure. Experience has shown that the doctors and the para-staff of the hospitals are also substantially responsible for the present ruinous condition of the hospitals. The State think that if the private practice of the doctors attached to the nine medical college hospitals is banned than they shall be able to devote more time in the hospitals and that will make things better. On its own part, the State has also come forward with crores of rupees and has also stated before us that steps are being taken for improving the conditions in the buildings, power-supply, water supply, etc., One may doubt if these steps will improve the fact of the hospitals but certainly it cannot be said that the action taken is such which no reasonable person will take. I do not, therefore, think that the imposition of ban as contained in Annexure 1 can be said to be arbitrary or having no nexus with the objective.

48. Mrs. Kanak Verma appearing on behalf of a citizen in C.W.J.C. No. 5047 of 1986 attacked Annexure 1 on the ground that as result of the ban her client will be deprived of the services of Dr. Mahendra Narain Sinha. According to her, her client had a right to be treated by a doctor of his choice but the State by imposing the ban on the private practice of the doctors has deprived him of his right to be treated by a doctor of his choice. I asked Mrs. Verma what will happen if Dr. Sinha was transferred from Patna to Dhanbad or Bhagalpur, how will he be treated by Dr. Sinha then or he will challenge the transfer of Dr. Sinha from Patna to Dhanbad or to Bhagalpur on the ground that as result of the transfer her client will lose the right to be treated by a doctor of his choice. She had no answer. Mrs. Verma then contended that as a result of the ban imposed on the doctors, conditions have become worse. She said that the conditions in the hospitals are deteriorating every day and the doctors after the ban have increased their fee in their private clinics on the pretext that they are examining the patients under risk and the increase in fee is to cover that 'risk'. Everyone appearing in the cases agreed that in spite of the ban most of the doctors are doing private practice. Mr. Govt. Advocate said that the State has not so far taken action against them because of the pendency of these applications. Speaking for myself, I can not appreciate this. At the instance of the State the order of stay was vacated and the Court was assured that the order of ban shall be implemented. I do not know if this lukewarm is on account of lack of political will or on account of incompetency. All that I would like to emphasise is that if the order is not implemented both in spirit and in words then the situation will become worse and instead of providing better medicare to the people of Bihar, it will be root cause for the death of many. Not only that, if no positive steps are taken against such doctors, who violates Annexure 1 then the State will be helping in the growth of black money in the country because the doctors, who are earning lacs of rupees every month will not show it in their income-tax returns. If the earnings are not shown in the income-tax returns then the National Exchequer will lose its share which will ultimately adversely affect the people and the Nation. I only hope that the assurance given to us by Mr. Government Advocate that Annexure 1 will be implemented both in the words and spirit will not be forgotten.

S.B. Sanyal, J.

49. These writ petitions involve a serious and important question, namely whether stoppage of private practice. Doctors attached to nine premier Medical Colleges of the State of Bihar is for better medicare of the public concerned, the object stated in the Government Resolution quoted in extenso by my Lord Uday Sinha, J. at page 3 of his judgment. The other question involved is whether the ban imposed on private practice amounts to infringement of such Doctors' fundamental right as guaranteed under Article 19(1)(g) of the Constitution of India.

50. As far as the second question is concerned, I am in agreement with my Lords that under Rules 55 and 60 of the Bihar Service Code read along with Rule 12 of the Bihar Government Servant's Conduct Rules 1956 a Government servant is a wholetime servant and he cannot carry on any trade or business without the sanction of the Government. The dictionary meaning of the word "business" takes within its sweep 'occupation and profession' as well. To the same effect is the decision in the case of Barendra Prasad Ray v. Income-tax Officer reported in MANU/SC/0282/1981 : A.I.R. 1981 SC 1047. It is, therefore, manifest unreasonable restriction sought to be put on the fundamental right of the petitioners by an executive fist and not by law as envisaged under Article 19(1)(g) of the Constitution. I find no merit in the argument of learned counsel for the petitioners that the impugned resolution should be quashed

as being ultra vires Article 19(1)(g) of the Constitution and/or section 15 of the Indian Medical Council Act. But, in my opinion, this does not resolve the problem with which the Court is faced that without sanction of the Government, a Government servant cannot carry on an independent profession of his own, he being a twenty-four hours servant of the Government. That being the terms and conditions of service, it is futile on the part of the petitioners to contend that the restriction sought to be imposed on the petitioners' fundamental right to carry on any practice is unreasonable. The submission that Article 19(1)(g) confers a fundamental right on a person to carry on any trade or profession as also the petitioners, statutory right under section 15 of the Indian Medical Council Act, 1956 to practise medical profession is being carved by an executive fist and not by law is wholly untenable since the petitioners have no fundamental right to carry on medical practice as being Government employees and section 15 of the Indian Medical Council Act entitles them to practice medicines in a State if they are enrolled on any State Medical Register. The petitioners having opted for Government jobs, they are bound by the terms and conditions of service. The impugned resolution does not relate to ban to do private practice while not being in Government service. The choice, therefore, is of the petitioners either to accept Government service or to do private practice independently. If an authority has a right to sanction private practice to a Government servant, it has equally the right to withdraw the sanction. Admittedly, a hospital doctor who intends to do private practice has to give a deduction of 20% of his salary to a certain maximum to carry on private practice as a Government servant. This itself suggests that such doctors are given a privilege to do private practice as being Government servants. The impugned order seeks to withdraw that privilege. Therefore, the impugned action of the Government cannot be challenged as an unreasonable restriction sought to be put on the fundamental right of the petitioners by an executive fist and not by law as envisaged under Article 19(1)(g) of the Constitution. I find no merit in the argument of learned counsel for the petitioners that the impugned resolution should be quashed as being ultra vires Article 19(1)(g) of the Constitution and/or section 15 of the Indian Medical Council Act. But, in my opinion, this does not resolve the problem with which the Court is faced.

