IN THE HIGH COURT OF DELHI

W.P. (C) 2866/2002 and 10697/2004

22 March 2007

Social Jurist, A Lawyers Group

v.

Government of NCT of Delhi and Ors.

&

Courts on its own motion (Safdarjung Hospital)

v.

Union of India (UOI) and Ors.

140(2007)DLT698

Judges: Swatanter Kumar and H.R. Malhotra, JJ.

JUDGMENT

Swatanter Kumar, J.

1. The constitutional mandate for assuring the dignity of individual is contained in the very preamble of the Constitution of India. To live with dignity would take within its ambit legitimate expectation of the citizens of the country for being provided with good environment and health care. Unlike right to education, right to health and healthy environment has so far not been incorporated in the fundamental rights of the people of India. However, an obligation in the form of directive principle under Article 47 of the Constitution is casted upon the State to raising of standard of living of its people and improvement of public health among its primary duties. The State has to ensure that this obligation is not rendered nugatory by inaction or inadequate action on the part of the State and its instrumentalities. Leaving aside its dogmatic approach, it must ameliorate by taking recourse to policies and steps and by involving other appropriate forums to achieve the object of better public health. The standards of public health

certainly are not the ones which framers of the Constitution desired to incorporate in such definite and unambiguous language. Coordination between different wings and departments of the State is essential and they must act in full coordination with each other so as to implement its policies in this regard. The times have come when the State has to prescribe a proper course of action and take steps well in time to ensure that private sector which comes up for the assistance of the Government and claims various concessions during the period of establishing their big multi-specialty and super-specialized hospitals, must conform to the conditions of law and the persons in position should not only check the breach of conditions but ensure consequential actions. The Government and various authorities should act *ab ante* in the event of breach and then ensure *actio quaelibet it sua via* to achieve its logical end. Lack of interest from any quarter would result in uncharitable profits to the private sector at the cost of deteriorating standards of public health and depriving the poor strata of the society from seeking benefits of the State policies only as a result of poor governance.

2. Moved with the unconcerned attitude of the public authorities and lack of adequate facilities for health care to poorer sections of the society with particular reference to breach of conditions of free treatment to poor in compliance to the condition of allotment of land to such hospitals/medical institutions, Social Jurist, A lawyers Group filed a writ petition being WP(C) No. 2866/2002 praying that conditions of allotment of land to hospitals/nursing homes particularly in regard to free treatment to the poor and indigent persons are complied with and the respondent authorities be directed to take action against those hospitals in accordance with law and to take action on the recommendations of Justice Qureshi Committee. In the petition, prayer was also made for holding a high level enquiry and also a direction that action be taken against the erring officers.

3. The court vide its order dated 7.5.2002 directed the Government to place on record, the status report on the basis of the recommendation made by Justice Qureshi Committee where after the matter proceeded on different aspects of the case and various orders were passed by the court which we would shortly refer and finally the writ petition was heard in relation to 20 hospitals out of number of hospitals to whom the land was allotted either by the DDA or L&DO and according to the authorities concerned conditions of free treatment to poor patients was applicable to all these hospitals. Out of these 20 hospitals, most of the hospitals had, in fact, accepted the condition but two hospitals i.e. Escort Heart Instt & Research Center and Dharam Shila Cancer Foundation & Research Center had contended that the condition of free patient treatment even in its limited aspect was not applicable to them. Arguments were heard and judgment was reserved in that writ petition.

4. Pursuant to the news item which appeared in The Indian Express on 8th July, 2004 stating that in Sardarjung Hospital, 34 infants died in a week and 12 on one day and that too because of shortage of essential medicines, IV fluids, a Division Bench of this Court issued notice on its own motion to the Secretary, Government of India, Ministry of Health, New Delhi and the Superintendent, Safdarjung Hospital, New Delhi. During the pendency of this petition, various orders were passed by the Bench which noticed the appalling conditions including the fact that walls of cathlab and ceiling sport splotches of blood, mosquitoes breed in puddles of muck in peak dengue season and the same was referred in regard to the Cardiology Department of the Safdarjung Hospital. The Committee was constituted by the court whose personal visits and

directions of the court resulted in varied improvements in the hospital which as of now is stated to be a hospital where patient care is proper. However, till date, it, of course, is on its way to achieve the requisite standards of medical and patient care and hygiene. This petition i.e. WP(C) No. 10697/2004 was also heard along with WP(C) No. 2866/2002.

5. Firstly, we would deal with the matters in issue in WP(C) No. 2866/2002. 20 hospitals according to the Government and the public authorities are those hospitals upon whom the condition of limited percentage of free patient treatment has been imposed while allotting the land to these hospitals on concessional rates. The details of these 20 hospitals with whom we propose to deal in this order are as under:

S. No. Name of Society Area with Location Date of allotment Date of possession 1. Gujarmal Modi Hospital 30.10.88 20.12.80 and Research Center 15 acres/Saket 2. Amar Jyoti Charitable Trust 20.1.83 30.4.83 0.85 Acres 726 Sqm./Karkardooma 3. Indian Spinal Injuries Center 22.8.85 4.5.89 11.84 Acres/Vasant Kunj 4. Deepak Gupta Memorial Ch. 15.1.85 4.2.86 Foundation 4840 sq. mts/ Karkardooma 5. Ganesh Das Chawala Ch. Trust 28.4.86 12.5.86 (Saroj Hospital) 4048 sq. mts/ Rohini 6. Araya Vaidsala Kottalaya 4.4.85 9.3.95 9240 sq. mts/Karkardooma 7. Venu Charitable Society 29.3.90 10.12.92 (Eye Hospital) 2.5 Acres/Saket 8. Laxmipat Sighnamia 29.3.90 19.7.91 Medical Foundation 2 Acres/Saket 9. Dharam Shila Cancer Foundation 30.3.90 6.12.90 and Research Center 13175 sq. 17.7.95 3.2.98 mts./Dallupura 10. Escort Heart Instt and Research 8.4.82 23.11.90 Center 0.7 Acres/Okhla 11. Devki Devi Foundation 6.2.96 5.6.96 1.123 Acre/Saket 12. Balaji Medical and Research 24.1.2001 21.5.2001 Center 16.10.96 12000 sq.mt/Mandawali 13. Jaipur Golden Ch. Trust 14.5.85 11.9.85 2.45 Acres/Rohini 14. Mukand Lal Memorial Foundation 6.4.88 7.6.88 6852 sq. mtrs. 15. National Heart Institute 16.8.80 31.5.2000 743.80 sq. mts/East of Kailash 16. Sarvodaya Health Foundation 24.3.99 22.6.99 1000 sq. mtrs/Rohini 17. Mai Kamali Wali Jan Kalyan 15.5.87 22.7.97 Ch. Trust 20.8.88 434.50 Sq.mtrs/Rajouri Garden 18. Bimla Devi Hospitals(Walia 3.12.97 19.2.98 Charitable Trust) 795 sq.mtrs/Mayur Vihar-III 19. Vimhans 2.6.1984 10.8.84 3.5 Acre/Nehru Nagar 20. Veerawali Hospital 6.8.73 2 Acres/Chanakayapuri

6. Out of the above 20 hospitals, land has been allotted by DDA to 18 hospitals while in the case of Veerawali and Vimhans hospitals, land has been allotted by the L&DO. To the hospitals to whom the land has been allotted by L&DO, it is the pointed case of the authorities that the land was allotted at concessional rates i.e. much cheaper than the market rates and the condition of free patient treatment was specifically incorporated in the letter of allotment.

