PETITIONER:

CONFEDERATION OF EX-SERVICEMEN ASSOCIATIONS & ORS.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 22/08/2006

BENCH:

CJI Y.K. SABHARWAL,K.G. BALAKRISHNAN,S.H. KAPADIA,C.K. THAKKER
P.K. BALASUBRAMANYAN

CITATION:

2006 (8) SCC 399

JUDGMENT

C.K. THAKKER, J.

This petition under Article 32 of the Constitution is filed as Public Interest Litigation (PIL) by petitioner- Confederation of ex-serviceman Associations for an appropriate writ directing the respondent-Union of India to recognize the right of full and free medicare of ex- servicemen, their families and dependents treating such right as one of the fundamental rights guaranteed under the Constitution of India. A prayer is also made to direct the respondents to take necessary steps to ensure that full and free medicare is provided to ex-servicemen, their families and dependents on par with in-service defence personnel. A further prayer is also made to extend such medicare for all diseases including serious and terminal diseases, even if treatment for those diseases is not available at Military Hospitals.

The case of the petitioner is that there are certain ex-servicemen Associations which have formed a Confederation in furtherance of common cause for welfare of ex-defence personnel.

They are;

(i) Air Force Association;

(ii) India Ex-services League;

(iii) Naval Foundation;

(iv) Disabled War Veterans (India); and (v) War Widows Association.

Aims and objects of the Confederation have been set out in the Memorandum of Understanding (MoU) produced at Annexure P-1. According to the petitioner, there are approximately 15 lakhs ex-servicemen in the country alongwith 45 lakhs dependents and family members. The petitioner has no information regarding medical facilities provided to ex-servicemen prior to the Second World War (1939-44). After the Second World War, however, certain information is available. A book edited by Mr. Bishweshwar Dass was published titled "Combined Inter-services : Historical Section : India and Pakistan", wherein it has been stated that the Government had accepted full responsibility for medicare of disabled ex-servicemen as also for their rehabilitation. Disabilities, which were categorized, were as follows:

(i) Loss of limb or use of limb;

(ii) General medical and surgical disability; (iii) Loss of speech;

(iv) Deafness;

(v) Blindness and material impairment of vision; (vi) Pulmonary Tuberculosis;

(vii) Mental diseases.

The petitioner further stated that in 1962, more medical facilities were provided to ex-army personnel. In 1983, regulations were framed known as Regulations for Medical Services of Armed Forces which restricted entitlement to disability for which pension had been granted. No treatment was authorized for serious diseases, like pulmonary tuberculosis, leprosy and mental diseases even if such diseases were attributable to Army Services if treatment of such diseases was not ordinarily available from service sources. According to the petitioner, various Committees were constituted to examine the issue as to availability of medical facilities to members of Armed Forces. In 1984, a High Level Committee headed by the then Rajya Raksha Mantri Shri K.P. Singh Deo was set up which conducted thorough study of the problems of ex-defence personnel for the first time. The Committee recommended enhancement of facilities and improvement of medical services to ex-servicemen. Between 1986 and 1990, several steps had been taken in the direction of extending more benefits to ex-servicemen through various committees and commissions, such as, Dharni Committee (1986), CDM Study Report (1987), Report on Army Logistics Philosophy (1987), Verma Committee (1988), Narsimhan Committee (1990), Vijay Singh Committee (1990), etc. In 1993, Lt. Gen. N. Foley Committee again examined the problem of medicare to ex-servicemen. It noted with concern the manner in which ex-servicemen had been treated in providing medical facilities which were shocking. It observed that ex-servicemen were virtually neglected by the Government. It felt that there was a feeling of frustration in ex-servicemen. It, therefore, suggested that there should be no discrimination of treatment between in- service personnel and ex-servicemen. The Committee made certain recommendations both on long term basis as well as on short term basis. Again, the Fifth Pay Commission examined the medical and

other facilities to pensioners of the Central Government employees and also to ex-servicemen. The Commission noted the expenditure incurred on various categories of Central Government employees, and after examining the entire issue, recommended that the Ministry of Defence should embark at once for expansion of medical facilities to ex-servicemen. It suggested creation of ex-servicemen wards in Civil Hospitals in liaison with State Governments. It also recommended Ministry of Health and Family Welfare to set up Veteran's Hospitals where a concentration of civil and military pensioners existed. In addition, it proposed a medical allowance of Rs.100 per month for ex-servicemen living in rural areas who could not avail themselves of military/civil hospital facilities. According to the petitioner, the Pay Commission missed the basic thrust of the requirement of providing free and full medicare to ex-servicemen. Since the Regulations relating to medical services to Armed Forces expressly excluded the treatment at Government hospitals to ex-servicemen for serious diseases like pulmonary tuberculosis, leprosy and mental diseases, any amount of facilities would not be sufficient to ex-servicemen suffering from such diseases. The Regulations were also silent about modern serious and terminal diseases like AIDS, Cancer, etc. and no provision was made for expenses on essential treatments like bypass surgery, laparoscopy, endoscopy, etc. The petitioner has also stated that after 1997, various efforts were made by the member-Associations to get more benefits to ex-servicemen. On June 12, 1997, Air Marshal D.S. Sabhikhi, Senior Vice President of Air Force Association submitted a detailed representation to the Defence Ministry requesting to take action on war footing for setting up Veteran's Hospitals, augmentation of Special Medical Inspection Rooms (MIRs), Dental Centres, etc., for ex-servicemen. Brig. Dal Singh (Retd.), President of Indian Ex-services League also wrote a letter to the Defence Secretary requesting him to intimate the actions taken by the authorities on various judgments of this Court. Similar representation was made by Vice Admiral S.K. Chand (Retd.), President of Navy Foundation, Delhi. Attention of the Government was invited by political leaders and reference was made to letters of Shri B.K. Gadhvi, Member of Lok Sabha to the Defence Minister as also by Shri Jaswant Singh, another M.P. The petitioner has referred to letters by Air Chief Marshal S.K. Kaul (Retd.) in 1997-98 and by Air Marshal D.S. Sabhikhi, Senior Vice President of Air Force Association.

The grievance of the petitioner is that though several attempts had been made by the Associations, the Government of India had never taken the matter seriously as regards the medical services to be provided to ex-servicemen. Though they have a valuable right of full and free medicare, which is a fundamental right, no concrete and effective steps had been taken by the respondents which constrained them to approach this Court by invoking Article 32 of the Constitution. According to them, keeping in view the services rendered by ex-defence personnel and the diseases sustained by them, they are entitled to necessary medical facilities. It was also their case that free and full medical facilities is part and parcel of their fundamental rights guaranteed by Part III of the Constitution as also covered by Directive Principles in Part IV of the Constitution. In several cases, this Court has held that such facilities must be provided to Government employees, past and present. According to the petitioner, such facilities are provided to Government employees and also to ex- servicemen. Refusal to extend similar medical benefits to ex-

defence personnel is thus arbitrary, discriminatory, unreasonable and violative of Articles 14, 16, 19 and 21 of the Constitution.