51. Apart from the Association of Doctors assailing the impugned resolution in C.W.J.C. Nos. 5047/87 and 5120/87, the citizen has moved this Court that the Government is playing with the lives of the persons who are totally deprived of getting medical advice either from a specialist doctor of their choice from a hospital which is mismanaged and ill equipped violative of Article 21 of the Constitution of India. According to them, the medical college hospitals are lying without proper care for last 10 years. The condition of the operation theatre is unfit for scientific works and until the State Government discharges its own responsibility by removing the ills at their end without delay, the imposition of the ban would be detrimental to the public at present. The opinion of better medicare in the hospitals has been formed on no survey, no data and no statistics, as such arbitrary and violative of Article 14 of the Constitution. It is, therefore, a case of public interest litigation or actio popularis, seeking judicial review of governmental action.

52. The action to impose ban on private practice is for the object of providing better medical facilities in the nine Medical College Hospitals. In my opinion, therefore, the action is circumscribed by the stated object and must subserve the object. It must not be to transgress the object or to frustrate it.

53. I will now consider the arguments of learned counsel on this aspect of the matter. Mr. Basudeva Prasad appearing on behalf of the petitioners contended that

even if it be conceded that the State has power to stop private practice of these doctors by the impugned resolution, the discretion has been exercised not in public interest but on irrelevant considerations and the reason assigned is invalid. The action impugned amounts to fraud in exercise of power vested in the Government in order to project that the deplorable medicare in the hospitals is due to greed and self-aggrandisement of the doctors attached to the hospitals. According to him, better medical facilities being the objective, asking the doctors not to render those facilities outside the hospitals is contrary to the stated object. Referring to the report of the Committee of Experts appointed by the Court by its order dated 1.10.86, learned counsel submitted that there is no hospital worth the name where a person is assured of real and effective medicare in perfect security. Most of the doctors attached to the Medical Colleges and Hospitals being renowned specialists in their respective discipline, to obtain their services now one has per force to go through Medical College Hospitals either as outdoor patient or as indoor patient. If the conditions in the hospitals deter persons from going to the hospital, they will be deprived of their services outside the hospitals hitherto being enjoyed by them. If by the ban imposed on private practice and the illusory and discriminating remuneration provided to them, good doctors are constrained to resign from their posts, the poorer section of the ailing patients will be deprived of their services in the hospitals, as their means may not permit to obtain their private services. The hospitals will be left with comparatively lower talented doctors who having failed to establish private practice may decide to stay back. Therefore the learned counsel submitted that the imposition of ban on private practice will be totally frustrated of the stated object and not at all in public interest.

54. The learned Government Advocate, on the other band, submitted that the present conditions obtainable in the hospitals have been brought about by the doctors themselves in order to advance their private practice. They, are too busy and exhausted in their self-aggrandisement caring little as to what happened in the hospitals. It is in their interest to see that the conditions of the hospitals deteriorate to an extent that the patients will prefer to get themselves treated in private clinics than to get themselves treated in the hospitals. Government has formed its opinion bona fide after having appraised itself of all relevant considerations that public interest would be better served by stopping the private practice of the doctors attached to 9 Medical Colleges and Hospitals.

55. It is admitted on all counts that Bihar unlike metropolitan cities like Calcutta, Madras, Bombay and Delhi does not have standard nursing homes where facilities of modern medical gadgets are available manned by reputed doctors and specialists. The patients generally, therefore, get themselves treated by the doctors attached to the hospitals either in their clinics or improvised nursing homes as also in the hospital where some modern medical gadgets requiring services to them are available. In course of argument it was admitted on all counts that there are not too many unattached doctors of repute carrying on private practice and those who are in private practice there is a mela around their chambers. By stoppage of private practice majority of the people of the State, poor or rich, will have to seek their remedy in these hospitals. It was for this reason this Court on 1.10.86 thought fit to have a report from a Committee of persons of impartial and undisputed integrity, in order to arrive at a just and fair decision bearing in view the rival contentions. If appointed with the consent of parties a Committee of three eminent Doctors some time attached to the hospitals with a social and welfare background in the State, namely, late Dr. A.K. Sen, Dr. U.N. Shahi and Dr. Sheo Narain Singh, to report on the following matter:

- (1) Whether stoppage of private practice in the present state of affairs will be prejudicial to the ailing patients of the State.
- (2) What should be the time gap essential in public interest for implementation of the order.
- (3) What improvement in the hospital attached to nine medical colleges are necessary to be made for its efficient functioning.
- (4) Whether infrastructure of the hospital is sufficient to admit the additional inflow of patients as a result of the ban on private practice of the petitioners and their proper treatment.
- (5) What short and long term change in the hospital are suggested for adequate and efficient treatment of the patients in the hospital indicating priority and approximate expenditure.
- (6) Any other valuable suggestion incidental to and connected with the questions at issue.