7. In the case of Vimhans, land measuring about 3.5 acre in Nehru Nagar, New Delhi was allotted by the L&DO to the Trust and it was specifically pointed out that the allotment is subject to the terms and conditions given in the Memorandum of Agreement and perpetual lease which shall also be inclusive of the other conditions. The condition with regard to free patient care reads as under:

2(xi) At lease 70% of the beds must be available free of charge to deserving patients belonging to economically weaker sections and the charges for the remaining 30 % should also be reasonable and got approved by the Government.

(xii) There should be two nominee of the Govt. on the executive committee of the hospital to look after Government interests with regard to land management/utilisation thereof and also to ensure that it is utilised for the purpose laid down in the memorandum of a Article of association of the institution. In case there is no provision for this in the Trust deed or memorandum of article association of the institution, the same should be amended to provide for two Govt. nominees of the body of the institution.

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

11. A clause will be inserted both in the "Agreement for Lease" and the "Perpetual Lease" that in the event of dissolution of the society the leased premises with building on that land shall be transferred, with the prior approval of the government to an institution having similar aims and objects failing which it will revert to the Government of India without payment of any compensation what so ever.

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

14. The hospital premises or any part thereof shall not be rented out without obtaining the prior permission in writing of the Lesser.

9. The learned Counsel appearing for Vimhans hospital had clearly stated before the court that they were trying their best to implement the condition of free patient treatment however that had posed great difficulties and they had run in great losses. An affidavit was also filed on their behalf on 22.2.2007 stating that they have been providing treatment to the poor patients more than the recommendations made in Justice Qureshi Committee Report and they had made a representation to the Ministry of Urban Development for reduction of terms of free treatment from 70% and 30% respectively to 10% to 20% in respect of free IPD and free OPD condition. However, they did not dispute that they were bound by the terms of free treatment. However, in a subsequent affidavit filed on 2.3.2007 they had stated that they would abide by the condition of 25% OPD and 10% IPD and free casualty treatment and first aid. It was also averred that their loss till January, 2007 w.e.f. 1996-97 has been Rs. 1,48,92,754/-. The documents were also filed on record to show that they have been complying with the free treatment condition and despite receipt of grant from different sources, the losses have still persisted. The Committee constituted by the court had also visited this hospital and in the status report filed by the Committee on 18th August, 2006, it has been stated that the hospital has failed to give the complete details of the names of patients and their addresses whom they have treated under the free patient clause as contained in their letter of allotment. However, it was noticed that concessional treatment has been provided to 75 patients in whose cases the charges for investigations and medicines are to be paid by the patient though free bed, consultation and free dietary services were being provided. There was a separate free ward and the hospital had also advertised about availability of the free treatment through insertion in papers. The Committee was also informed by the Medical Superintendent that the bed, diet, treatment, procedures, to charges and fee of the surgeons was not being charged from the patients of free patient care ward but they had to pay for drugs and consumables. In the report, it has been shown that there

is some element of compliance though not fully and substantially, particularly to the extent of 70% free patient care.

10. In the case of Veerawali International hospital (Delhi Hospital Society), it may be noticed that the hospital has not disputed that the said condition is applicable to them. However, they have not strictly adhered to the condition. In fact, vide notice dated 3.12.2004, a letter was written by the Dy. Land & Development Officer to them that they had already violated the condition of 70 free beds in the hospital and an order of re-entry was passed. This order of re-entry was withdrawn subject to the undertaking given by the hospital that they would strictly adhered to the said condition but again they were found to be lacking. In reply to this letter, it was stated by them on 10.12.2004 that their hospital was under construction and renovation and was not functional and they were treating free patients and would abide by the terms. It was specifically made clear to the hospital by the authorities that renewal of registration for subsequent years would be subject to fulfillment of the condition. Another status report was filed on behalf of the Union of India on 17.1.2007 where these facts have been referred to and it is also stated that a fresh show cause notice was issued on 5.5.2006 as the hospital had failed to restore the facilities. The permission to complete the construction now stood extended to 21.3.2007 where after the hospital had agreed to abide by the terms.

11. The remaining 18 hospitals were allotted land by the DDA. Out of which, 16 are the ones in whose cases, undisputably, the condition of free patient treatment in relation to free beds as well as OPD was specifically incorporated. On the contrary, during the pendency of this petition, they had either made statements, given undertaking before the court or written to the authorities concerned that they would abide by the condition of free patient treatment as incorporated in their lease deed/letter of allotment. However, the remaining two hospitals who were also allotted land by the DDA, as already noticed, i.e. Escort Heart Institute & Research Center and Dharam Shila Cancer Foundation & Research Center have seriously contested enforcement of this condition against them. According to them, there is no specific condition requiring them to provide free patient care and treatment to the poorer sections of the society and in fact they are super-specialized hospitals and this condition would be incapable of being performed by them. According to them, the condition is impracticable and legally not enforceable against them and at no point of time, they had agreed to abide by such a condition.

12. During the pendency of this petition, the court passed various orders. In the order dated 15th November, 2002, the court referred to Justice Qureshi Committee report and after noticing the recommendation and the contentions raised, it was noticed that the High powered committee presided over by the Chief Secretary of NCT of Delhi had considered the recommendation of the Justice Qureshi Committee and the court directed as under:

It appears that the Committee is of the view that free treatment means totally free and not partly free and partly paid. The free IPD patient will not have to pay for anything including medicines and medical consumables as in the case of government hospitals. The Committee has also recommended that all the hospitals which have been allotted government land, should provide totally free treatment to the poor, needy and deserving patients to the extent of 10% of the total number of beds in the IPD and 25% of the total number of patients in OPD uniformly. Certain other recommendations have also been made including the one dealing with proposals for

setting Poor Patients Advisory Committee in private hospitals within a period of one month.