The petition came up for preliminary hearing before a two Judge Bench on May 10, 1999 and the following order was passed:

"Issue Rule.

Reliance is placed upon paragraph 25 of the decision of a three Judge Bench in Consumer Education and Research Centre and Ors. v. Union of India and Ors. (1995) 3 SCC 42. Since we are, prima facie, disinclined to accept the correctness of the broad observations in that paragraph, the matter shall be placed before the Bench of five learned Judges."

From the above order, it is clear that the two Judge Bench had some doubt about the correctness of wider observations in Consumer Education & Research Centre. The matter was, therefore, ordered to be placed before a Bench of five Judges. By an order dated July 20, 2004, however, a three Judge Bench, relying on a decision rendered by the Constitution Bench of this Court in Pradip Chandra Parija & Ors. v. Pramod Chandra Patnaik & Ors., (2002) 1 SCC 1 observed that initially the matter was required to be heard by a Bench of three Judges. Accordingly, the matter was ordered to be set down for hearing before a three-Judge Bench. On November 22, 2005, a three Judge Bench perused the earlier orders, heard the learned counsel for the parties for some time and the issue involved and was satisfied that the writ petition was required to be heard by a Bench of five Judges. Accordingly, an order was passed directing the Registry to place the papers before Hon'ble the Chief Justice for necessary action. That is how, the matter is placed for hearing before us.

A counter affidavit by Mr. V.K. Jain, Under Secretary, Ministry of Defence on behalf of Union of India was filed on January 24, 2002, raising inter alia, preliminary objection as to maintainability of writ petition as also objections on merits. A technical objection was raised by the respondents that the petition was not maintainable as the petitioner-Associations were not registered associations and, therefore, had no locus standi. On Merits, it was submitted that ex-servicemen were provided Assured In-patient and Out-patient Treatment as specified in the Regulations of 1983 within the available resources of the State. According to the Union, full and free medical aid for ex-servicemen cannot be claimed as a matter of right. It has never been claimed for more than fifty years of independence. Ex- servicemen and their dependents are entitled to medical treatment in Military Hospitals. They are also given financial assistance from the Group Insurance Scheme and from the Armed Forces Flag Day Fund for treatment outside Military hospitals. On the recommendations of Fifth Pay Commission, the Government had sanctioned fixed medical allowance of Rs.100 per month to those ex- servicemen and their families who reside in the areas where facilities of Armed Forces hospitals/clinics are not available. Over and above those facilities, other facilities were also provided, such as Mobile Medical Teams, Medical Vans, Army Group Insurance Medical Benefit Scheme, Army Dialysis Centres, etc. It was then stated that the Government had extended certain medical amenities to ex-servicemen and their dependents within the available

sources. Ex-servicemen and their family members are given free out-patient treatment in nearest Military Hospitals and are also given medicines. Regarding Military hospitals, it was stated by the deponent that such hospitals are essentially meant for treatment of in-service defence personnel for whom it is a service requirement to ensure defence preparedness. Ex-servicemen are provided in-patient treatment in Military Hospitals, subject to the availability of beds within the authorized strength and without detriment to the needs of in-service defence personnel. It was, however, conceded that the scheme did not cover treatment for pulmonary tuberculosis, leprosy, mental diseases or malignant diseases.

As to discrimination, it was stated that the case of ex-servicemen cannot be compared with retired Civilian Central Government employees inasmuch as medical facilities under Central Government Health Scheme ('CGHS' for short) are contributory i.e., a retired Central Government servant who is a member of CGHS before retirement has option to continue to be covered by the said scheme. The petitioners, therefore, cannot claim similar benefits since they are not similarly situated. Regarding in-service defence personnel, it was stated that the case of the petitioners cannot be compared with in-service defence personnel as they are different, distinct, independent and form different class. It was, therefore, submitted that the grievance of the petitioner is not well founded and they are not entitled to the reliefs claimed.

A rejoinder affidavit on behalf of the petitioner was filed to the affidavit in reply controverting the facts stated and averments made in the counter affidavit, reiterating the assertions in the petition. In addition, it was stated that on September 13, 1999, Assistant Chief of Personnel (P&C) of the Indian Navy had informed the then President of the Confederation that the Committee had been constituted under the direction of the Defence Minister to look into the problems of medicare of ex- servicemen. Similar information was also communicated by the Under Secretary of Ministry of Defence vide letter dated September 20, 1999 and yet nothing was stated on that point by the Union of India in the counter affidavit already filed.

On July 20, 2004, this Court granted I.As. of All India Defence Services Advocates Association and All India Ex-Services Welfare Association seeking impleadment to the limited extent of addressing the court to raise such points not covered by the submissions of the learned counsel for the petitioner. It was also stated at the Bar that during the pendency of the writ petition, the Government of India had introduced a scheme known as "Ex-Servicemen Contributory Health Scheme" (ECHS) partly taking care of grievances raised by the petitioner and intervenors. The respondents sought time to place the scheme on record within four weeks. Accordingly, by an additional affidavit dated October 4, 2004, ECHS has been placed on record by the respondents. The scheme is a contributory scheme for ex-servicemen and extends certain benefits to ex-servicemen on payment of contribution.

We have heard learned counsel for the petitioner, intervenors and for the respondent-authorities. The learned counsel for the petitioner and intervenors submitted that considering the hard and arduous nature of work performed by defence personnel and

taking into account the exigencies of service, it was obligatory on the respondents to provide free and full medical facilities to them even after retirement. It was submitted that such facilities are provided to defence personnel who are in service. They are also extended to civilians, even after retirement. In such matters, expenses would be immaterial. But even if the said fact is relevant and considered material, it is a negligible amount compared to the services rendered by them. The impugned action, therefore, is arbitrary, discriminatory, unreasonable and violative of fundamental rights conferred by the Constitution. It was also urged that several Committees, Commissions and Expert Bodies considered the plight of ex-servicemen. Various suggestions were made and recommendations were forwarded to the respondents but no adequate steps have been taken by them. The doctrine of 'legitimate expectation' was also pressed in service contending that most of the defence personnel had to retire at a premature age either because of injuries sustained or occupational diseases suffered by them. It is, therefore, the right of ex-servicemen to get adequate free and full medical treatment. Apart from fundamental rights guaranteed by Part III of the Constitution, it is the duty of the respondents to implement Directive Principles of State Policy under Part IV of the Constitution. The counsel submitted that serious and terminal diseases cannot be excluded from the category of medical services to be provided to ex-servicemen. It was stated that in past, there were no sufficient number of Military hospitals/clinics. Due to inadequate infrastructure, paucity of staff, availability of sufficient means and other considerations, it was not possible for the respondents to provide medical facilities for serious diseases but in 21st century, when Medical Science has much developed and huge infrastructure is available, there is no earthly reason to deprive ex-servicemen from getting medical treatment for those diseases. It was finally submitted that no doubt, recently a scheme has been framed under which medical facilities have been ensured to ex-servicemen. But they are required to pay contribution since the scheme is 'contributory health scheme'. To that extent, therefore, the scheme is objectionable and is violative of fundamental rights of ex-servicemen. It is also inconsistent with and contrary to various decisions of this Court wherein it has been held that to get free medical service is a fundamental right of citizens. On all these grounds, it was submitted that the petition deserves to be allowed by issuing appropriate directions to the respondents to provide full and free medical facilities to ex defence personnel and their family members.

