Seenath Beevi

vs

State Of Kerala

Kerala High Court

3 September 2003

Citations: 2003 (3) KLT 788

Bench: K Denesan

JUDGMENT

K.K. Denesan, J.

1. Petitioner, a Head Nurse working in the Taluk Head Quarters Hospital, Thirroorangadi in the Health Services Department of the State has approached this Court with the grievance that she is required to do continuous duty for 14 hours at a stretch for 6 days consecutively.

2. A few facts may be noticed. The strength of the nursing staff in Govt. Taluk Head Quarters Hospital, Thirrorangadi is 44, out of which 36 Nurses are Staff Nurses and 8 are Head Nurses. 4 Staff Nurses are working in other hospitals on working agreements. Similarly 2 Head Nurses are working in other hospitals. The strength of the Nursing Staff in the above hospital is thus reduced to 30. Government have introduced shift system in some of the Government Hospitals. Since shift system is not introduced in the Govt. Taluk Head Quarters Hospital, Thirroorangadi, members of the Nursing Staff are compelled to work for 14 hours a day at a stretch. Petitioner is working 14 hours a day and she is allowed to avail only one day off in a week. She has averred in the O.P. that 'the work of nursing, especially in Government Hospitals, is arduous in nature' and therefore long hours of continuous duty is too harsh and inhuman to stand the test of law and justice. She has prayed in this O.P. for a direction commanding the respondents to introduce 3 shift duty system in Government Hospital, Thirroorangadi, and for a declaration that forcing the petitioner to be on duty continuously for 14 hours a day for 6 days in a week is illegal and unconstitutional.

3. Nurses working in the Government Hospitals of the State have approached this Court on prior occasions also with the above grievance. A Writ Petition (O.P. No. 6842 of 1990) was filed by four Nurses working in the Women and Children Hospital, Mattancherry, and another Nurse working in the Maharaja's Hospital, Palluruthy, for the redressal of a similar grievance. Having regard to the importance of the issue and the impact it may have throughout the State of Kerala in the Health Services, K.T. Thomas, J. (as His Lordship then was), referred the question for decision by a Division Bench of this Court. Before the Division Bench, it was submitted on behalf of the Government that the question to limiting the duty time of the Nursing Staff within 8 hours per day had been engaging the attention of the Government for some time past and after considering all the aspects Government have introduced "3 shift system" with the intention to limit duty time of nurses as 8 hours per day. A list of hospitals where the 3 shift system was introduced with effect from May 18, 1987 was also furnished by the respondents in that case. Those hospitals are:

1. Medical College Hospital, Thiruvananthapuram.

2. S.A.T. Hospital, Thiruvananthapuram.

3. Medical College Hospital, Kozhikode.

4. Institute of Maternal and Child Health, Kozhikode.

5. Beach Hospital, Kozhikode.

6. W. & C. Hospital, Kozhikode.

Three shift duty system was thereafter introduced in the Medical College Hospital, Kottayam, as well as in the Medical College Hospital, Alappuzha, with effect from June 28, 1989. In that background the Division Bench disposed of O.P. No. 6842 of 1990 in the following manner:

"In this view of the situation, all that is left for us is to appreciate the approach of the State and sincerely desire to order God speed to this necessary and noble function. When the State Government has already done much in 1987 and 1989, the lull thereafter in the direction has to be pushed up because 1994 is far away from 1989 with a period of five years thereafter.

This petition is pending in this Court from 1990 with this counter having been filed on July 27, 1992. Normally the State Government should have come before us with an order of compliance, be that as it may in the above situation, we allow this petition and direct the respondents 1 to 3 to take all necessary and required steps to implement the three shift system already made applicable to the medical hospitals referred to in paragraph 4 and other Medical College Hospitals referred to in paragraph 5, almost forthwith without loss of further time to the Women and Children Hospital, Mattancherry on or before December 31, 1994. Needless to state that other similarly situated medical hospitals would also be looked after in the same spirit by the present respondents, not requiring them to approach this Court for this purpose any more. In the circumstances there shall be no order as to costs".