It is not disputed that for all these years, the Authorities had not been monitoring the various hospitals with a view to find out as to whether or not they were complying with the condition of providing free medical treatment to 25% of the indoor patients and 40% of the outdoor patients.

On hearing learned Counsel for the parties we are of the view that all the hospitals to whom the Government had allotted land free of cost or at concessional rates should be directed to furnish details of the patients, who were treated free of charge. At the same time the Govt. of NCT of Delhi and the Government of India should appoint a joint committee to go into the records of the hospitals so that they are able to know as to how many patients were treated free in accordance with the stipulation contained in the letters of allotment of lands to them. In case the hospitals have succeeded in breaching the condition, it means cornering of huge amounts of monies, which were not due to them. In case these hospitals have made unwarranted profits by breach of the terms of allotment of lands to them, the amounts should be recovered and a pool should be set up for the health care of the people. We order accordingly.

The aforesaid directions shall be complied with by the Govt. of NCT of Delhi and the Union of India by or before the next date.

13. Again in the order dated 7.4.2003, the court noticed that it was a matter of sorrow that despite the directions given by the court, the Government authorities are not moving an inch and directed complete compliance to the orders of the court and also directed constitution of a special committee. In furtherance to the order of the court, the Government of NCT of Delhi had constituted a Committee and that Committee had been filing reports from time to time. Vide order dated 3.3.2004, the court noticed the lapses on the part of certain hospitals and DDA & L&DO were directed to take action at the earliest. In different orders of the court, it was noticed that 18 hospitals, indicated above, were willing to comply with the condition. In the order dated 2.12.2005, the court expressed its displeasure for non-compliance of its order by the respondents and in the detailed order, following observations of the court in relation to constitution of a committee and other directions, can usefully be referred at this stage:

...Although, it has been contended before us that the Government of NCT of Delhi has appointed the aforementioned Committee, but no data has been placed before this Court as to what kind of services have been provided to the poor patients. Whether they have been duly provided free beds or they have also been provided consumables as well as medicines and if the said facilities had not been provided in terms of the order passed on 15.11.2002, the amount was to be recovered from such erring hospitals and Nursing Homes and a pool was to be set up for the health and care of the people of Delhi belonging to the poorer and poorest sections of the Society. Nothing has been brought on record to show that any joint Committee has been constituted by the Union of India and the Government of NCT of Delhi. If they have constituted any Committee, as per the report of the Government of NCT of Delhi, they have not done any work pursuant to the directions passed by this Court. It seems that on 4.3.2005, the Court observed that a Monitoring Cell has to be constituted and in this regard, time was given to the respondent for the suggestions to be given to the learned amices curiae. Therefore, we direct the Principal Secretary, Government of NCT of Delhi to constitute a Committee with the Director

Health Services of Delhi. We direct the Vice Chairman/DDA to have the Commissioner (Land) on the Committee and the Land and Development Officer also on the Committee. The Committee shall also comprise of Mr. Ashok Aggarwal, Mr. Anish dayal, Ms. Maninder Acharya, Dr. Uma Nambiar and Dr. Ranjuna Kumar. The Committee will submits its report in the light of the directions passed on various dates, from time to time.

Keeping in view the order passed on 15.11.2002, if any report is received from the Monitoring Cell, that report be also placed on record and the same will be considered by this Committee.

Ms. Maninder Acharya shall be the Convenor of the said Committee. Renotify on 7.2.2006.

14. Ms. Maninder Acharya Committee has been filing reports after regular intervals and has placed on record, the details supported by data as to compliance and/or violation of the condition of free patient care and treatment at different hospitals particularly the 20 hospitals afore-indicated.

15. In the order dated 21.8.2006, it was noticed by the court on the basis of the report submitted by the said Committee that Venu Eye Institute and Research Center was complying with the condition of free patient treatment. The policy decision in regard to acceptance and enforcement of free patient condition was directed to be finalized by the concerned Ministry and Delhi Administration and also to inform the court with regard to position of the corpus to be made by requiring the defaulting hospitals to contribute money to the extent of their default, in terms of order dated 15.11.2002. In the order dated 13.12.2006, it was also noticed that most of the hospitals are in default of compliance to the said condition. In regard to general hospitals, the following information was noticed in the said order:

In order to verify the factual matrix, we had directed the Medical Superintendents of general hospitals to be present in Court. They are present today. We have been informed by them that 20 per cent of the patients are provided free treatment by the general hospitals. This means, according to them, such 20 per cent patients are entitled to treatment which includes free bed, free consultation, free medicines, free investigations and in fact they are called upon to pay nothing for their treatment. While other 80 per cent patients are charged at the minimum rates in relation to costlier investigations like MRI, Ultra Sound or other investigations. Justice A.S. Qureshi's Committee appointed by Government of NCT, Delhi had also decided that the free treatment would be on the lines as suggested by the general hospitals.

We may notice that the letter of allotment issued to the various hospitals contained terms for treating the patients on free term basis, which read as under:

2.The Hospital will serve as general public Hospital with at least 30% of beds of free treatment for the weaker section.

3.The OPD of the Hospital will provide free services to the patients falling in the indigent category.

4.The Hospital shall take part in the National Health Programme for which its services may be

called by the Directorate Health Services/Ministry of Health.

5.The Hospital shall earmark a separate area for maternity and Child Health Centre which will be available free of cost to the community.

Prima facie and at this stage, we are of the view that free treatment includes providing of investigative consultancy treatment and admission free of any charges to a patient who belongs to a poor strata of the society. Providing a free bed and charging him for everything else would obviously defeat the very object of concessional distribution of lands and apparently would be just an eye wash or a camouflage to cover the default of the concerned hospitals.

In view of this, we direct DDA to issue notices to such defaulting hospitals within two weeks from today. If the notices have already been issued and replies have been received, they should be considered by the competent authority of the DDA and a composite report be placed on record before the next of hearing. Similarly, steps shall be taken by the L&DO as it is commonly conceded before us that no hospital is strictly complying with the condition of free treatment to the patients to the extent of agreed percentage.

16. During the proceedings before the court dated 8.2.2007, counsel appearing for the State had stated that the Government has taken a decision that they would enforce the condition of free treatment in regard to all the 26 hospitals uniformally and would require them to provide 10% indoor patient treatment and 25% OPD patient treatment free of cost in terms of the lease deed and in default would take action against the said hospitals. Thereafter, the arguments were addressed on various dates on behalf of the counsel appearing for different hospitals particularly the ones which were disputing the liability to obey the condition of free patient treatment as afore-referred.