At the time of hearing of the stay matter, materials were placed in the form of supplementary affidavit that the petitioners altogether attend about 800 beds in the city of Patna itself and in case there is cessation of private practice present infrastructure of the hospitals and state of affairs obtainable will not be able to handle the extra burden and render efficient medicare. It has been stated that the hospitals are already over-burdened on account of large number of patients. It was further stated that in the city of Patna there are about 90 operation theatres where these doctors carry on operations and in case they are not allowed to perform these operations there it will not be possible to operate those patients in the Patna Medical College Hospital as sufficient operation theatres are not available in the hospital to handle such a large number of operations. The learned Government Advocate, on the other hand, while conceding that the conditions in the 9 medical college hospitals may not be desirable but the Government is taking steps to improve conditions in the hospitals and with that end in view large sums have been sanctioned. Other ancillary measures are being taken and the conditions are bound to improve soon. He also submitted that it is true that the posts of Principal have not been filled up in several medical colleges but that too will be done within four months including filling up of superior posts which have not been filled up so far. The Court ultimately refused to stay the operation of the order banning private practice depending on the assurance of the Government that the condition of the hospitals in the meantime would be improved.

56. The Committee of Experts who were called upon to submit a report, visited medical college hospitals at Patna, Muzaffarpur, Bhagalpur, Nalanda, Dhanbad, Gaya as also the Rajendra Medical College at Ranchi and M.G.M. College at Jamshedpur. The Committee has submitted a detailed report after inspecting all the aforesaid nine colleges. The Committee has taken great care and pain to set out their findings as also their opinion on the basis of facts found, as was directed by this Court. The report, therefore, is a valuable material meant for Court's consideration to correctly weigh and balance the rival contentions. I, therefore, took care to peruse the whole of it apart from the paragraphs specifically referred to in course of argument.

56A. From the Committee's report it has to be noticed at the outset "enquiry revealed that these Hospitals had not been inspected by the Health Department for years for

professional, administrative and other matters". The Committee interviewed Residents, House Surgeons, Interns and Nurses. It visited Health Department and discussed with Director of Health Services, B bar, and officials of the Medical Education and Family Welfare Department. It gathered information from public through press insertions and interviewed medical men. The questionnaire circulated is at page 10 of the printed book. The Medical College Hospitals were inspected from 12th December 1986 till 9th May 1987.

57. Their finding with respect to each of Medical College Hospitals is as follows:

Patna Medical College Hospital.

This institution which once occupied a foremost position as a centre of medical education and treatment in the country with an enviable reputation in foreign lands is lying in ruins with several outdated buildings, unauthorised occupation by various types of people like pavement dwellers, vendors, undesirable urchins, cattle, dogs, bathing ghats, temples.

schools and residences mingled with hospitals, far from the atmosphere of a teaching hospital A drive to the Indira Gandhi Institute of Cardiology is difficult to negotiate. One wonders how a case of acute attack, panting for life, can reach there to be saved. Further, east cannot be negotiated at all because of huts and other hindrances. The stinking smell from the morgue, port-mortem room, the noise of quarrels, Jhalas and other musical instruments, songs on loud-speakers are sufficient to do harm to a cardiac patient. The department is in a condemned building for about 14 years, so are the Medical, Eye and E.N.T. and the administrative buildings. Hospital for women have leaking roofs and pipes demonstrating callous apathy, inefficiency and negligence of the authorities concerned Water supply on the second floor of the Rajendra Surgical Block and in other parts is deficient. Electric supply is frequently interrupted for hours. The medical men appear to be somewhat depressed and frustrated. It appears that they had no job satisfaction because the facilities in the hospital for high professional pursuits and academic attainments are lacking. Several costly instruments are lying idle for installation, repair and maintenance. The present space in the hospital is inadequate. Large number of buildings are condemned for several years without attracting the notice of the authorities. It is full of dirt, filth, debris etc. The budget is made by the Accountant. The first allocation of funds comes between June to August and then in February next year. The departmental head does not know the amount sanctioned or allocated to his department. No allocation of fund in the budget for the regular maintenance of equipment and for research has been made. The Pathology Department complained that where as its grant for laboratory was Rs. 25,000/- in the year 1948 it has come down to Rs. 10,000/- in 1986. Out of 39 Resident Surgical Officers and Resident Medical Officers only 7 have been provided with quarters. The allocation of fund for drugs for an indoor patient is Rs. 4.75 per day and for an outdoor patient is Rs. 1.0 per day and the diet per day from May 1986 is Rs. 3.56." This is the pattern in ail hospitals.