4. Disappointed by the fact that no effective steps were taken thereafter to introduce the shift system in other hospitals also, an association of Nurses, called Kerala Government Nurses' Union, filed O.P. No. 1 of 2000 for a declaration that the working condition requiring the nursing staff 'to do continuous duty at night for 14 hours at a stretch for 6 days' was unconstitutional and for a direction 'commanding the respondents to ensure that there is uniformity in the matter of working hours of nursing staff under them by introducing three shift duty system in all the Government hospitals'. A learned Single Judge of this Court disposed of the said O.P. by Ext. P1 judgment. In that writ Petition the contention of the Government was that introduction of the 3 shift duty system in all the hospitals would incur huge financial commitment and therefore the shift system can be implemented only in a phased manner subject to availability of the finance. Taking due note of the above submission made by the Government, this Court in Ext. P1 judgment opined that the stand taken by the Government cannot be said to be unreasonable and that the court cannot compel the Government to introduce the 3 shift system by incurring huge financial commitment. However, considering the fact that the Government have implemented the 3 shift system in the Medical College Hospitals and District Hospitals as also in some of the Taluk Head

Quarters Hospitals, the system should be extended to all the Taluk Head Quarters Hospitals. For that purpose a time limit was fixed in Ext. P1, i.e., 31.12.2000. The operative part of the judgment is as follows:

"Therefore, the Government is directed to introduce the system in all the Taluk Headquarters Hospitals on or before 31st December, 2000. Thereafter within one year the Government must take steps to introduce the shift system in all the other Hospitals. Since the Government is given sufficient time, they must also find out the sufficient finance for the above purpose within the above stipulated time. Since the Government have got a duty to the people to extend the medical facilities and health care, they cannot wriggle out from the above responsibility by stating that they have no finance to implement the above system. It is for the Government to find out the ways and means to see that the people in the State are given proper medical care and hospital facilities".

It is seen that Government is not interested in implementing the directions in Ext. P1, consequently Nurses including Head Nurses like the petitioner are the victims of the inaction.

5. Learned counsel, Smt. Anu Shivaraman who argued the case for the petitioner, submitted that rationalisation of the working hours by laying down just and reasonable time schedule is the duty of every employer in a civilized society, particularly of a model employer like the Government in a welfare State. The duty of the State is as much more than a private employer. It has got the constitutional obligation to do away with unjust and unfair conditions of service and replace them with benign conditions which are just, fair and humane. Learned counsel put emphasis on the need for a declaration as prayed for in this petition. To drive home the point, counsel brought to my notice relevant Articles in the Universal Declaration of Human Rights, 1948, decisions of the Supreme Court explaining the meaning and content of the expression 'Right to Life' in the context of Article 21 of the Constitution, relevant extracts from the text of I.L.O. Conference (Nursing Personnel Convention 1977) and write-ups appeared in Health Care Magazines.

6. Facts stated in the Writ Petition, uncontroverted as they are, go to show that the work of a Nurse, especially in the Government Hospitals, is extremely arduous in nature. The sum and substance of the submission of the learned counsel is that attending such duties continuously for long hours is harmful to the physical as well as mental health of the Nurse, unsafe to the patient and likely to cause deleterious consequences.

7. Nursing is a noble profession; it is not merely an occupation to earn a living but a benevolent service. The nursing of the sick, said Florence Nightingale, is a vocation as well as a profession. Nurses live in the midst of the distressing atmosphere of the hospital. Naturally they get tired due to the stress and strain both mental and physical. The submission made by the petitioner's counsel that employees actively engaged in the work of nursing get totally exhausted by attending duty continuously and regularly for a period of 10 to 14 hours a day, is no exaggeration.

8. Qualified and efficient employees committed to the service of the sick, the ailing and the injured is essential for the proper functioning of every hospital. There is no place for any sort of indifference, lethargy or lack of devotion to duty in the field of medical care. True it is that, qualification, skill, efficiency, devotion to duty are essential for the doctor as well as the nurse. But those attributes will not be of any use once the staff members get tired and exhausted and loose their presence of mind. Burn out has been identified as a phenomenon

that poses danger to the physical and mental health of those who do overtime work regularly in medical as well as other profession. The above issue is being seriously discussed among physicians as it affects not only their ability at the work place but also their private life. It is a fact that the sick and the injured need a nurse who is pleasant and alert; well behaving and caring. The presence of a nurse who has lost the freshness, the patience to attend the patient and has also lost the very equilibrium of the mind and the body, will be felt as a curse.