17. It is contended on behalf of Dharam Shila Cancer Foundation & Research Center and Escort Heart Instt & Research Center that the lands were transferred to them under the Government of Grants Act, 1895 and as such, no conditions beyond the lease deed can be imposed upon them. Particularly in relation to Escorts Hospital, it is also contended that for some peaces of land transferred to them, no such condition existed either in the allotment letter or in the lease deed and as such, the question of adhering to the condition would not arise. Further and with some vehemence, it was also argued that the condition which requires the hospital to act as general public hospital to the extent of 25 per cent is a condition incapable of enforcement as the hospitals are super-specialty hospitals and cannot become general hospitals just for the sake of free class.

Dharamshila Hospital

18. Before we proceed further to discuss the merits or otherwise of the above contentions raised before the Court, we may refer to certain facts which emerge from the records before the Court. This hospital was admittedly allotted land twice, firstly, vide letter dated 30.3.1990 whereby the land measuring two acres was allotted for comprehensive cancer care and research centre in East Delhi. The Lease Deed for this land was executed on 6.10.1990. The second allotment in favor of this hospital was allotted by letter dated 17.7.1995 vide which the land measuring about

5840 sq. mtrs. was allotted for the purposes of hospital and the lease deed for this piece of land was executed on 3.2.1998. According to the DDA, the possession of the land was given on 6.12.1990. It is again a matter of record that both the lease deeds executed between the DDA and the Hospital do not contain the clause of free patient treatment giving any percentage. On behalf of the authorities it is contended that the letter of allotment remained an integral part of the lease deed and the said letter of allotment contains such a condition. The hospital had filed various documents from time to time and particularly after the second piece of land was allotted to them undertaking to abide by the condition of 'free patient care' and/or any such directions passed by the Court in this regard. The cumulative effect of these documents is that the hospital is bound by such condition and having enjoyed the benefit of concessional rates of land as well as other benefits flowing there from for all this period, the hospital is bound both by contract and in law. Besides, it is obligatory upon the DDA to impose such a condition while allotting land at concessional/institutional rates which in comparison to the market rates of land are very low.

19. On the contrary and in addition to the above noticed contentions, it is also argued by the learned Counsel appearing for the hospital that the rates were in no way concessional but were determined rates as per the policy of the DDA and they have not acquired any advantage out of such allotment and the condition cannot be enforced upon them. There is no dispute to the fact that the first letter of allotment was issued on 30.3.1990 which contained the condition of free patient treatment. The very opening paragraph of the allotment letter along with the relevant clauses can be usefully reproduced at this stage:

With reference to your letter dated 5.1.90 on the subject noted above, I am directed to inform you that it has been decided to allot on perpetual lease hold basis a plot of land measuring 2.0 acres for comprehensive Cancer Care & Research Centre in East Delhi to Dharamshila Cancer Foundation & Research Centre on usual terms and conditions as given in the agreement for lease/perpetual lease which shall also include the following:

xxx xxx xxx xxx xxx xxx

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

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

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

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

xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx

12. In case to violation of any of the conditions imposed the Administration/Govt. Of India

would be free to resume the title of land.

13. The Foundation & Research Centre shall be bound by the architectural controls as may be prescribed by the Dir. (Planning) Chief Architect, DDA.

The above restrictions have been provided on the analogy of Delhi Admn. policy with regard to allotment to the Societies for construction of Hospital.

If the above terms & conditions are acceptable to the Foundation & Research Centre, the acceptance thereof may please be communicated to this office Along with Bank Draft of Rs. 29,21,250/- (Rupees Twenty nine lacs Twenty one thousands Two hundred and fifty only) (Rs. 28,50,000/- an account of cost of land and Rs. 71,250/- as ground rent @ 2v2% p.a. for one year) for the land measuring 2.0 acres for Comprehensive Cancer Care & Research Centre in favor of DDA within 30 days from the date of issue of this letter so that possession of the plot could be handed over.

In case the payment is not made within the stipulated period, it will be presumed that the Foundation & Research Centre is not interested in allotment of land and the same will be withdrawn.

20. The Lease Deed which was executed between the parties does not indicate that the land was allotted for building a cancer hospital and had made it obligatory upon the hospital to discharge all obligations as stated. The DDA was vested with the right to re-enter. The Lease Deed specifically contemplated that there would be no waiver on the part of the DDA in relation to observance and performance of the conditions of the Lease and Clause 11 of the Lease Deed stated that the lease is granted under the Government Grants Act, 1985. The letter of allotment as afore-noticed clearly provided that the agreement for perpetual lease shall also include the treatments stated in the letter of allotment. In the letter of allotment dated 17.7.1995, Clause 9 had clearly stated that all other conditions as contained in the perpetual lease deed to be executed and any other terms and conditions imposed from time to time by the Central Government/Lt. Governor shall be binding upon the allottee. This clause of the letter of allotment, thus, had put the matter clear and beyond ambiguity and it was obligatory upon the hospital to carry out the conditions imposed by the authorities in terms of these documents. In addition to these specific conditions, the hospital, through its Vice President-cum-Treasurer had given undertaking on different dates clearly stating that they would abide by the conditions. Both the undertakings read as under:

UNDERTAKING

I, Dr. S. Khanna, Vice President Cum Treasurer, Dharamshila Cancer Foundation and Research Centre, solemnly give an undertaking that we will provide Free IPD treatment up to 25% of indigent patients, below poverty line, issued BPL Cards by Delhi Govt. without Consumables, drugs and disposables.

Final view of the Court/DDA on drugs, disposable and consumables will be binding on us.

Free ship condition will be honoured even after the redemption of the Mortgage.

DEPONENT

VERIFICATION:

I, Dr. S. Khanna, that the contents of the above affidavit/ undertaking are true and correct to the best of my knowledge and belief.

DEPONENT

The Second undertaking reads as under:

UNDERTAKING

I, Dr. S. Khanna, Vice President cum Treasurer, Dharamshila Cancer Foundation and Research Centre, solemnly give an undertaking that we will provide Free IPD treatment up to 25% of indigent patients, below poverty line, issued BPL Cards by Delhi Govt. without Consumables, drugs and disposables.

DEPONENT

VERIFICATION:

I, Dr. S.Khanna, that the contents of the above affidavit/ undertaking are true and correct to the best of my knowledge and belief.

DEPONENT

21. The plea raised by the hospital before the Court do not stand substantiated on fact and law, particularly in view of the stand taken by them in their various letters written to the Delhi Administration and other authorities. Vide their letter dated 29.7.1992 they had clearly admitted to adhere to the conditions and the relevant part of the said letter reads as under:

...We again draw your attention to page 2 para S of Memorandum of our association which says "Research Centres, Laboratories, hospital and other centres shall be established and maintained solely for philanthropic purposes and not for purpose of profit. (Copy attached). We have reserved 25% of the beds for poor patients and would be offering free outdoor and diagnostic services to 40% of the poor population.