58. In addition to sanctioned beds, the following are the extra patients.

Surgery--250 floor patients per day.

Orthopedic--As against 86 sanctioned beds, 180 patients per day.

Pediatrics--Floor cases 57 to 82 per day in rush season.

Emergency--These cases are treated in a room 25' 'x 25' with ten beds for 110 patients per day with only one sucker and three oxygen cylinders.

Out of Rs. 90,60, 000/ = plan, non-plan is Rs. 12,61,000/- a sum of Rs. 1,00,000/- was only sanctioned in November 1986 when the Government claimed improvement and no decision has been taken for the utilisation of the promised amount of Rs. 50 lacs.

Obstetrics and Gynecology--Except the ground floor the other floors are occupied by anti-social elements, and murders, stabbing and dacoity manifest the atmosphere in which the academic pursuits are carried on Government grant is only 50% of the figures of actual operation done.

Darbhanga Medical College Hospital

59. The casualty ward has no operation theatre and resuscitation arrangements. No routine investigations are done by the clinical pathologist for the Surgery Department. Intensive care unit has not been started as yet. 42 paying beds in the newly constructed building are occupied by illegal occupants and have not been vacated by the district administration. Investigation facilities are not up-to-date for modern scientific treatment. No specialised x-rays are done. The film supply has been reduced from 18225 in 1964 to 10,050 in 1985-86. The Pediatric Department is in a small room of 8 'x 10' which is said to be the treatment room for serious patients. There were nine patients in three small cots. Large number of patients were found on the floor. There was no adequate space for Cardiology Department. In the hostel for Nurses there is only one tap with erratic supply which prevents the Nurses from taking their bath. Due to water logging the Medical Officers have to go on rickshaw to their respective wards. The campus is occupied by unauthorised and antisocial and almost all clinicians and nurses complained of insecurity.

Bhagalpur Medical College Hospital

60. In out patient department there is no room for Registrar or separate waiting hall for male or female or separate dressing room. The operation theatre has leaking asbestos roof with frequent electric wire short circuiting endangering the lives of patients, Doctors and other staffs. In Pediatric Department there is no room for treatment of serious patients. There is no Intensive Care Unit. In Obstetrics & Gynecology Department there is no emergency lighting arrangement in the Labour Room and the operation theatre. So far as pathology Department is concerned, annual laboratory grant is only Rs. 6000/- which includes teaching and examination also. There is no facility for investigation of emergent patients. The Orthopaedic Department is congested and needs immediate expansion. The department has one Medical Officer only. There is no accommodation for Resident Medical Officer. The hospital requires all round improvement. Nalanda Medical College Hospital, Patna.

61. No anesthetist is placed on duty and has to be called from his residence at Patna. The Senior Surgeons live at 8 K.M. away in Patna. No investigation and/or resuscitation facilities are available in the emergency. Doctors feel frustrated and disgusted. The Medical Officers have to leave their cars and go on a rickshaw to the wards in rainy season. No investigations are done in the emergency as the college departments do the routine investigations which is 3 Kms. away from the hospital with no proper transport, total pathology department grant in the College being Rs. 5000/- annually. The Orthopaedic Department is single man department with only one Associate Professor for the last 9 years even with no plasterman. There is no

automatic laundry and incinerator.

A.N. Magadh Medical College Hospital, Gaya.

62. Intensive Care Unit is not working for the last two months. One operation theatre is for both clean and septic cases in Obstetrics and Gynaecology has no water tap. Two out of three water pumps are not functioning.

There is not a single quarter for teachers, not even for Principal and Superintendent.

Patliputra Medical College Hospital, Dhanbad.

63. No E.C.G. has been done in the hospital for the last 3 years and blood sugar is done only twice weekly and no specialised X-rays are done. Water scarcity is alarming. It is available for six months only in the Medical College and for the rest of the period, Medical Officers have to bring water in cans for themselves.

S.K. Medical College Hospital, Muzaffarpur.

64. Surgery Department works in only one operation theatre within recovery room and I.C.U. There is only one common operation theatre both for Eye and E.N.T. Department. In Dental Department no equipment has been purchased after 1980. It is one man department and the doctor has to sterilise the instrument himself.

Rajendra Medical College, Hospital, Ranchi.

65. The institution is imparting training and teaching for undergraduate and postgraduate medical degrees and is a leading medical centre in Bihar established in the year 1960. The wards were dirty, windows broken, large number of beds had torn mattresses and sheets, as well as no mosquito nets and no bedside lockers. Toilets and bath rooms were dirty, filthy and wet with leaking roofs and floor wet and slippery. The basement of the hospital was stinking with water logging. It has been unserviceable for years. Wards have rat menace. It was complained that on several occasions rats nibbled away the parts of living newborns. Equipments in the operation theatres, emergency services and investigation department were inadequate and in a number of cases outdated and unserviceable. The cobalt therapy machine which was purchased about ten years ago became useless and outdated without being used and no machine has been obtained since. Patients go away without necessary treatment. Electric and water supply is inadequate and irregular, and generators are few. They fail to meet the requirements of the operation theatres, wards and costly electronic equipments often causing considerable inconvenience and damage. Posts lying vacant for years both at the doctors' level as well as lower level which cause a lot of problem in managing the teaching and looking after the patients' care. The hospital's work suffers due to deputation of medical personnel after posting them in a particular hospital to work in another hospital even though such deputations are at the cost of the hospital. The unit heads and heads of departments have no secretarial assistance and no technicians to assist them. There is no workshop, no central casualty, no canteen and no incinerator. No medicine is available in emergency and there is no watch and ward man for security which has been a problem in this hospital. Nurses are few. The hospital is suffering like others due to apathy, lack of adequate funds and mismanagement. The hospital is suffering due to inadequate funds, ill planning, slow and halting executions of the targets and decisions, lack of supervision and inspection of hospital functions, work assessment of individuals and institutions with regard to their performance. For these health