9. Rationalisation of the working hours so as to make it humane and to bring it within just and reasonable limits is not only the need of the nursing staff but also the patients who are at the receiving end. In a broader sense it is the concern of the society at large. Petitioner has brought to the notice of the respondents that because of the inordinate delay in introducing the shift system nurses are compelled to work 14 hours a day; female nurses find it extremely difficult to manage their home affairs and long hours of continuous work denudes the very essence and fragrance of their life.

10. Hours of employment, is a condition of service and the power to prescribe the same, subject to limitations imposed by law, is the prerogative of the employer. The question that at once arises is, whether in the absence of statutory provisions or executive orders having the force of law, has not the employer got the unfettered power to prescribe a schedule of working hours regardless of the problems of the employees? What if any is the remedy for the worker, if the prescribed working hours is so inhuman, unjust and unconscionable as to make his life miserable? If solution to this problem cannot be found on statutory grounds, can the grievance be redressed under the provisions of the Constitution? These are the issues that arise for consideration in this Writ Petition.

11. Article 39(e) of the Constitution directs the State that the health and strength of workers, men and women are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 42 mandates that the State shall secure just and humane conditions of work and for maternity relief. Article 43 states that the State shall endeavour to secure, by suitable legislation or in any other manner, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

12. India is a signatory to Universal Declaration of Human Rights, which was passed by the United Nations Assembly vide Resolution 217A (III) dated 10.12.1948. Article 23(1) of the said Declaration says:

"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

Article 24 also is worth noting. It reads:

"Everyone has the right to rest and leisure time, including reasonable limitation of working hours and periodic holidays with pay."

The main thrust of the argument of the petitioner's counsel was on Article 21 of the Constitution which mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. It is no more res integra that in interpreting the scope and ambit of Article 21 of the Constitution, the Universal Declaration of Human Rights and the Directive Principles of State Policy enshrined in . Part IV of the Constitution

play a significant and effective role. The Supreme Court has time and again pressed into service the Human Rights Declaration and the Constitutional provisions in Part IV in interpreting Article 21.

13. In Samatha v. State of A.P. and Ors. ((1997) 8 SCC 191) the Apex Court held that Article 21 of the Constitution reinforces "right to life" - a fundamental right- which is an inalienable human right declared by the Universal Declaration of Human Rights and the sequential conventions to which India is signatory. In Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161) it was held that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develop in a healthy manner and in conditions of freedom and dignity. It was also held: "Adequate facilities, just and humane conditions, of work etc. are the minimum requirements which must exist in order to enable a person to live with human dignity and the State has to take every action". In C.E.S.C. Ltd. v. Subash Chandra Bose ((1992) 1 SCC 441) the Apex Court held that right to health of a worker is a fundamental right. Right to health and social justice was held to be fundamental right to workers. In Consumer Education and Research Centre and Ors. v. Union of India and Ors. ((1995) 3 SCC 42) it was unanimously held by the Bench of three Judges thus:

"The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood to sustain the dignity of person and to live a life with dignity and equality."

In the above decision Supreme Court referred to Article 2(b) of the International Convention of Political, Social and Cultural Rights and pointed out that the said Article protects the right of worker to enjoy just and favourable conditions of work ensuring safe and healthy working conditions. It is now well settled that the expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. As held in C.E.S.C, Ltd. v. Subash Chandra Bose (supra) it has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure. In paragraph 26 of the said decision Supreme Court said:

"The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood".

Supreme Court further held:

"Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e),41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21".

Paragraph 26 concludes as follows:

"Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and

culturally....."

Then the Supreme Court held in paragraph 27 as follows :

"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 life of the workman meaningful and purposeful with dignity of person."

In State of Punjab and Ors. v. Mohinder Singh Chawla (AIR 1997 SC 1225) Supreme Court held:

"It is now settled law that right to health is an integral to life. Government has constitutional obligation to prove the health facilities".

In Hinch Lal Tiwari v. Kamala Devi and Ors. ((20001) 6 SCC 496) Supreme Court held that the right to enjoy a quality life is the essence of the guaranteed right under Article 21 of the Constitution. In fact, Supreme Court had already brought the right to enjoy a quality life within the scope of Article 21 much earlier through its judgment in State of H.P. v. Umed Ram (AIR 1986 SC 847). There it was said that the right under Article 21 embraces not only physical existence of life but the quality of life as well.