The learned counsel for the Union of India, on the other hand, submitted that the action of the Government cannot be held arbitrary, unlawful or otherwise unreasonable. He conceded that valuable services have been rendered by retired army-men when they were in service. But submitted that the State after taking into account all relevant aspects, formulated a policy for providing medical facilities to its employees as also to ex-employees. According to the counsel, defence personnel and civil personnel cannot be compared as they belong to different class. Article 14, therefore, has no application. Likewise, defence personnel in-service and defence personnel out of service, i.e. who have retired, cannot be placed in the same category and if different standards are fixed for providing medical facilities to defence personnel in service on one hand and to retired defence personnel on the other, it cannot be said that the State has acted arbitrarily or practised discrimination between the two classes who are not similar and do not stand on the same footing. It was submitted by the respondents that free medical service to all its

employees in- service or out-of service is never held to be a fundamental right guaranteed by the Constitution and even if there are some observations to that effect, they are either 'obiter dicta' or 'passing observations' and do not lay down correct law. Every State has limited financial means and resources. And keeping in view financial capacity and available means, it has to undertake its obligations of providing social services including medical facilities to its employees in- service or retired. So far as ex-servicemen are concerned, the counsel submitted that recommendations and suggestions of various Committees were considered by the Union of India and more and more benefits had been extended from time to time. Regarding medical facilities in serious and terminal diseases, it was submitted that in past, such facilities were either not available at Military hospitals/clinics or there were no sufficient number of hospitals/clinics and hence they could not be provided to ex-servicemen. The position was thereafter substantially changed. In several hospitals/clinics now such facilities are available. It was also stated that financial assistance is being given to ex-servicemen in certain cases. In 2002, the Government has prepared ECHS for full medical services. True it is that the scheme is contributory. But considering the amount of contribution which is 'one time payment' and is really negligible, it cannot be contended that the action is arbitrary, irrational or in the nature of deprivation of ex- servicemen from getting necessary medical services. If ex-servicemen intend to take benefit of the scheme, they may exercise option, may become members and may avail benefits thereunder by paying contribution on the basis of the amount of pension received by them. In that case, they would not be entitled to financial assistance given to them. If they are not willing to be members of the scheme, it is not necessary for them to pay the amount of contribution but they would not be entitled to medical benefits under the scheme. It was also stated that this is to a limited class of employees who have retired prior to January 1, 1996 as thereafter, the scheme has been made applicable and contribution has been charged from all the employees. It was, therefore, submitted that no case can be said to have been made out by the petitioner so as to hold the action of the respondents unlawful or otherwise unreasonable and the petition deserves to be dismissed. We have given anxious and thoughtful consideration to the rival contentions raised by the parties. So far as the preliminary objection regarding maintainability of the petition is concerned, it may be stated that the petitioner has asserted in the petition that it is a Confederation of five ex-servicemen Associations formed in furtherance of common cause. The aims and objects of the Confederation have also been annexed as set out in the MoU (Annexure 'P-1'). In the affidavit in reply filed by the Under Secretary working with the Ministry of Defence, it was stated that he is 'not aware' of the existence of the petitioner organization. He, however, stated that the organization 'does not seem' to be registered body to represent the cause of ex-servicemen. The rejoinder affidavit unequivocally states that the objection raised by the Union of India is incorrect. The Confederation was registered under the Societies' Registration Act, 1860. Likewise, all Associations which constitute the Confederation are similarly registered individually. It is further stated that Air Force Association and Indian Ex-Services League are even recognized by the Ministry of Defence, Union of India. It, therefore, cannot be said that the petitioner- Confederation is not registered and the petition filed is not maintainable. In view of the fact that some of the Associations have been recognized even by the Ministry of Defence, the deponent ought not to have raised the objection regarding maintainability of the petition without ascertaining full facts and

particulars. We leave the matter there holding the petition maintainable. We are also satisfied that the contention of the respondent is even otherwise not tenable at law. A similar point came up before a Constitution Bench of this Court in the well known decision in D.S. Nakara v. Union of India, (1983) 1 SCC 305. There also, one of the petitioners was a Society registered under the Societies' Registration Act, 1860. It approached this Court for ventilating grievances of a large number of old and infirm retirees who were individually unable to approach a court of law for redressal of their grievances. This Court held locus standi of the Society 'unquestionable'. In the present case, apart from the fact that a larger public issue and cause is involved, even individually, all Associations are registered Associations of ex- servicemen. The petitioner-Confederation representing those Associations which is also registered, can certainly approach this Court by invoking the provisions of Part III of the Constitution. We, therefore, reject the preliminary objection raised by the respondents and hold that the petitioner-Confederation has locus standi to file the petition.

In our view, however, maintainability of petition and justiciability of issues raised therein are two different, distinct and independent matters and one cannot be mixed or inter-linked with the other.

It was strenuously contended that when in-service defence personnel have been provided full and free medical services, refusal to extend similar facilities and benefits to ex-servicemen would result in discriminatory treatment, violative of Article 14 of the Constitution. It was also urged that members of civil services have been provided all medical facilities, irrespective of the fact whether they are in service or have retired. In the submission of the counsel, if in-service defence personnel have been provided full and free medical services, the same benefit should be extended to retired defence personnel. Likewise, when employees from civil services have right to get full and free medical facilities, the same yardstick must be applied to retired defence personnel as well. Retired civil servants and retired defence personnel stand on one and the same footing. Granting relief in favour of one class and denying same or similar relief in favour of another class would result in unequal treatments to equals and would infringe Article 14 of the Constitution. The action of the respondents, therefore, deserves interference by this Court. We are unable to uphold the argument advanced by the petitioners for more than one reason. It is no doubt true, that Article 14 guarantees equality before the law and confers equal protection of laws. It clearly prohibits the State from denying persons or class of persons equal treatment provided they are equals and are similarly situated. In our opinion, however, the basis on which the argument proceeds is fallacious and ill-founded. It is well established that Article 14 seeks to prevent or prohibit a person or class of persons from being singled out from others situated similarly. It thus prohibits discrimination or class legislation. It, however, does not prohibit classification if otherwise it is legal, valid and reasonable.