administration has to take major responsibilities at the apex than the periphery. Large number of posts in the departments of Medicine, Surgery, Obstetrics and Gynecology remain vacant.

Mabatma Gandhi Medical College Hospital, Jamshedpur.

66. The Medical College Hospital continues to be functioning in the old subdivisional hospital with limitations of space, structure, fittings, equipment and finances. There is one operation theatre which is shared by Surgery, Orthopaedic, E.N.T. and Eye Departments on rotation basis for both urgent and routine operations. This operation theatre has no anaesthesia room, no changing room, no recovery room. I here is a labour room which is not well equipped. The hospital has no intensive care unit, no workshop, no record room, no arrangement for the biochemical and history pathological investigations. There is no Blood Bank, no glucose laboratory. The hospital has no telephone. There was a telephone in the office of the Deputy Superintendent which was disconnected several years ago for arrears and no new one has been obtained since then. There is no extra budget for emergency. The hospital does not fulfil the requirements of the Medical Council of India. It does not attract patients, doctors, nurses, ward attendants and sweepers. The state of affairs is very Unsatisfactory and disquieting.

67. The Committee ultimately arrived at the conclusion that the hospitals are not functioning satisfactorily. They do not have true campus with compound wall, gates controlling entrance of persons, cattle, dogs, pigs, goats etc. A number of their buildings are dilapidated and falling. They are full of dirt, filth, garbage strewn in their premises and all over and unauthorised occupants are many. Their staff, medical, paramedical, non-medical, nursing and third and fourth grades have grievances. House Surgeons, Interns and post-graduates are not happy. The patients and teaching suffer. Electricity and water supply are inadequate, irregular and erratic. Allotment of funds is poor and irregular. Modern equipments are not available at several places and in others they are non-functioning or have not been commissioned for years. Operation theatres, labour rooms and wards are dirty and impartial administrative action seems to be lacking. Causes may be many but the situation is sad and distressing. Several announced decisions for improvement have made no impact on improvement of the hospitals. In a number of cases they have not reached the targets and/or actions have not been taken. The improvements suggested are many.

68. Operation theatres and labour rooms should be modernised and air-conditioned with necessary instruments including vital function monitoring equipment. The number of operation theatres must be increased. They should have resuscitation and recovery rooms and other necessary rooms for sterilisation, cleaning etc.

69. The budget allocation on health has been falling steadily from 7.19% of the total budget in the second plan to 2.7% of the total budget in the seventh plan. The current inadequate allocation of funds cannot meet the requirements. There have been highly sophisticated and efficient investigative and curative equipments even though costly but essential. The allocation of budget should at least be 10%. In preparing the budget, heads of departments should be called upon to initiate budget proposals. This may be coordinated by the Superintendent of the hospital and the Director of Health Services and once grants are allocated they should be spent with the approval of the heads of the respective departments. Separate grant should be made for repair and maintenance of the equipments and for research purposes. The

allocations to the Medical College Hospitals are sent in fragments, the last instalment arriving a little before the end of the financial year which lends to hurried purchase or surrender of even the meagre grants. The audit reports for the last 3 years have not been intimated nor available. Therefore, the Committee was unable to comment on the receipt and disbursement status in the departments of Medical College Hospitals. Emergency blocks must be adequately provided from the point of view of drugs, investigation and personnel. The budget of the emergency section should be separately made. This is a far cry from the existing conditions.

This has to be done on a priority basis in all the hospitals. Sanitation has to be vastly improved by removal of unauthorised constructions, trespass etc. Building accommodation as well as conditions in all the hospitals require immediate attention of the authorities. In Darbhanga Medical College Hospital a wing of the hospital is occupied by about two dozen unauthorised non patients. Accommodation has to be provided to all the resident staff, housemen, residents, Registrars, Nursing staff. Blood Bank officers and persons working in casualty block inside the campus. Water supply in the hospitals requires vast improvement. The nurses have to go without bath for a few weeks. The same is the condition with respect to student hostels and housemen. Power supply needs improvement through generators to prevent breakdown in operation theatres, blood bank, labour room etc. It has been recommended that power supply, water supply, P.W.D. and P.H.E.D. sections of the hospitals should be units under the direct charge of the Superintendent of the Medical College Hospitals There should be training facilities for nursing trainees. They have also suggested for separation of teaching and non-teaching hospitals as also separate medical education and research cadre and creation of Boards or Medical Council and Research. The Patna Medical College Amendment Rules framed in the year 1933 should immediately be revised. The infrastructure of the hospitals has been inadequate in terms of the guidelines laid down by the Medical Council of India. They have been poor equally when private practice was allowed and then private practice was banned. There is appreciable congestion in Patna Medical College Hospital in Medical and Surgical emergency, Orthopaedic Department, Paediatric Ward and hospital for wo men. There is no bed for female patients in Skin hospital in Patna Medical College Hospital. The patients do not feel attracted to hospitals due to poor equipment and inadequate professional treatment.