14. Therefore it can safely be held that rationalisation of working hours to make it just, unreasonable and humane is the constitutional obligation of the State. Right to have such conditions of work is an integral part of the right to life under Article 21 of the Constitution. In this context I may gainfully extract what the Supreme Court said in paragraph 15 of the judgment in L/C of India v. Consumer Education & Research Centre and Ors. ((1995) 5 SCC 482):

"Article 25 of the Universal Declaration of Human Rights envisages that everyone has the right to standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control. Article 7 of the International Covenant on Economic and Social Rights equally assures right to everyone to the enjoyment of just and favourable conditions of work which ensures not only adequate remuneration and fair wages but also decent living to the workers for themselves and their families in accordance with the provisions of the Covenant. Covenant on Right to Development enjoins the State to provide facilities and opportunities to make rights a reality and truism, so as to make these rights meaningful".

The scope and ambit of the expression right to life was once again explained by the Supreme Court in paragraph 17 of the above decision.

15. In this connection it is worth noticing that the Indian Railways Act, 1890 was amended in the year 1930, based on the Geneva and Washington Conventions sponsored by International Labour Organisation in order to regulate hours of employment, period of rest and payment of overtime of various categories of Railway employees. The employees were not satisfied with the amended regulation adopted in 1930, They agitated for better conditions of service and as a result of which Justice Rajadhayaksha adjudicated the issue and gave his award. This award was accepted and the Indian Railways Act, 1890 was again amended in the year 1956. The provisions thus made are known as Hours of employment Regulations. A cursory look at these regulations shows that for the purpose of hours of work, the Railway employees are classified as 'intensive', 'continuous', essentially intermittent' and 'excluded'. A chart showing categories, description, statutory limit, restored limits shift duty, weekly rest etc. is annexed to the said Regulations. I am referring to the above Regulations to show that rationalisation of the working hours was always a matter of concern for the labourers and that was taken care of, at least to some extent, even during the colonial-pre-independence period.

16. Rationalisation of working hours has to be done taking into account the basic realities and other relevant aspects prevailing in each industry or establishment and it will not be proper to simply copy down what has been done in a particular industry or establishment. However, in the light of the Constitutional mandate under Article 21 no employer whether private, Government or quasi-Government has got the unfettered freedom to prescribe conditions of work imposing duty hours exceeding certain limits. A glance through the various labour regulations would show that compelling the worker to attend duty continuously for 14 hours for 6 days in a week consecutively is a service condition which stands in isolation in the field of labour law and is inconsistent with the scheme of all those legislations. The impugned working hours is definitely on the higher side. A reading of Sections 51, 54, 55, 57 and 66(b) of the Factories Act, Sections 28 to 36 of the Mines Act, 1952, Sections 19, 20, 21, 23 and 25 of the Plantation Labour Act, Notifications under Section 13 of the Minimum Wages Act and similar labour legislations shows that the normal working hours with a short interval is 9 hours daily and the total working hours per week in the normal course is 48 hours.

17. "Eight-Hour Day and the 48-Hour Weekly" has been accepted as a standard regulation in the Hours of Work (Industry) Convention, 1919 of the International Labour Organisation Convention. The above Convention applies to persons employed in public or private industrial undertakings. It provides that the working hours shall not exceed eight in the day and 48 in the week. The Convention authorises various exceptions also. It excludes persons holding positions of management, and persons employed in a confidential capacity. It further says that when the hours of work on one or more days of the week are less than eight, the limit may be exceeded on the remaining days, but not by more than an hour. It is also permissible to exceed the eight-hour limit in the case of shift work, but the average number of hours over a period of three weeks should not exceed the general standard of the Convention. Exceptions are also permitted in cases of accident, actual or threatened, of urgent work to be done to machinery or plant, or of force majeure, but only so far as may be necessary to avert serious interference with the ordinary working of the undertaking. In exceptional cases where the standard of the eight-hour day and 48-hour week cannot be applied, the daily limit of work can be calculated over a longer period, with the agreement of the occupational organisations concerned. It is pertinent to note that the Convention also provides that employees should notify workers of the hours of work and rest intervals and should keep a record of additional hours worked. It specifies that it should be made an offence against the law to employ a person outside the hours provided in the Convention. The Hours of Work (Commerce and Offices) Convention, 1930 also has made more or less similar provisions.