We are not planning to take any loans and the hospital will be totally funded by voluntary donations in cash and kind.

As you are aware, the most expensive life saving equipment is being donated to us by Narigis Dutt Foundation, Canada and Dharamshila Cancer Foundation Benefit Society, Allentown, Pensylvania, U.S.A. In view of this, we appeal to you to kindly direct DDA that Rs. 21.5 lacs

with interest be refunded to us urgently, so that we can use the same for construction purposes.

22. Again vide letter dated 2.1.1993, before commencing the operation of the hospital they had reiterated their intent to obey the said condition. Of course, at subsequent stages, the hospital while referring to the cost and estimates in the All India Institute of Medical Sciences and also preparing a comparative statement showing statement of cost of service and cost of medicines tried to justify non-adherence to this condition. But prior thereto, the DDA as well as the NCT, Govt. of Delhi had vide their letter clarified the imposition of enforcement of the condition of free patient treatment upon the hospital.

23. The hospital has also filed a detailed affidavit supporting the above stand and also clearly stating in paragraph 21 of that affidavit that the hospital is committed to provide free medical services to poor patients and willing to give a discount of 10% on drugs and disposals to all poor patients holding BPL Cards. Their claim is primarily founded on the ground of 'Super-Specialty hospital'.

24. According to the DDA, the hospital is not providing free drugs and disposals to the poor patients and is charging Rs. 60/- as registration fee. They have not issued any advertisement in the newspaper and the conduct of the hospital display breach of the conditions of allotment.

25. The Committees appointed by this Court had submitted different reports. In its first report dated 16.4.2003 chaired by the Secretary, Ministry of Urban Development and Poverty Alleviation, it was noticed that this hospital had only kept 10% of the beds for free treatment and which was not in conformity with the terms of the allotment.

26. The Committee in its report dated 16th July, 2003 had noticed that the hospitals including this hospital were not adhering to the conditions, there were no fixed guidelines, income of Rs. 2000/- was taken as the deciding factor, the condition of free service was not publicized and they were not providing free beds and free treatment. The Maninder Acharya Committee amongst others filed another report dated 18th August, 2006 wherein it reported the matter in regard to Dharamshila Cancer Hospital & Research Centre and after discussing the matter in great detail, on facts noticed by them during inspection and otherwise, it noticed that the records produced from 1.4.2002 to 31.3.2005 showed only details of concession given to IPD patients and OPD patients, no board was displayed as per orders of the court and directions issued by the Directorate, no person was being given completely free treatment, the bed strength was 90 and there was no demarcation of free beds. It was specifically noticed that no other steps were taken by the hospital towards informing the public about availability of free treatment.

27. The land in question was allotted to Dharamshila Cancer Foundation & Research Centre at concessional rates at which the land was allotted to them. It is not even the case before the court that the market value of the land was same as concessional rates. The contention raised is that the pre-determined rates of the DDA in regard to allotment to institutions were concessional rates. This argument, at the face of it, has no merit. The land was allotted to the hospitals/institutions at the rates which were obviously much less than the market value of the land. Another additional advantage which all these hospitals have received is that in a place like Delhi where one can hardly think of possessing land in acres, it was certainly a gratuitous act on

the part of the State to allot such big pieces of land to the hospitals which was done in public interest and to achieve the obligation placed upon the States for improving the health care for people of Delhi and other areas. At the time when the lands were acquired, even the compensation awarded to the land owners was much less, which ultimately was one of the main factors in determining the institutional rates. Vide letter dated 15.9.1992, the Joint Secretary (Medical), Govt. of NCT of Delhi had written to the Joint Director (Instl.), DDA about categorization of this hospital and further clearly stated that the land was being allotted on highly concessional rates and the following usual conditions in regard to free treatment of patients should be imposed upon them:

At least 25% of the total number of beds will be provided as free beds where no charges will be levied from patients belonging to lower socio-economical groups. Medicine, food, medical/surgical investigation/operations and investigations like X Ray, Ultrasound, CT Scan shall also be free.

The institution will run a separate free OPD and the number of cases handled in the OPD will be at least 40% of the total number of OPD cases attended in the institution. For these cases the entire services including the cost of medicine and investigations shall be entirely free. The institution shall maintain separate records of free as well as paid work carried out by it and make them available to the Dte. Of Health Services at the time of inspection.

28. In view of the above narrated facts, we are unable to understand as to how this hospital can avoid the obligations arising from the condition of free patient treatment imposed upon them under the terms of allotment and under law. The factual matrix of the case clearly shows that the hospital, at all relevant time, had agreed to abide by this condition and their stand before the authorities was only for reduction in the percentage for the same. The undertakings/affidavits filed from time to time and the discussion of authorities prior and subsequent to the allotment of the land at concessional rates and, in any case, at rates which were much less than the prevailing market value of the land, show that there was unambiguous term for enforcement of this condition. The terms of allotment do not admit any ambiguity or confusion of which the hospital can take any advantage. Whenever and wherever the hospital needed any concession and/or benefit, they fully exploited this term claiming themselves to be a trust meant for public welfare and for strict adherence to the clause of free treatment for patients. The conduct of the hospital itself over a long period demonstrates that it took full advantage of the allotment and concession from other authorities while expressing unequivocal desire to adhere to this condition and it would now be estopped from altering their statement to the contrary. We would shortly proceed to discuss the merits or otherwise of the submissions made in law before us on behalf of both the hospitals i.e. Escorts and Dharamshila.

Escorts Heart Institute and Research Centre

29. To this hospital, the land has been allotted by the DDA repeatedly on seven different occasions. Two acres of land was allotted initially on 8.4.1982 for constructing a hospital and in the letter of allotment the condition of 25% free bed was specifically added. Thereafter lands were allotted for staff quarters, rehabilitation services, for hospital again, Referred Centre and for maintaining green area. The details of the lands allotted can be seen at a glance in the

following table:

S. Date of allotment Area Purpose Remarks Date of possession Premium No. 1 08/04/82 2 Acres Hospital 25% free bed 09/07/82 1,97,000 conditions exists 2 15.12.1983 3668.72 Hospital - 18.10.84 74663 sq. yds. and essential staff quarters 3 03/05/90 0.83 Rehabilitation 25% free 23/11/90 20,44,875 acres services to the bed condition patients exists 4 28.8.85 2 acres Staff quarters - May, 1986 12,00,000 attached to Hospital 5 21.3.1984 0.643 Hospital - 30/3/94 46,13,525 acres 6 31.7.1995 0.412 Referred Centre - 08/12/95 21,11,500 acres for treatment of Cardiac diseases 7 14.6.1996 1135.43 Maintaining - 10/07/96 23,00,600 sq. mtrs. as green Total Area 6.9 Acre (approx) Total Premium 1,25,42,163