70. As to the question of performance and work culture, it has been observed that some doctors and other members of the staff work with zeal whereas others come late and disappear early. In absence of appropriate working conditions, equipments, accommodation, grants, a listless disregard of their demands for minimum improvements in the hospitals, there is a growing feeling that administration is not receptive to their just aspirations sanctioned by statutes and reportedly more often than not is partial to individuals depending on their influence and while it is also true, that a number of professional men try to do their best despite difficulties; it is equally true that there is a sizeable gap in totality at the performance level. Attendance on time, responding to calls for emergency, regular teaching, undergraduate and post-graduate are currently casualties, in a significant part of the scenario, This requires to be corrected. The Committee has suggested to start with medical men having special aptitude, desire, experience and training be selected for short training and manning of medical administrative posts and later after due training they should form a separate wing of the Medical Education Cadre/Health Cadre. Medical men with aptitude for hospital administration be specially trained for hospital jobs. They have also suggested accommodation of different types of teachers and clinicians as on full time, non-practising basis on high pay, on part time basis

and as on honorary basis which may be created.

71. The Committee has also compared the wages paid to Professor, Associate Professor and Assistant Professor in Indira Gandhi Medical Institute at Patna with that obtainable in the Medical College Hospital at Patna. This also is a cause of great dissatisfaction on the part of the professionals. A look to the comparative chart (Annexure 1) at page 78 of the printed book is necessary.

		Salary	H. R. A.
Professor in Indira Gandhi Medical Institute	...	Rs. 5705.35	Rs. 2500.00 = Rs. 8205.35
Medical College Hospital recently revised	...	Rs. 3840.00	Rs. 500.00 = Rs. 4340.00
Associate Professor in Indira Gandhi Medical Institute	...	Rs. 4873.00	Rs. 2000.00 = Rs. 6873.00
In Medical College	...	Rs. 3390.00	Rs. 400.00 = Rs. 3790.00
Assistant Professor in Indira Gandhi Medical Institute	...	Rs. 4416.35	Rs. 1500.00 = Rs. 5916.35
In Medical College	...	Rs. 3254.50	Rs. 250.00 = Rs. 3504.50

In course of argument Mr. Basudeva Prasad, as noticed in my order dated 24th October, 1986, gave an undertaking that if the said Doctors are paid wages in the same scale as obtainable in the Indira Gandhi Medical Institute, the writ petitions will not be pressed and the Doctors will continue to render their services to the hospitals ungrudgingly. He had submitted also that the authorities on their part should improve the place of work enabling the doctors to have job satisfaction. The report ultimately suggested that it is not the opportune time for imposition of ban on private practice till such time the improvements suggested are brought about by the Government.

72. The Committee answered the queries made and suggested the following:

- (i) The strike of the junior doctors should end forthwith with a reasonable upward increment in their stipends and emoluments.
- (ii) The litigations and disputes of medical men should be settled to the satisfaction of all concerned.
- (iii) The pay, promotions, increment etc. of medical officers be settled and paid with arrears immediately.
- (iv) The present ban on private practice of teachers, in Medical College Hospitals should be withdrawn or put off; and immediate steps be taken to separate Medical Teaching Cadre from State Health Cadre as recommended by Medical Education Committee (Sunil Mukherjee Committee) In 1973, which remains unimplemented; and to appoint 3 categories of medical

teachers and specialists.

(a) On full time basis, non-practising with high pay, perks, privileges and responsibilities.

(b) On part time basis.

(c) On honorary basis.

This arrangement will save money attract best talents and end struggles and agitation. Such arrangements are in practice in leading medical college hospitals in Bombay with good result To start with the non-practising medical teachers should be granted the pay, perks, house allowances and other facilities as are given to medical teachers of the Indira Gandhi Institute of Medical Science, Patna (Annexure 1). There will be a good case for hospital allowance to clinical teachers for their additional hospital routine and emergency duties besides teaching as these teachers are doing more hospital work than the teachers in the I.G.I.M.S., and non-clinical teachers of the medical colleges.

(d) All Resident Medical Officers and Housemen must be provided with residential accommodation in the hospital campus. If it is not possible immediately they must be provided accommodation on rent paid by the Government and there should be arrangement for their transport if the residents are away from the hospital.

(e) Medical College Hospitals should be used for mainly referred serious and complicated cases and for patients needing specialised service. All routine cases and minor casualty cases be attended in the peripheral hospitals, district hospitals and general hospitals established for the purpose.