Before more than five decades, a Constitution Bench of this Court was called upon to consider a similar contention in the well known decision in State of West Bengal v. Anwar Ali Sarkar & Another, (1952 SCR 284 : AIR 1952 SC 75). In that case, validity of certain provisions of the West Bengal Special Courts Act, 1950 was challenged on the

ground that they were discriminatory and violative of Article 14 of the Constitution. Dealing with the contention, S.R. Das, J. (as His Lordship then was), made the following pertinent observations which were cited with approval in several cases;

"It is now well established that while article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained." (emphasis supplied)

Again, in Budhan Choudhry v. State of Bihar, [(1955) 1 SCR 1045 : AIR 1955 SC 191], after considering earlier decisions, this Court stated; "It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration."

(emphasis supplied)

The principle laid down in Anwar Ali Sarkar and Budhan Choudhry has been consistently followed and reiterated by this Court in several subsequent cases. [See Bidi Supply Co. v. Union of India & Ors., 1956 SCR 267 : AIR 1956 SC 479; Ram Krishna Dalmia v. Justice Tendolkar, 1959 SCR 279 : AIR 1958 SC 538; V.C. Shukla v. State (Delhi Administration); 1980 Supp. SCC 249 : AIR 1980 SC 1382; Special Courts Bill, Re, (1979) 1 SCC 380 : AIR 1979 SC 478 : (1979) 2 SCR 476; R.K. Garg v. Union of India, (1981) 4 SCC 675 : AIR 1981 SC 2138; State of A.P. & Ors. v. Nallamilli Rami Reddi & Ors., (2001) 7 SCC 708 : AIR 2001 SC 3616; M.P. Rural Agriculture Extension Officers Association v. State of M.P. & Anr., (2004) 4 SCC 646 : AIR 2004 SC 2020]. In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfill the twin-test, namely;

(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and

(ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question. In our considered opinion, classification between in-service employees and retirees is legal, valid and reasonable classification and if certain benefits are provided to in-service employees and those benefits have not been extended to retired employees, it cannot be successfully contended that there is discrimination which is hit by Article 14 of the Constitution. To us, two categories of employees are different. They form different classes and cannot be said to be similarly situated. There is, therefore, no violation of Article 14 if they are treated differently.

Likewise, a classification between defence personnel and other than defence personnel is also reasonable and valid classification. Moreover, it is clarified by the respondents in the counter-affidavit that for medical facilities provided to retired civil servants, there is also a scheme known as the Central Government Health Scheme (CGHS), which is again contributory. Retired Central Government Servants who are members of the scheme are covered by the said scheme and they are provided medical services on payment of specified amount under the scheme. We, therefore, see no substance in the argument of the petitioners that the impugned action in not providing full and free medical facilities to retired defence personnel infringes Article 14 of the Constitution.

We are also not impressed by the argument that all medical benefits and facilities must be provided to ex- servicemen under the doctrine of 'legitimate expectation'. The doctrine of 'legitimate expectation' is a 'latest recruit' to a long list of concepts fashioned by Courts for review of administrative actions. No doubt, the doctrine has an important place in the development of Administrative Law and particularly law relating to 'judicial review'. Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise

either from the express promise or from consistent practice which the applicant may reasonably expect to continue.

The expression 'legitimate expectation' appears to have been originated by Lord Denning, M.R. in the leading decision of Schmidt v. Secretary of State, [(1969) 1 All ER 904 : (1969) 2 WLR 337 : (1969) 2 Ch D 149]. In Attorney General of Hong Kong v. Ng Yuen Shiu, [(1983) 2 All ER 346 : (1983) 2 AC 629], Lord Fraser referring to Schmidt stated;

"The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.

(emphasis supplied)

In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised. We do not wish to burden our judgment with several English, American and domestic decisions, since the proposition of law has not been disputed by the other side. In our opinion, however, in the instant case, the doctrine of legitimate expectation has no application. It is not even the case of the petitioners that certain medical facilities which were enjoyed by them in the past have been withdrawn or revoked. On the contrary, they have admitted that after independence, because of several representations made by them and various efforts, suggestions and recommendations by different Committees and Commissions, more and more medical facilities were provided but they were not enough. It was also their case that in the last few years, situation regarding infrastructure and staff has been improved. They have, therefore, prayed that medical facilities which were not provided in past may also be provided now to retired defence personnel. Similarly, medical facilities should also be extended for serious and terminal diseases. The doctrine of legitimate expectation, in the fact situation, therefore, cannot be invoked by the petitioner in the case on hand.

We are equally unimpressed by the submission of the learned counsel to issue directions or guidelines to 'fill in gaps' in the exercise of plenary powers. Undoubtedly, in absence of legislative provisions or administrative instructions governing the field, this court may, in appropriate cases, issue necessary directions as has been done in several cases. [See Delhi Judicial Service Association v. State of Gujarat, (1991) 4 SCC 106 : AIR 1991 SC 2106 : (1991) 3 SCR 936; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 : AIR 1997 SC 610; Visakha v. State of Rajasthan, (1997) 6 SCC 241 : AIR 1997 SC 3011]. In the instant case, however, a scheme providing medical facilities to ex-servicemen has been framed. It has been decided by the Central Government to extend medical facilities to retired defence personnel on the basis of 'one time contribution' which is legal, proper and reasonable. In the circumstances, the ratio laid down by the Supreme Court in the

above cases does not apply and no directions need be issued to the respondents. At the same time, however, so far as the services provided by the defence personnel is concerned, there can be no two opinions that they have rendered extremely useful and indispensable services which can neither be ignored nor under-estimated. The petitioners have rightly stated that they have served in the Army, Air Force and Navy of the Union of India during cream period of youth putting their lives to high risk and improbabilities. As a mark of respect and gratitude, therefore, they must be provided medical services after retirement. It is indeed true that men and women in uniform are the pride of the nation and protectors of the country. It is because of their eternal vigil that ordinary citizens are able to sleep peacefully every night, for it is these men and women guarding the frontiers of our nation that makes our interiors safe. They, therefore, are entitled to privileged treatment. It would be appropriate to quote here an epitaph from the Kohima War Cemetry which conveys eloquently what our Soldiers, Sailors and Airmen are cheerfully willing to sacrifice their lives; "When you go home,

Tell them for us;

For your to-morrow,

We gave our to-day."