30. As is evident from the above table that in total 6.9 acres of land was given away at a rate much lesser than the market rate of the land and in the heart of the city. In furtherance to the letters of allotment issued, three lease deeds i.e. lease deed dated 28.5.1985 for construction of nursing and medical staff quarters, lease deed dated 28.5.1985 for hospital and lease deed dated 21.7.1986 for construction of staff quarters were executed. The first letter of allotment dated 8.4.1982 which commenced the project of this hospital clearly stipulated that "....I am directed to inform you that it has been decided to allot on lease hold basis a plot of land measuring 2 acres (9680 sq. yds.) in Okhla Institutional Area near the Holy Family Hospital for the construction of Escort Heart Institute and Research Centre, on usual terms and conditions, as given in the agreement for lease/perpetual lease which shall also include the following:"

31. In addition to stating the price which was @ 10,000/- per acre provisionally in addition to ground rent and annual ground, the letter of allotment included not only the free patient treatment condition but also other conditions in regard to free treatment to indigent category and making a representative of Delhi Administration as a member of the the society. The said conditions read as under:

xxx xxx xxx

2. The Institute shall service as general public hospital with atleast 25% of the total beds reserved for free treatment for weaker sections and other 25% will be subsidised.

3. A representative of the Delhi Administration will be made a member of the registered society responsible for the administration of the Project.

xxx xxx xxx

8. The construction of the hospital and Research Centre will have to be completed within a period of two years from the date of possession of the plot.

32. It is evident that the hospital was to be constructed and was to operate within a period of two years from the date of taking over of possession. The possession was handed over to the hospital on 9th July, 1982 which clearly means that by 8th July, 1984, the hospital was bound to comply with the terms and conditions of allotment. The hospital received the possession of the plot without any protest or subject to any conditions and in fact they made the payment

unconditionally without any reservation, within the time of 60 days as provided in the letter of allotment. In other words, there was complete and full acceptance of the terms and conditions of letter of allotment and which obviously became an enforceable contract between the parties. Thereafter, a lease deed was also executed between the parties. Of course, the lease deed did not contain any condition with regard to free patient treatment. The hospital was allotted land for different purposes including building of staff quarters and for maintaining the green area and allotment letter of these places also did not contain any such condition and rightly so. The lands covered under these letters or lease deeds were obviously not for treatment purposes and the land allotted for maintaining green area or for construction of staff quarter would have no relevancy to providing of free treatment. 0.83 acres of land was given to the hospital for establishment of rehabilitation services to the patients, 0.643 acres for hospital and 0.412 acres for Referred Centre for treatment of Cardiac diseases. In the allotment letter dated 3.5.1990 whereby the land was allotted for the purpose of rehabilitation services to the patients, the afore-reproduced conditions were also there. The letter of allotment dated 21.3.1994 whereby additional land was allotted for the hospital, the conditions of free treatment was not specifically incorporated but it made it obligatory upon the hospital to abide by all the terms and conditions contained in the perpetual lease deed to be executed and any other terms and conditions imposed from time to time by the Central Government/Lieutenant Governor. This letter further had specific clauses being Clauses (ix) and (x), which would have bearing on the controversy involved in the present case and they read as under:

xxx xxx xxx

(ix) That all other conditions as contained in the perpetual lease deed to be executed in this behalf and any other terms conditions imposed from time to time by the Central Govt./Lt. Governor shall be binding upon the allottee. The format of Lease Deed can be purchased from the office of the D.D.A.

(x) If the Allottee violates any terms and conducts as mentioned above and in the perpetual lease deed, the allotment shall be cancelled and possession of the land/plot with superstructure standing there if any, will be taken over by the Lesser (President of India)/DDA without any compensation to the Allottee.

33. Most of the letters of allotment relating to the land allotted for hospital purposes, has somewhat similar conditions. We have already noticed that few of these allotment letters do not have this condition. Except one, most of them relate to utilization of the land for non-medical purposes. At this stage, it is pertinent for us to notice that every letter of allotment was a result of certain representations made by the hospital to the DDA. Those representations, negotiations and undertakings were taken into consideration and were the basis of issuance of letter of allotment. In order to ensure that the parties abide by the terms and conditions of their undertakings and representations, every lease deed executed between the parties opened with the following clause:

WHEREAS THE LESSEE HAS applied to the Lesser for the grant of a Perpetual lease of a piece of land and the Lesser has on the faith of the statements and the representations made by the Lessee agreed to demise the plot of land here in after described and in the manner

hereinafter appearing.

34. One of the main factual controversies raised before the court is that as each and every letter of allotment and the lease deed does not contain the specific stipulation in regard to free patient treatment, thus, the said condition cannot be enforced against them fully. We have already noticed that the relevant letters except one for the land allotted for rehabilitation services Centre, contained this condition. In order to further examine this controversy, it is very material for this Court to notice what kind of representations were made by this hospital to the DDA and other authorities prior to even first allotment made in April, 1982. It will be essential to refer to some of the correspondence which is part of the pleading of the parties and has been placed on record with advance copy to each other by the parties appearing before the court. The hospital while addressing a letter to the Director, Indian Council of Medical Research on 20th September, 1980 which had been relied upon by it heavily and which was also relied upon by the DDA enclosing the application form for grant of exemption under Section 35(1)(ii) of the Income Tax Act, 1961, showed their objects and projected growth and the obligation of the hospital to carry out research activity and providing free treatment. The relevant portion of same reads as under:

xxx xxx xxx

4. Objects of the Institution, Objects as per Memorandum of Trust (Copy of Memo. of Assocn. etc. Deed enclosed. to be attached)

5. Research facilities available. Nil at present.

i) Building/Laboratories used i)A 75 Bed Hospital and Research Centre exclusively for research has been planned and most of the beds will be utilized for Research, if needed. This

also includes a 22 Bed CRIITICAL CARE AREA, A Free Outpatient Department and a Bio-medical Department.

ii) Number of beds used exclusively ii)30 per cent of the total Bed Strength.for research:

iii) Number of staff employed iii)At present - Nil

exclusively for research (give details) Will advertise and appoint once

(a) Whole-time:Officers/Technical Staff: nearing completion of the Hospital

(b) Part time-Officers/Technical Staff: and Research Centre.

xxx xxx xxx

9 (v) Developing new valve prosthesis v)Most of the equipment necessary to indigenously manufactured. Also to perform open heart surgery is imported develop an infrastructure for obtaining with a great expense of foreign exchange self sufficiency in India for manufacture to

the country. By working in close for open heart surgery. co-ordination with industry the development and manufacture of equipment.