(f) A separate well equipped hospital be started for Govt. servants and members of Legislature and Parliament.

Hospital Campos:

(a) All unauthorised occupation, encroachments, hutments, stalls and vendors be removed from the hospital premises and campus with immediate effect.

(b) A compound wall should enclose the hospital. There should be only two gates guarded by gatemen or security men for entrance and exit. Entrance to the wards be restricted to visiting hours only.

(C) Condemned buildings should be replaced by new ones.

(d) Urgent steps be taken to shift the residence of 3rd grade and 4th grade employees to separate co-ones.

Arrangement be made for their transport for duties to the hospital. Residence of non-essential service men including doctors be also shifted away from the hospital campus. Services of P.W.D., P.H.E.D. and Electricity Department men serving in the hospitals be transferred to the hospitals. Superintendent of the respective hospital be made both drawing and disbursing officer. He should be empowered to supervise their work and to take disciplinary action against them.

Hospital administration must ensure attendance of all categories of employees in the hospital in time and their presence during respective duty hours. Hours and time for

duty must be denned and fixed. Hospital Manual and Patna Medical College Hospital Management Rules be revised and made up-to-date.

A Work Assessment Committee and a Discipline Committee be formed in each medical college hospital to assess and monitor the performance of medical and non-medical men and in case of default or lapse, to take or recommend suitable action against the person concerned.

To initiate steps to make Patna Medical College Hospital as autonomous institution because of its long and distinguished history, pivotal position in the State and unwieldy diverse specialised activities and functions. Other hospitals should be given more administrative and financial powers."

73. The question to my mind arises whether there was proper self direction by the authorities as to facts obtainable in the nine hospitals. It is true, evaluation of these facts fall within the domain of the authorities forming the opinion.

74. From page 29 of the report of the Committee it appears that before formation of the opinion and/or satisfaction arrived at these colleges and hospitals were not inspected by the authorities for several years for "professional, administrative and other matters". Even for arriving at a subjective satisfaction genuine application of mind to the facts and circumstances obtained after proper investigation and enquiries of the hospitals is necessary. The authorities further assume that the doctors attached to the hospitals are discreditable and their conduct is unworthy and unreasonable and that is all because they have been allowed to do private practice. And once that is stopped, old glories of the existing hospitals will be revived.

75. Administrative decisions based on reasons of fact that do not exist or prompted by mistaken belief in the existence of non-existing facts and circumstances have been held to have been in bad faith and consequently liable to be set aside. Lord Green M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [(MANU/UKWA/0001/1947 : 1948 1. K.B. 223] observed:

A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider.

It is true, if the ground of challenge is that the relevant considerations have not been taken into consideration, it is incumbent upon the Court to try to assess the actual and potential importance of the factor which has been overlooked. The Court will never interfere with the discretion whenever a trivial factor has been disregarded in formation of the said opinion. S.A. DE Smith, Fourth Edition, on *Judicial Review of Administrative Act*, 291 after having discussed decisions observed:

Hitherto the courts have held that they cannot go behind a statement by the competent authority (in the absence of proof of bad faith) that it was satisfied that the statutory condition for the exercise of the power existed. But it is conceived that if prima facie grounds can be established for the proposition that the authority could not have been so satisfied, a court will be entitled to hold the act or decision to be invalid unless the authority itself persuades the court that it did in fact genuinely from the opinion which it claims to have held.

76. Conditions obtainable in the hospitals and what is due to what on reliable and sufficient data obtained after proper investigation and enquiry and application of mind with due care and caution to the facts so collected is the first fatality before the formation of the impugned opinion. No discretion could be said to be absolute and unfettered. Willingness of the Court to interfere on the nature of interest affected by the exercise of discretion. Here the decision concerns the health of public at large. When prima facie grounds appear from the report of the expert committee that had the authorities inspected the state of affairs in the nine Medical Colleges and Hospitals and appalled themselves genuinely to the circumstances finding there they might or might not have (sic)ded at this stage that the patients will obtain better medicare in the hospitals. The medical facility available in the hospitals is not worth the name. The Committee members have also noticed that there is even no security to the hospitals as they are infested with unauthorised people and criminals. Further, the condition of sanitation is such that the nurses have to go without bathing for weeks and the doctors have to carry their own cans for fetching water for six months in a year in come of the hospitals. In some of the hospitals the asbestos sheets covering the roof of operation theatre are leaking and the live wire hanging the reform endangering the lives of the doctors and the patients. Animals have a free access to every place in so much so that bodies of new born have been found nibbled. Factual basis upon which discretionary powers have been exercised cannot be shut out from Court's scrutinisation.

Something could have been said had the decision affected an individual interest, but that is not the case here.

77. Can it be said that all that has been noticed by the expert Committee is merely because of lack of work culture on the part of doctors and once they stop private practice the ailments prevailing in the hospitals now, will vanish including the basic needs of patients. This presupposes that the doctors are not attending to their duties either in the colleges or in the hospitals. They are a discreditable lot. However, the State has not been able to bring to our notice any disciplinary case initiated against any of the doctors attached to these hospitals for such or any unworthy conduct. There may be some who may be late in attending to their duties but it would not be fair to conclude that those who carry on private practice are totally indifferent to what obtains in the hospitals.