The petitioner has made grievance that during war and serious situations, defence personnel are remembered but as soon as grave situation is over, they are forgotten and ignored. We are reminded what Francis Quarrels said;

"Our Gods and Soliders we alike adore, At the time of danger, not before; After deliverance both are alike requited, Our Gods forgotten and our Soldiers slighted".

Before more than two decades when the respondents appointed a High Level Committee under the Chairmanship of Shri K.P. Singh Deo, Minister of State, Ministry of Defence to consider problems of ex- servicemen, it highlighted the difficulties experienced by ex-servicemen in the light of hard and strenuous work undertaken by them and exigencies of service in which they had to discharge their duties. The Committee, while submitting the report, observed in the Foreword Our Armed Forces have won world wide renown for their valour, dedication and devotion. The achievements of the Armed Forces in varying roles since Independence are a matter of pride for all of us in the Country and that of envy of other Nations. Men from all castes, creeds, religions and from all parts of India join the Armed Forces and their integration as a secular homogeneous and dedicated team is remarkably total.

The Armed Forces personnel have sterling qualities of head and heart, courage, discipline, loyalty and implicit obedience to orders. They are the guardians of the safety and honour of the Country and are ever prepared to sacrifice their lives to preserve the freedom and sovereignty of the Country. In addition to their preparedness for war, during peace time, our Armed Forces have always risen to the occasion to assist the Administration during natural calamities and internal unrest. The sacrifices made by the

personnel of the Armed Forces from 15th August, 1947 to date have been so innumerable that they can best be described by the following quotation of Sir Winston Churchill who had on 20th August, 1940 said:

"Never in the field of human conflict was so much owed by so many to so few"

The Committee was conscious of the ground reality that the personnel of Armed Forces are the only Government employees who retire at a relatively younger age to keep a youthful profile due to the arduous nature of their duties in hazardous and inhospitable terrain. It stated that, almost all ex-servicemen, whose retirement age depending on rank, vary from 35 to 54 years, require help and assistance for resettlement, rehabilitation and adjustment in the civil stream. They require a second career as they are comparatively young and active and their responsibilities and obligations are at the peak when they are compulsorily retired. Having given the best years of their lives for the safety, honour and integrity of the country, it becomes a national obligation to get them resettled and rehabilitated. The Committee noted that the problems of ex-servicemen had, for a long time, been engaging the attention of both the Houses of Parliament as well as the Government and a cause of concern to Prime Minister Smt. Indira Gandhi who had a special love and affection for the Armed Forces. Keeping in view the magnitude of the problem, the High Level Committee had been set up for the first time after independence to go into various problems of ex- servicemen. The Committee was also mindful that defence and national development were, to a great extent, interdependent. The Committee quoted Pandit Jawaharlal Nehru, first Prime Minister of India, who, while inaugurating the National Defence College at Delhi as early as in 1960, stated;

"Defence itself is not an isolated matter now. It is intimately connected with the economic aspect, industrial aspect and many other aspects in the country. India today has become positively and actively defence conscious, more than at any time since independence. Our desire is to continue to live peacefully and co-operatively with all our neighbours. Nevertheless, no defence apparatus can exist in a purely idealistic way. It has to be very realistic and remain prepared for any emergency".

(emphasis supplied)

The Committee considered several problems and prepared a detailed report. Regarding medical facilities, it observed:

"Medical Facilities

12.9 Prior to the issue of Government of India, Ministry of Defence letter No. 16307/DGCAFMS/DG3(A)/417S/D(AG -1) dated 14th October, 1966, ex-servicemen and their families were not entitled to receive any treatment from Service hospitals except to a very limited extent as follows:-

(a) Free medical treatment for specific disabilities in respect of ex-servicemen in receipt of disability pension.

(b) Other Armed Forces pensioners could be admitted to Service hospitals only if accommodation was available and admission was sanctioned by the Officer Commanding Station/Administrative Authority. Specified hospital stoppages were to be paid. No out-patient treatment was available to such pensioners.

(c) Families of ex-servicemen were not entitled to any treatment out -door or indoor from Service hospitals.

12.10 The Government letter cited in para 12.9 above was instrumental in making very liberal concessions towards the treatment of ex-servicemen and their families from Service sources. Under the provisions, ex-service pensioners and their families and the families of deceased service personnel drawing pension of some kind were entitled to free out-patient treatment including supply of free medicines from the nearest military hospital. Sanction was also accorded for these personnel for providing in-patient treatment in Service hospitals subject to the following conditions:-

(a) That the disease is not incurable.

(b) That the hospital accommodation could be made available from within the authorized number of beds and without detriment to the needs of serving personnel.

(c) That the treatment will be limited to the facilities locally available.

(d) No conveyance will be provided for journeys from the residence to the hospital and back; and

(e) No special nursing would be admissible.

It is specifically laid down in this Government letter that the above concessions will not include treatment for pulmonary tuberculosis, leprosy, mental diseases, malignant diseases or any other disease for which treatment is not ordinarily available from the local military sources.

12.11 Liberalisation Proposals : due to the increased awareness and phenomenal increase in the number of ex-servicemen at the rate of 60,000 per annum, more and more ex-servicemen are now coming to Service hospitals for treatment. To meet the requirement of giving adequate treatment to the ex-servicemen reporting at the Service hospitals, the following additional facilities need to be provided:-

(a) Sanction of 1155 beds exclusively for the ex- servicemen pensioners and entitled dependents.

(b) To treat ex-servicemen as out-patients and in-patients, additional staff would also be required as under:-

(i) Officers 33

(ii) Nursing Officers 74

(iii) Other Ranks 312

(iv) Civilians 211

12.12 Civil Hospitals : Ex-servicemen are living in villages, towns and cities throughout the country. The 31 military hospitals are situated in military stations. The primary aim of these hospitals is to provide medical cover to the serving personnel. On account of their location, only those ex-servicemen and entitled dependents within close proximity to these stations are likely to avail of the facilities in these military stations. In the case of most other ex-servicemen they have to perforce depend upon the civil hospitals in the districts. Hence, States/Union Territories should provide medical assistance to the ex-servicemen in their civil hospitals free of charge, for example as provided in Karnataka. In Chapter X, certain recommendations have been made for provision of funds from the Seventh Plan expenditure for the construction of wards for ex-servicemen in hospitals. This should also be done in civil hospitals particularly in States where there are a large number of ex- servicemen."

The Committee then made certain

recommendations, inter alia, observing that the existing facilities in the Military hospitals should be enhanced for ex-servicemen and their entitled dependents in a phased manner in the next few years.

As already noted earlier, in 1983, Regulations for the medical services of the Armed Forces were framed superseding the Regulations for the medical services of the Armed Forces, 1962. Regulation 296 providing "Entitlement to medial attendance" is relevant and the material part thereof reads thus:

296. The classes noted below are entitled to medical attendance as defined in paras 284, 285 and 286 to the extent shown against each:□

Classes

Medical attendance

Admissible

Remarks

(a)

(b)

(c)

A.