This Convention also authorises, in exceptional cases, the distribution of hours of work over a period longer than the week, provided that the average hours of work do not exceed 48 hours in the week and that hours of work in any day do not exceed ten hours. The International Labour Organisation has held Special Conventions and has taken resolutions with respect to particular industries. The recommendation made by the International Labour Organisation Convention 1962 shows that workers all over the world have been consistently clamouring for reduction of the working hours. 19th Century has witnessed many a battle fought by the working class against bonded labour, drudgery and restless labour. In the streets of Chicago workers sacrificed their life demanding 8 hours work, 8 hours rest and 8 hours entertainment. "May day" became a memorable day for the workers all over the world, following this historical struggle.

18. In this connection reference may be made to some of the decisions taken in the general conference of the International Labour Organisation - Nursing Personnel Convention 1977. Provisions contained in Articles 2, 6 & 7 of the resolution passed in the above convention are extracted below:

"Article 2:

1. Each member which ratifies this Convention shall adopt and apply, in a manner appropriate to national conditions, a policy concerning nursing services and nursing personnel designed, within the framework of a general health programme, where such a programme exists and within the resources available for health care as a whole, to provide the quantity and quality of nursing care necessary for attaining the highest possible level of health for the population.

2. In particular, it shall take the necessary measures to provide nursing personnel with-

a) education and training appropriate to the exercise of their functions; and

b) employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it.

3. The policy mentioned in paragraph 1 of this Article shall be formulated in consultation with the employers' and workers' organizations concerned, where such organisations exist.

4. This policy shall be coordinated with policies relating to other aspects of health care and to other workers in the field of health, in consultation with the employers' and workers' organisations concerned.

Article 6

Nursing personnel shall enjoy conditions atleast equivalent to those of other workers in the country concerned in the following fields:

a) hours of work, including regulation and compensation of overtime, inconvenient hours and shift work;

b) weekly rest;

c) paid annual holidays;

d) educational leave;

e) maternity leave;

f) sick leave;

g) social security

Article 7

Each member shall, if necessary endeavour to improve existing laws and regulations on occupational health and safety by adapting them to the special nature of nursing work and of the environment in which it is carried out".

19. Is it that the Government of Kerala has not made any rule or regulation prescribing a work schedule for the officers and the employees working in the various departments under the Government? The answer is not in the negative. Classified broadly, there are three sets of regulations for the officers/employees under the Government. They are (1) The Kerala Secretariat Office Manual, (2) The District Office Manual and (3) the Manual of Office Procedure. As the name itself indicates, the Kerala Secretarial Manual is meant for the Officers and other employees of the Secretariat. The office procedure in the Revenue Officers of the State is regulated by the District Office Manual. The Manual of Office Procedure deals with the procedure in the offices of the heads of departments and other subordinate offices. Police personnel are governed by another Manual issued separately for that department. The information relevant for the purpose of this case is what does those regulations say with regard to 'hours of work'. Article 352 of the Kerala Secretariat Manual which governs those working in the Secretariat reads:

"Hours of Attendance.- All the members of the Secretariat establishment are expected to attend office from 10 a.m. to 5 p.m. daily. Office hours should on no account be changed to suit the convenience of individual officers. Superintendents must set an example to others by themselves attending office punctually. An interval of 45 minutes from 1-15 p.m. to 2 p.m. will be allowed for tiffin. Peons of the Secretariat should however, attend the office at 9.30 a.m. "Muslim Officers who wish to offer Jumma Prayers will be granted an interval of two hours from 12.30 to 2.30 p.m. on Fridays, provided the time so spent is made up, if necessary, outside office hours on the same or other days of the week".