INDIGENOUSLY.

xxx xxx xxx

11. If the Institution is a hospital state whether it is a free or paying hospital"

i) No. of paying beds The hospital will initially have

ii) No. of free beds a)Total Bed strength 75

b) No. of free beds-will be a minimum of 20% of the Total. If necessary, this may be increased to exceed above figure.

c) paying beds - whatever beds are remaining will be paying beds.

35. In addition to the above, vide their letter dated 25th October, 1980 addressed to the Lt. Governor of Delhi, significant and very moralistic picture was painted by the Hospital stating that it is a public trust being Registered under the Indian Trusts Act and declared it to be a non-profitable unit. This was the letter which constituted a real representation made to the Government and the DDA and it was the very foundation of allotment of land to them. Following relevant extracts of this letter make an interesting reading:

xxx xxx xxx

The Trust will be a non-profit-making body and sponsored by Escorts Limited vide Resolution passed by the Board of Directors of the Escorts Limited in a meeting held on September 22, 1980. The objective of the Trust is wholly charitable and general, public good for providing much needed medical aid, and to create research and training facilities.

xxx xxx xxx

The Trust has accepted their proposal and agreed to build and provide the Heart Institute both for medical aid as well as for teaching and research. The Trust being sponsored by Escorts Limited, shall be supported and funded by donations from Escorts Limited and associates to meet the cost of land, building, furniture, utilities and equipment as may be available in India. These costs are estimated at two to two-and-a-half crore of rupees. A letter to this effect from Escorts Limited is enclosed herewith.

xxx xxx xxx

It may be added that the Trust will be prepared to pay the price of the said piece of land at such prescribed rates as may be applicable in the case of recognized medical institutions.

xxx xxx xxx

As stated in our application to the Indian Council of Medical Research, the provision regarding free beds in the Heart Institute shall be more than the minimum prescribed with an added scope that the number of free beds would always be possible to be increased to meet any emergent needs.

36. Laudable were the objects and intents of the hospital when it was to seek various benefits from the Government authorities and particularly allotment of land in the heart of the city at such concessional rates and it was to be a charitable hospital on the principle of no profit. It may be noticed that after issuance of the letter of allotment, the possession was taken subject to the conditions stated in the letter of allotment, which by a specific language included the terms and conditions of the lease deed. Conditional allotment in regard to free treatment was the essence and which was rightly accepted unconditionally by the hospital particularly as it was totally in line with the objects of the Trust itself. The hospital really failed to adhere to its commitment which it had made before taking possession of the land and the assurance given by it even thereafter. The letter of allotment at the very beginning of the project contained this stipulation in no uncertain terms. Avoidance of this condition by the hospital on any ground would not be permissible as the hospital has made millions of rupees as per its own version due to its location in South Delhi on a land measuring nearly two acres with all its infrastructure and the same has now spread over to 6.9 acres of land. This progress and profiteering could not have been achieved by the hospital but for the allotment of the land by the DDA in the heart of the city. It may be noticed that in one of the letters they had written to the DDA and the Government that they would not be interested in taking land across yamuna where even a larger piece of land was proposed to be allotted to them. Therefore, the said proposed location was changed on the basis of the representations made by the hospital and the DDA agreed to allot them the land at the present site. This itself shows that land was allotted at a much attractive location of South Delhi, rather than in a developing area of East Delhi. Having taken all these advantages over the years together, it would be impermissible for the hospital to plead to the contrary.

37. We may notice now the stand of the hospital in its affidavit filed on record. In principle and in view of the facts above noticed, it is stated that the condition for providing free treatment is not applicable to them, the land of 6.873 acres was allotted at Rs. 3,77,10,870/- and the first allotment was made in the year 1982-83. The case of the hospital further intends to emphasize that it is a super specialty institution and maintenance of beds is very expensive as cost of maintaining the bed was about Rs. 50 to Rs. 100 per day at the time of allotment of land and at present, the cost of setting up a bed is approximately in the range of Rs. 50-60 lakhs and per day cost of maintaining such a bed is Rs. 3500/- to Rs. 4000/-. It is specifically averred in the counter affidavit that the compliance to the condition of 25% beds for free treatment with unlimited free consumables and medicines would result in an annual revenue outflow of approximately Rs. 40 crores and this would wipe out the present pre-tax annual profit figure of Rs. 27 crores and will start eroding free reserves and surplus of the hospital thereby rendering the hospital defunct and inviable. It is also their case that even the Government hospitals do not provide consumables and the patients are required to pay for the same. They had made a proposal for concessional rates and such proposal dated 25.5.2004 is pending with the DDA and, thus, they cannot be compelled to abide by the term of free patient treatment as afore-

noticed.

38. It will be useful at this stage to refer as to what is the conduct of this hospital despite such representation and assurances given to the authorities prior to completion of the hospital and the specific term contained in the letter of allotment. There is hardly any dispute that the hospital has not even remotely complied with the conditions imposed in the letter of allotment. We have no doubt in our mind that the conditions of allotment letter are binding upon the hospital and they are expected to adhere to the same unless it was varied by the competent authority. The non-mentioning of such condition in allotment letters relating to allotment of land for the purpose of staff quarters, green area, doctors quarters etc. is inconsequential. Even in the other letter where the condition is missing, the land was allotted for the purpose of looking after the patients who were being treated in the main hospital and the same was in continuation of the project and purpose, in furtherance to the letter of original allotment. The lands were granted as additional pieces of land in continuation to the basic purpose of hospital and where the land was allotted for construction of a rehabilitation centre on 3.5.1990, the condition was reiterated. As already noticed, various committees were appointed by this Court. The first committee chaired by the Secretary of Urban Development had noticed as under:

Escorts Heart Institute has informed that beds cannot be blocked and kept unoccupied. Therefore no free beds have been earmarked. However according to the hospital, free/subsidized treatment is provided to the poor patients that include diet, beds, consultations, Nursing Care & various tests etc. The details of free treatment provided to the poor patients has been furnished, and is reflected in Annexure-V.

39. The Maninder Acharya Committee noticed the conduct of this hospital and made the following observations:

14.That is important to mention here that the Committee has not received any reply till date to its letter dated 26.01.2006 by which the Escort hospital was asked to submit to supply the data relating to free treatment. However, on the basis of inspection of the hospital prime facie it is clear that Escorts hospital is not providing any free treatment to patients as neither any data could be shown to use from the computers (except that register) nor any patient availing the free treatment could be shown in the hospital. In the name of free treatment, we were given the copies of the circular relating to free heart checkup camps held by the hospital in rural areas. It is submitted though the said efforts of the hospital are appreciable but the same cannot be termed as "the free treatment" provided in compliance with the condition stipulated in the allotment letter/lease deed of the hospital. In addition to above, names of 3 patients, i.e., Shanti Devi, Sandai Jeet Kaur and Pramwati were provided to us who had been given free treatment on 5.10.2005, 22.6.2005 and 7.10.205 respectively. These are the only 3 names in respect of whom some records were shown to us. A photocopy of the said register containing 115 names, applications for subsidy by abovementioned 3 patients and circulars for community outreach programme supplied by Escorts Hospital are annexed herewith and marked as Annexure A-6 (COLLY).