B.

C.

D.

E.

F.

(i)

Ex-service personnel in receipt of a disability pension and Ex-servicemen of the Indian State Forces in receipt of a disability pension from the Defence Services Estimates for a disability accepted as attributable to or aggravated by service with the Indian Armed Forces.

As out-patient or in a hospital.

(a) Treatment is authorized only for the disabilities for which pension has been granted excluding cases of Pulmonary Tuber-culosis, Leprosy and mental diseases and patients requiring any special treatment not ordinarily available from service sources, such as radiotherapy.

(b) Admission may be authorized for the purpose of observation to

enable the medical authorities to arrive at a correct assessment of the degree of disability.

(ii) Personnel of F(i) above, who have been invalidated out of service on account of a disability accepted as attributable to/ aggravated by military service but who are not in receipt of a disability pension for the reason that the disability is less than 20% and individuals whose

case attributability has been conceded by the Medical Board but a final decision in the matter ha snot been reached.

As out-patient or in a hospital, if accommodation is available.

(a) As in F(i) above.

(b) Treatment will be discontinued immediately in respect of cases under conside-ration if the final decision is against the findings of the Medical Board.

(iii) Ex-service

personnel invalided out of service on account of pulmonary tuberculosis which has been accepted as attributable to/aggravated by service and for which disability pension has been granted.

(i) Domiciliary treatment as out patient.

(ii) May be admitted in Military Hospital (Cardio Thoracic Centre), Pune, on the recommendation of OC of an armed forces hospital, if a bed out of the ten T.B.

beds reserved for
this category of
personnel is
available.
On relapse of the
disease.
This concession is
not an entitlement
for indoor hospital
treatment for T.B.
from military
sources for ex-
servicemen.
G.
H.
I.
J.
K.
L.
M.
N.
O.
Ex-Service pensioners

and their families of deceased service personnel drawing pension of some kind

(i) Free out patient treatment in the nearest Armed Forces Hospital including the supply of medicine necessary for their treatment.

(ii) In-patient treatment in Armed Forces Hospital subject to the following conditions:

a) That the disease is not incurable.

b) The hospital accommodation could be made available within the

authorized number
of beds and without
detriment to the
needs of service
personnel.
c) That the treatment
will be limited to the
facilities available
locally.
d) No conveyance will
be provided for
journeys from the
residence to the
hospital and back.
e) No special nursing
would be admissible.
f) for in patient
treatment, hospital
stoppages will be as
para 16 of Appendix
5.
The scope of the
above concessions

will not include treatment for pulmonary tuber-culosis, leprosy, mental disease, malignant disease or any other disease for which treatment is not ordinarily available from local military sources.

(ii) These conce-ssions will not be admissible to the service pensioners who are re-employed in Government/Semi-Government departments or other public or private Sector

undertaking which

provides medical

facilities to their

employees.

iii) for this purpose

family includes

wife and un-

married children /

step children /

adopted children

under 18 years of

age are dependent

on the pensioners.

Note : Retired officers of the Armed Forces including M.N.S. officers and retired JCOs, WOs, OR and NcsE or equivalents in the Navy and Air Force in receipt of service pension may be treated in a hospital if accommodation is available and admission is sanctioned by the O.C. Station/administrative authority. They are not entitled to special nursing in hospital.

In the affidavit in reply filed by the Union of India, it was stated that under the Group Insurance Scheme and from the Armed Forces Flag Day Fund, medical treatment has been provided to ex-servicemen. On the recommendation of Fifth Pay Commission, the Government had sanctioned a fixed medical allowance of Rs.100 per month to those ex-servicemen and their families who reside in the area where Armed Forces hospitals/clinics are not available. Other facilities were also extended to them. It was stated that in respect of serious diseases i.e. diseases affecting heart angiography, open heart surgery, valve replacement, pacemaker implant, bypass surgery and repeat angioplasty, cancer, etc. facilities are now available. Substantial financial assistance is provided to ex- servicemen and their dependents for treatment in several hospitals for bypass surgery (including preliminary tests like angiography, angioplasty, angiography), kidney/renal transplantation, cancer/spastic paraplegic treatment, coronary artery surgery, open heart surgery, valve replacement and pacemaker implant. We have been taken through the contributory scheme of 2002. It substantially covers extensive medical

facilities to be provided to ex-servicemen. A communication dated December 30, 2002 by Government of India, Ministry of Defence to the Chief of Army Staff, Navy Staff and Air Staff states that Government has sanctioned Ex-Servicemen Contributory Health Scheme (ECHS).

The communication inter alia states as under: "(a) ECHS would be a contributory scheme. On retirement, every Service personnel will compulsorily become a member of ECHS by contributing his/her share and the Scheme would be applicable for life time. Similarly ex- servicemen who have already retired can become members by making a one time contribution. There would be no restriction on age or medical condition. The contribution will be according to the rates prescribed for CGHS pensioners as per Appendix-A attached.

(b) Retired personnel joining the scheme will forfeit the medical allowance of Rs.100/- presently admissible to them and those who do not join the scheme would continue getting medical allowance as hithertofore. Such persons would not be entitled to any medical facility from Armed Forces Clinics/Hospitals or Polyclinics set up under the scheme."

Para 2 (c) of the said letter states that the scheme would cater for medicare to the ex-servicemen by establishing new Polyclinics and Augmented Armed Forces Clinics at 227 stations spread across the country, the details of which have been given in the letter. It also provides for reimbursement of cost of medicines/ drugs/consumables and for financial outlay. It states that the service head quarters would ensure that allocations made for revenue expenditure and reimbursement is fully utilized on yearly basis. It then prescribes rates of contribution in Appendix-A which are as under:

RATES OF CONTRIBUTION

(a) Pension upto Rs.3000 Rs. 1800 (b) Pension between Rs.3001-6000 Rs. 4800 (c) Pension between Rs.6001-10000 Rs. 8400 (d) Pension between Rs.10001-15000 Rs. 12000 (e) Pension of Rs.15000 and above Rs. 18000 From the above discussion as well as the relevant provisions of the scheme, we are satisfied that necessary steps have been taken by the respondents. Under the scheme, now in vogue, all ex-servicemen are entitled to medical treatment provided they become members of the said scheme and pay requisite contribution. It is also not in dispute that this would apply only to those defence personnel who retired prior to 1st January, 1996 since officials who have retired after that date or are still in service are governed by the scheme and are paying requisite amount of contribution. The larger question raised by various associations is that to get free and full medical aid is their fundamental right and is corresponding duty of the Government. The respondents, hence can neither deny that right nor can ask ex-servicemen to pay contribution amount for getting medical services. To buttress the contention, the learned counsel invited our attention to several decisions of this court. It is not necessary to deal with all those cases. We may, however, consider some of them which are relevant. Strong reliance was placed on a decision of three Judge Bench in Consumer Education & Research Centre. In that case, the Court dealt with the problem of occupational health

hazards and diseases sustained by the workmen employed in asbestos industries. The Court observed that the dangers and diseases attributable to personnel working in asbestos industries were very serious apart from cancer and respiratory disorders. It was held that right to health and medical aid of workers during service and thereafter, is a fundamental right of workers. According to this Court, it can issue directions in an appropriate case to the State or its instrumentalities or even private employers to make the right to life meaningful and to pay compensation to affected workmen. It also held that the defence of 'sovereign immunity' would not be available to the State or its instrumentalities where fundamental rights are sought to be enforced. Relying on several previous judgments, this Court held that right to life would mean meaningful and real right to life. It would include right to livelihood, better standard of living in hygienic conditions at the work place and leisure.