As an exception to the office hours mentioned above, Article 354 says that on certain special occasions such as during days of sittings of the Legislature, or when certain particularly urgent work has to be transacted, the persons concerned should attend office even at earlier hours, if necessary. Article 358 says that employees as may be ordered by superiors will have to attend duty on holidays. The relevant provisions in the Manual of Office Procedure are the following:

"157. Hours of attendance.- All the members of the establishment are expected to attend office from 10 a.m. to 5 p.m. daily. Office hours should on no account be changed to suit the convenience of individual officers. Superintendents must set an example to others by themselves attending office punctually. An interval of 45 minutes from 1.15 p.m. to 2 p.m.

will be allowed for tiffin. Peons should, however, attend the office at 9.30 a.m. Muslim officers who wish to offer jumma prayers will be granted an interval of 2 hours from 12.30 to 2.30 p.m. on Fridays, provided the time so spent is made up, if necessary, outside office hours on the same or other days of the week.

A member of the office establishment shall not leave the office premises during working hours without the previous permission of the Superintendent of the section.

158. Earlier hours on certain special occasions.- On certain special occasions such as during days of sittings of the Legislature, or when certain particularly urgent work has to be transacted, the persons concerned should attend office even at earlier hours, if necessary.

161. Urgent work during holidays.- Proper arrangements should be made for the disposal of work during holidays. The Superintendents may make their own arrangements in regard to this, but care should be taken to distribute the work fairly and if possible, no clerk should be required to attend office on more than one or two days during the holidays. On the last working day previous to a vacation or to two or more consecutive holidays, no clerk shall leave the office without the permission of the Superintendent of the section concerned".

The District Office Manual also contains similar provisions. Disparity in the matter of working hours between the category of employees to which the petitioner herein belongs and the bulk of the State Government employees governed by the Kerala Secretariat Manual, the Manual of Office Procedure and the District Office Manual is so glaring that it cannot escape notice. It is not to say that there should be absolute parity in the matter of working hours between different categories and classes of employees, but to point out that the difference in the working hours, (from 6 hours to 14 hours) is too wide a gap as to cause agony and hardship to one section of the employees of the Government.

20. The nature and quality of service with which we are concerned here, is not one to be performed mechanically but with full application of mind. It is a matter concerning public health and those in distress. Hence such a service has to be done with compassion and confidence in contradistinction to the indifferent service rendered by a person with tired and irritated mind. Deficiency in service in these kind of work is tantamount to disservice, because what is dealt with is human life. No person running a hospital would be justified in providing deficient service and no responsible Government can turn a Nelson's eye to the harm caused to or injury suffered by its own employees and its own citizens. Hospitals run by the Government are the only asylum for the sick hailing from lower middle class families including those coming under the below poverty line. These sections of our polity are generally unhealthy owing to their economic backwardness and are easily prone to diseases. No Government or private entrepreneur has got the right to meddle with the life of these unfortunate class of citizens by giving only deficient service which often slips down to the level of disservice depriving them of their very life itself.

21. Respondent-State has not pleaded in this case, that the existing nursing staff are asked to work continuously for 14 hours for six days consecutively in a week, for want of sufficient number of qualified hands available for recruitment. It must be said, even if such a plea is raised, it will not be true to facts. This Court can take judicial notice of the fact that there is no dearth for qualified nurses in this State. Most of them are going to other States and abroad in search of job opportunities. The number of Writ Petitions filed against orders of termination by Staff Nurses appointed temporarily Under Rule 9(a) of K.S. & S.S.R. from the

list of candidates furnished by the Employment Exchange, illustrates the availability of qualified hands in the open market.

22. Petitioner and similarly placed nursing staff are increasingly working overtime and their overtime (mandatory or voluntary) has been used as a measure to reduce the expenditure to be incurred for public health activities. The increasing amount of overtime would threaten nurses' ability to provide safe and individualise the patients' care. However, the question that may arise or that the court may address to itself is: Can the judiciary undertake the task of laying down hours of work or other conditions of service for government servants? No doubt the power is vested in the Government and the primary responsibility is also that of the Government. That apart without a proper study of the specific nature as well as problems of the particular service eliciting relevant materials based on which priorities can be fixed on a rational basis, there cannot be a blanket order prescribing working hours and for that reason also, the task is that of the legislature or the executive or the employer concerned. But here the situation is slightly different. From the materials available in this case it is seen that the respondents have accepted in principle (see the stand taken by the Government in the earlier Writ Petitions also) three shift duty system for nurses working in Government Hospitals. Hence, the only debatable issue is, should this court direct the respondents to translate that principle into reality? Firstly it cannot be contended that the Government has got the discretion to postpone the directions in Ext. P1 judgment ad infinitum. Secondly, the existing hours of employment of nurses in many hospitals including the one where the petitioner works infringe the fundamental right under Article 21 of the Constitution. Implementation of 3 shift duty system has thus become an imperative and this Court can exercise its power under Article 226 of the Constitution when the Government fails to do the constitutional duty.