78. For expectation of work culture there must be a work place with all ancillary facilities and congenial atmosphere. After all, in the past the hospital at Patna was one of the premier institutions in the country even though private practice was permissible. From the report of the Committee it is manifest that now there is no administration worth the name for proper opportunities congenial for proper treatment of patients. There is a complete Government apathy to the conditions of the buildings, supply of water, electricity, instruments, maintenance, lack of funds, timely release of funds, not filling up posts for years etc. etc. for which the doctors cannot be held to be responsible.

79. My Lord Uday Sinha, J. has observed that even if it be conceded that hospitals are almost death traps' but there should be at least a beginning to improve them instead of "putting a spanner in the field of every Government activity". Is the object propounded of better medicare in the hospitals served by driving the patients at first instance to the 'death traps' or "suffocative and poisonous atmosphere" as my Lord S. Ali Ahmad, J. has chosen to describe the situation obtaining in the hospitals. The question is which should precede what, so that the interest of the ailing patients does

not suffer. In agreement with the report of the Committee, I do not think that ban should now be imposed. The authorities must first improve the conditions in the hospitals which fall completely within the sphere as otherwise it will frustrate the very object for which the ban is sought to be imposed to the great detriment and inconvenience of the ailing patients. It is true, no body has a right to be treated by a particular doctor irrespective of his avocation but the State at the same time while depriving the services of a particular section of doctors must provide better treatment facilities in the alternative which is one of the primary duties of the State under the directive principles. Can it be said that the existing hospital conditions are such to generate confidence among the ailing citizen. Any action to be sustainable must be in accordance with law. The Court intervenes to undo an act which is taken not in accordance with law.

80. In my opinion, it is for this reason that in spite of our refusal to stay the operation of the resolution, the State completely failed to implement it as the patients in distress are bound to approach the specialists through the back door at their residence or clinics instead of being attracted to go to the hospital.

81. Further, discriminatory treatment held out to doctors attached to hospitals quo their counter-part in the Indra Gandhi Medical Institute, both situated in the same town and requiring the same qualifications to hold the posts of Professor, Associate Professor and Assistant Professor cannot improve the work culture of the persons discriminated. The learned Government Advocate contends that it is not the function of the Court in these writ petitions to revise the wages payable to the doctors. It is for the doctors either to continue their employment or not to do so. The relevancy of this question has to be looked into from the point of view of the ailing public. If the specialists leave the hospitals, the hospitals will be bereft of talented people to treat patients; this would not attract patients contrary to the professed object. Once the privilege is withdrawn there may be flight of competent doctors from the hospitals which are supposed to serve the greater multitude of persons and the ailing patient will be left at the mercy of those who are not that efficient than those who have left. In such a situation, can it be said that such hospitals will provide better medicare to the ailing public?

82. The experts of the Committee have given very valuable suggestions even to the extent of creating a separate cadre of doctors attached to the Medical Colleges and hospitals attached to them who impart education, promote research and treat patients and another cadre of doctors who are attached only to State Hospitals engaged only in treatment. The Government Advocate's contention that once the scale obtainable at the Indra Gandhi Medical Institute is extended to the doctors of Medical Colleges and Hospitals attached to them, there will be a clamour by all the Government doctors in State Hospitals through out the State does not impress me. The doctors in the State Hospitals constitute a different class than those who are teaching and at the same time treating patients and carrying on research work.

83. However, I am not concerned with remedial steps the authorities should take in order to make the hospitals worth their name. It is at the same time true that in all these ten or eleven months no improvement has been brought about even though the ban continued. It is also admitted that private practice is as flourishing as it was before ban. It is contended that the Government is waiting for the decision of these cases. The Committee noted at page 82 of the report "No decision has been taken for the utilisation of the promised amount of Rs. 50,000/-. We repeatedly enquired from counsel of the Government what have been done meanwhile. The Government

counsel was unable to point out anything tangible except what the Government proposes to do. These are hard facts which can not be ignored.

The task of the Court is over once it concludes that the authorities had no factual basis for the formation of their operation which is condition precedent for the stated object.

84. I am unable to agree with my learned Brethren that the impugned resolution should be upheld at this stage. On the contrary, I am of the view, whether the resolution was taken in good faith or bad faith, the State authorities did not apply their mind to the prevailing conditions in the hospitals. It has been prompted on a mistaken belief in the existence of non-existing facts or circumstances and, therefore, there has been no valid exercise of discretion and must be struck down for the present. The authorities are directed to reconsider the matter in the light of the report of the Committee with an open mind, remove their own shortcomings and take such remedial measures as they deem fit and proper and impose the ban on private practice as recommended by the Medical Council of India. The ban at this stage irrespective of the conditions in the hospitals, in my opinion, will bring misery to the ailing patients of the State. In the result, all the writ applications are allowed and the impugned resolution dated 20.9.86, Annexure 1 to C.W.J.C. No. 4476, is hereby quashed. In the circumstance, I make no order as to costs.

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