Speaking for the Court, K. Ramaswamy, J. observed in para 25;

"Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person." (emphasis supplied)

Reliance was also placed on CESC Ltd. v. Subhash Chandra Bose, [1992) 1 SCC 441 : AIR 1992 SC 573], wherein His Lordship (K. Ramaswamy, J.) held that right to health of a worker is covered by Article 21 of the Constitution. It was also indicated that health does not mean mere absence of sickness but would mean complete physical, mental and social well-being. "Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gift-edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on the ground of sickness."

Reference was made to Bandhua Mukti Morcha v. Union of India, [(1984) 3 SCC 161 : AIR 1984 SC 802] wherein Bhagwati, J. (as His Lordship then was) referring to Francis Coralie Mullin v. Administrator, Union Territory of Delhi, [(1981) 1 SCC 608 : AIR 1981 SC 746] stated;

"It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and

humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in Clauses (e) and (f) of Article 39, Article 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State."

The counsel also relied upon Paschim Banga Khet Mazdoor Samity v. State of West Bengal, [(1996) 4 SCC 37 : AIR 1996 SC 2426]. That case related to failure on the part of Government hospitals to provide timely emergency medical treatment to persons in serious conditions. Relying on Khatri (II) v. State of Bihar, [(1981) 1 SCC 627], this Corut said;

"It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the Constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused, this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. (See : Khatri (II) v. State of Bihar (1981) 1 SCC 627]. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the Memorandum of the Government of West Bengal dated August 22, 1995 and the further directions given herein".

In Vincent Panikurlangara v. Union of India, [(1987) 2 SCC 165 : AIR 1987 SC 990],the issue related to manufacturing, selling and distributing approved standard of drugs and banning of injurious and harmful medicines. In the background of that question, this Court held right to maintenance and improvement of public health as one of the

fundamental rights falling under Article 21 of the Constitution. Quoting a well-known adage "Sharirmadhyam khalu dharma shadhanam" (healthy body is the very foundation of all human activities), the Court observed that

"maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority--perhaps the one at the top".

In National Textile Workers' Union v. P.R. Ramakrishnan, [(1983) 1 SCC 228 : AIR 1983 SC 75], placing emphasis on needs of changing society and liberal construction of laws conferring benefits on weaker classes, Bhagwati J. (as His Lordship then was) said; "We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand alongwith the tree, it will either choke the tree or if it is a living, tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adopting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation. We cannot therefore mechanically accept as valid a legal rule which found favour with the English courts in the last century when the doctrine of laissez faire prevailed. It may be that even today in England the courts may be following the same legal rule which was laid down almost a hundred years ago, but that can be no reason why we in India should continue to do likewise. It is possible that this legal rule might still be finding a place in the English text books because no case like the present one has arisen in England in the last 30 years and the English courts might not have had any occasion to consider the acceptability of this legal rule in the present times. But whatever be the reason why this legal rule continues to remain in the English text books, we cannot be persuaded to adopt it in our country, merely on the ground that it has been accepted as a valid rule in England. We have to build our own jurisprudence and though we may receive light from whatever source it comes, we cannot surrender our judgment and accept as valid in our country whatever has been decided in England".

It cannot be gainsaid that right to life guaranteed under Article 21 of the Constitution embraces within its sweep not only physical existence but the quality of life. If any statutory provision runs counter to such a right, it must be held unconstitutional and ultra vires Part III of the Constitution. Before more than hundred years, in Munn v. Illinois, (1876) 94 US 113 : 24 Law Ed 77, Field, J. explained the scope of the words "life" and "liberty" in 5th and 14th Amendments to the U.S. Constitution and proclaimed;

"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation

of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world..... by the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bonds of a prison." (emphasis supplied)

The above observations have been quoted with approval by this Court in Kharak Singh v. State of U.P. (1964) 1 SCR 332 : AIR 1963 SC 1295. A similar view thereafter has also been taken in several cases, viz., Prithi Pal Singh v. Union of India, (1982) 3 SCC 140 : AIR 1982 SC 1413; A.K. Roy v. Union of India, (1982) 1 SCC 271 : AIR 1982 SC 710; Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545 : AIR 1986 SC 180; State of H.P. v. Umed Ram Sharma, (1986) 2 SCC 68 : AIR 1986 SC 847; Prabhakaran v. State of Tamil Nadu, (1987) 4 SCC 238 : AIR 1987 SC 2117; A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : AIR 1988 SC 1531; Vikram Deo Singh v. State of Bihar, 1988 Supp SCC 734 : AIR 1988 SC 1782; Parmanand Katara v. Union of India, (1989) 4 SCC 286 : AIR 1989 SC 2039; Kishan Pattnayak v. State of Orissa, 1989 Supp (1) SCC 258 : AIR 1989 SC 677; Shantistar Builders v. Narayan, (1990) 1 SCC 520 : AIR 1990 SC 630; Chhetriya Pradushan Mukti Sangharsh Samiti v. State of U.P., (1990) 4 SCC449 : AIR 1990 SC 2060; Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 : AIR 1990 SC 1480; Delhi Transport Corporation v. Delhi Transport Corporation Mazdoor Congress, 1991 Supp (1) SCC 600(735) : AIR 1991 SC 101; Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1; District Registrar & Collector, Hyderabad v. Canara Bank, (2005) 1 SCC 496].