23. As already stated, shortage of funds rather financial difficulty is the only contention urged by the respondent-State as a defence against the non-implementation of 3 shift duty system in the Government Hospitals. I am unable to accept the above contention as justifiable reason to perpetuate the illegality and infringement of the fundamental and the inalienable right guaranteed under Article 21 of the Constitution. It is the Constitutional obligation of the State to find out the required funds to preserve such fundamental rights, otherwise Government will be reduced to a machinery not worth its name. Salt is worth its name because of its savour. Government cannot afford to stand as a helpless spectator witnessing injury to public health and the life of its workers and citizens. Let me repeat what the learned Judge (C.S. Rajan, J.) said in Ext. P1 in this connection:

"Since the Government is given sufficient time, they must also find out the sufficient finance for the above purpose within the above stipulated time. Since the Government have got a duty to the people to extend the medical facilities and health care, they cannot wriggle out from the above responsibility by stating that they have no finance to implement the above system. It is for the Government to find out the ways and means to see that the people in the State are given proper medical care and hospital facilities".

But the respondents pretend ignorance of the above directions, that is what the petitioner says in this Writ Petition.

24. Financial stringency pleaded by the State is no good ground to avoid implementation of the shift duty system in the Government Hospitals. There are authoritative pronouncements of the Supreme Court in support of the view I have taken. In Municipal Council, Ratlam v.

Vardhichand (AIR 1980 SC 1622), All India Imam Organisation v. Union of India ((1993) 3 SCC 584), State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees ((1995) 4 SCC 507) and Kapila Hingorani v. State of Bihar ((2003) 6 SCC 1) = 2003 (3) KLT (SC) (SN) 1) Supreme Court has considered the above question. In Municipal Council, Ratlam (supra) His Lordship Justice V.R. Krishna Iyer said:

"A responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability."

In State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees ((1995) 4 SCC 507) the Apex Court opined:

"The constitutional mandate to the State, as upheld by this Court in Unni Krishnan case ((1993) 1 SCC 645) - to provide free education to the children upto the age of fourteen- cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity".

Now in a very recent decision of the Supreme Court in Kapila Hingorani (supra) the legal proposition is reiterated in the following manner:

"Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises".

In Kapila Hingorani (supra) what was said by the Supreme Court in All India Imam Organization (supra) has been extracted thus:

"..... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the imams as they are being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the wakf then it is their duty to harness resources to pay those persons who perform the most important duty, namely, of leading community prayer in a mosque the very purpose for which it is created. "

In the light of the above decisions it has to be held tat the respondents are not justified in delaying the implementation of 3 shift duty system, even ignoring the observations made by the Division Bench of this Court as early as on 23.8.1994 (judgment in O.P. No. 6842 of 1990) and the specific directions issued by a learned Single Judge of this Court in Ext. P1 judgment dated 2.3.2000. Moreover the hours of employment thrust on the petitioner and similarly situated persons is an infringement of the fundamental right to life guaranteed under Article 21 of the Constitution. Accordingly, I allow this Original Petition granting the following reliefs:

(i) There shall be a declaration that compelling the petitioner to be on duty continuously for 14 hours a day for 6 days consecutively in a week is illegal and unconstitutional.

(ii) The respondents are directed to introduce 3 shift duty system in the Government Hospital, Thirroorangadi, immediately and redress forthwith the grievance of the petitioner.

(iii) It is made clear that in the light of the declaration above made to the effect that the impugned action of the respondents is illegal and unconstitutional, the prevailing system of assigning duty for 14 hours continuously to the petitioner and other nursing staff shall not be continued. It follows that the respondents shall take expeditious steps to introduce 3 shift duty system for the nursing staff in all the hospitals.