The stand of the Union of India, however, is that to provide medical facilities to all defence personnel in service as well as retired, necessary steps have been taken. So far as ex-servicemen are concerned, Contributory Scheme of 2002 provides for medical services by charging 'one time contribution' on the basis of amount of pension received by an employee. The amount ranges from Rs.1,800 to Rs.18,000 which cannot be said to be excessive, disproportionate or unreasonably high. The question, therefore, is whether the State can ask the retired defence personnel to pay an amount of contribution for getting medical facilities by becoming a member of such scheme. In our opinion, such a contributory scheme cannot be held illegal, unlawful or unconstitutional. Ultimately, the State has to cater to the needs of its employeespast and present. It has also to undertake several other activities as a 'welfare' State. In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex- defence personnel by allowing them to become members of contributory scheme and by requiring them to make 'one time payment' which is a 'reasonable amount', it cannot be said that such action would violate fundamental rights guaranteed by Part III of the Constitution.

In State of Punjab v. Ram Lubhaya Bagga, [(1998) 4 SCC 117 : AIR 1998 SC 1703], a three Judge Bench of this Court had an occasion to consider the question of change of policy in regard to reimbursement of medical expenses to its employees. Referring to earlier decisions, the Bench took note of ground reality that no State has unlimited resources to spend on any of its projects. Provisions relating to supply of medical facilities to its citizens is not an exception to the said rule. Therefore, such facilities must

necessarily be made limited to the extent finances permit. No right can be absolute in a welfare State. An individual right has to be subservient to the right of public at large.

"This principle equally applies when there is any constraint on the health budget on account of financial stringencies."

We are in agreement with the above view. In our considered opinion, though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay 'one time contribution' neither violates Part III nor it is inconsistent with Part IV of the Constitution. Ex- servicemen who are getting pension have been asked to become members of ECHS by making 'one time contribution' of reasonable amount (ranging from Rs.1,800/- to Rs.18,000/-). To us, this cannot be held illegal, unlawful, arbitrary or otherwise unreasonable. Observations made by this Court in the cases relied upon by the petitioner and intervenors including Consumer Education & Research Centre referred to earlier, must be read as limited to the facts before the court and should not be understood to have laid down a proposition of law having universal or general application irrespective of factual situation before the Court. To us, the policy decision in formulating Contributory Scheme for ex-servicemen is in accordance with the provisions of the Constitution and also in consonance with the law laid down by this Court. We see no infirmity therein. We, therefore, hold that getting free and full medical facilities is not a part of fundamental right of ex-servicemen.

We must, however, hasten to add that we are not unmindful or oblivious of exemplary and extremely useful services rendered by defence personnel. We are equally conscious of the fact that the safety, security and comfort enjoyed by the countrymen depend largely on dedication and commitment of our soldiers, sailors and airmen. We are also aware that they are exposed to harsh terrain and discharge their duties in hostile conditions of life. For days and months, they are at places covered by snow or in desert or in wild forests. They are unable to come in contract with their family members, kiths and kins or rest of the world. They are not in a position to enjoy even usual and day-to-day comforts and amenities of life available to ordinary men and women. At times, they are not able to communicate to their friends and relatives. It is also not in dispute that the question relates to a particular class of persons which is a 'diminished category', retired prior to January 1, 1996.

Taking into account all these facts and the circumstances in their entirety, on March 8, 2006, we passed the following order:

"Mr. K. S. Bhati, learned counsel appearing for Petitioner No. 1, commenced his submissions at 10.30 a.m. and concluded at 2.35 p.m. Thereafter, Mr. J.S. Manhas, learned counsel appearing for Petitioner Nos. 2 and 3, made his submissions till 3.00 p.m. Mr. Ravi P. Mehrotra, learned counsel appearing for the Union of India, made his submissions till 3.25 p.m. Mr. K.S. Bhati, learned counsel, thereafter rejoins and concluded at 3.30 p.m.

Hearing concluded.

We have heard the learned counsel for the parties on the questions of law, particularly on the aspect of the correctness of broad observations made in the decision of a three-Judge Bench in Consumer Education Research Centre & Ors. vs. Union of India & Ors. (1995 (3) S.C.C.43).

During the course of hearing with the assistance of the learned counsel, we have perused the Ex-servicemen

Contributory Health Scheme [for short, "E.C.H.S."] dated 30th December, 2002. The contribution to be made by an ex-serviceman so as to avail the benefit of health scheme under the E.C.H.S. is one-time payment ranging from Rs.1800/- to Rs.18,000/- depending upon the amount of pension drawn by him. In this writ petition, we are concerned with the cases of those ex- servicemen who have retired before 1st January, 1996. It is evident that this class of ex-servicemen is a diminishing category. The Government of India, Ministry of Defence, shall consider, without it being treated as a precedent, the question of granting the waiver of contribution required to be made under the E.C.H.S. by the ex-servicemen of the category with which we are concerned, i.e., those who have retired prior to 1st January, 1996, having regard to the contribution that may have been made by them in the service of the nation and particularly considering that they, while in service, were not making any payment so as to enjoy the benefit of medical care. Alternatively, the Government can also consider making payment on behalf of those who may be interested in availing the benefits under the E.C.H.S. In case of any difficulty in granting this one-time concession, the Government shall file an affidavit within a period of four weeks, placing on record the approximate amount which may have to be waived or contributed by the Government on behalf of such category of ex-servicemen. Further, if the Government decides to waive it or pay it, without it being treated as a precedent, in that event, the amount may not be incorporated in the affidavit. The waiver or payment would be only in respect of those who voluntarily wish to join the E.C.H.S.

Judgment is reserved".

In the above order, we suggested that the Government may waive payment of contribution charges or may consider to pay requisite 'one time contribution' on behalf of the employees who may be interested in availing the benefits of ECHS. We also indicated that in case of any difficulty in granting this one time concession, the Government may file an affidavit within a period of four weeks placing on record the approximate amount which may have to be waived or contributed by the Government on behalf of such category of ex- servicemen. No such affidavit has been filed by the Government so far. It can, therefore, safely be presumed that the Government has no difficulty in waiving/paying contribution as a 'one time measure' on behalf of ex- defence personnel who retired prior to January 1, 1996 and wish to avail benefits of ECHS. Obviously, the said question will not arise in future. We, therefore, dispose of the matter in the light of our earlier order and the observations made therein.

For the reasons aforesaid, the writ petition deserves to be partly allowed. Keeping in view totality of facts and circumstances, in our considered view, the ends of justice would be met if we hold the Ex-servicemen Contributory Health Scheme, 2002 (ECHS) to be legal, valid, intra vires and constitutional but direct the respondent-Government either to waive the amount of contribution or to pay such amount on behalf those ex- servicemen who retired prior to January 1, 1996 and who intend to avail medical facilities and benefits under the said scheme by exercising option by becoming members of ECHS. In other words, it is open to ex- defence personnel, who retired prior to January 1, 1996 to become members of ECHS and to claim medical facilities and benefits under the said scheme without payment of contribution amount. They are, however, not entitled to claim medical allowance in future. The writ petition is accordingly disposed of. Rule is made absolute to the extent indicated above. In the facts and circumstances, however, parties are directed to bear their own costs.