40. The hospital did not comply with the conditions of letter of allotment despite the fact that it was making huge profits annually which fact has been stated by them in its own affidavit. It

even did not care to cooperate with the Committees appointed by the court. The interest of the hospital appears to be making profits in complete contradiction to purpose of the trust which was to be a charitable trust and to work on no profits basis. Rather, it ignored specific directions of the authorities to comply with this condition for all this period. Compelled with the persistent breach on the part of the hospital and its conduct, the DDA even issued a show cause notice as to why the allotment and lease be not cancelled for the violations committed by them in regard to free treatment to weaker section vide notice dated 31st October, 2003. Another pertinent factor which relates to the conduct of this hospital is that this so called charitable trust had allegedly transferred the hospital to Fortis for Rs. 650 crores. The authorities are also taking action in that regard as the Trust was converted into a company and then allegedly transferred to Fortis. The DDA has heavily relied upon the meeting held on 23rd March, 1982 wherein the hospital had discussed various issues and had given a firm commitment that they would abide by the condition consequent upon the change of land from East Delhi to the present site. The following extract of the minutes recorded in the meeting held with Lieutenant Governor, can throw light in regard to free treatment to weaker section of the society, which was the basis for allotment of land.

It was not possible for Dr. Trehan to convince us that trans-yamuna area is not the right place for the location of their project. He, however, mentioned that in case their suggestion was not accepted, he would not be interested to participate in this as he termed it a self-defeating venture.

The question, Therefore, now boils down to either losing a project or having it in the area indicated by them. Under the circumstances, I have no alternative but to agree to their suggestion. The allotment of land would be made in the South Delhi area as originally proposed by the VC, DDA in his earlier notes. This is, however, subject to the following conditions, which were then accepted in the meeting by both Dr. Trehan and Mr. Handa;

(i) 25% of the total of beds would be free and another 25% will be subsidized;

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

These conditions would be incorporated in the order of allotment which will be issued to Messrs. Escorts Ltd.

A copy of this note would be endorsed to VC, DDA for further necessary action."

41. Again subject to the determination of legal submissions raised on behalf of the hospital, as they are more or less common to Dharamshila hospital, we have no hesitation in coming to the conclusion that essence of allotment of land in its entirety was compliance to the condition of free treatment to the poorer section as per the percentage specified therein. Having received the benefits of the discussions in the meetings and its own representations before the competent authorities, the hospital cannot be permitted to shirk its responsibility even in the larger public interest. The institutions like the present hospital which are stated to be super-specialty hospitals must envisage their difficulties before they seek the benefit. After having received benefit and

having made huge profits, now to turn back and compare themselves to Govt. Hospitals is nothing but travesty of public obligation and social welfare state.

42. A State makes various attempts to discharge its obligations for achieving the constitutional mandate mentioned by us in the very opening paragraphs of the judgment. In a place like Delhi, where the land cost has always been on the increase, wide discretion lies with the authorities to make allotments of land. In regard to allotment of lands, the State is expected to make policies which are not only in conformity with the socio-economic principles but are also in conformity with the Constitutional command of equal status and opportunity with dignity of individuals.

LEGAL SUBMISSIONS:

43. Reference to this aspect of law would be essential as the learned Counsel appearing for the parties have made reference to certain statutory provisions and the policies of the government.

44. The emphasis on behalf of the petitioners is placed on the provisions of the Government Grants Act, 1895 and the Lease Deed with reference to the provisions of the Delhi Development Act while the respondents have also relied upon the provisions of the Delhi Development Act, 1957 along with the terms of the letter of allotment, The DDA (Disposal of developed Nazul Land) Rules, 1981 and the guidelines issued by the Government from time to time to regulate the development and disposal of land by the concerned authorities. The emphasis of the petitioners has been that the Lease Deed is a complete and composite grant by the Government and is a document independent and absolute in its terms. This does not vest the authorities with the power to impose such a condition and in any case enforce the same. It is also contended that no term inconsistent with the terms of grants or which is not in tenor with the conditions of a grant can be given effect to. In support of these submissions, reliance has been placed upon the judgments of this Court in the cases of Hajee SVM Mohamed Jamaludeen v. Govt. of Tamil Nadu: [1997]2SCR413 ; Jor Bagh Association v. Union of India: AIR2004Delhi389 ; Sunil Vasudeva and Ors. v. Delhi Development Authority 34 (1988) DLT 37 and State Bank of India and Anr. v. Mula Sahakari Sakhar Karkhana Ltd: AIR2007SC2361 .

45. These submissions are primarily refuted by the petitioner and the official respondents on the ground that the letter of allotment is a concluded contract between the parties. The Lease Deed is a part and parcel of the letter of allotment. The provisions of The Government Grants Act, 1895 do not come in conflict with the conditions which are otherwise in conformity with the policy of the State. The attendant circumstances otherwise show that the government would even otherwise have competence to regulate the affairs to prevent commercialization and exploitation by the Institutions. The Institutions/hospitals are bound to comply with the terms and conditions of free treatment as it is the obligation of the State to provide best possible health to its citizens within its means. It is also their contention that mere likelihood of loss or taking of a sympathetic view is no ground for non-compliance to a condition which is imposed contractually and is backed by law. They have relied upon the judgments in the cases of Indu Kakkar v. Haryana State Industrial Development Corporation Ltd. and Anr.: AIR1999SC296 ; Delhi Abhibhavak Mahasangh v. Union of India and Ors. : AIR 1999 Delhi 124; Union of India and Anr. v. Jain Sabha, New Delhi and Anr. (1997)1SCC164 ; State of Punjab and Ors. v. Ram

Lubhaya Bagga and Ors: [1998]1SCR1120 .

46. The first letter of allotment issued to both these hospitals contained the term of free treatment to poorer sections. The relevant terms of the letter has been referred by us supra. Without execution of any document, the hospitals had in furtherance to the letter of allotment accepted the terms and conditions of the letter including this condition and

(a) paid the money demanded in terms of the letter of allotment and

(b) took possession thereof, without any protest or reservation.

47. In other words, a party's right had to be controlled in accordance with the terms of letter of allotment and, Therefore, a complete contract existed between the parties. The terms and conditions of the letter of allotment empowered the authorities to add or impose such other conditions which the allottee was obliged to agree having taken benefit thereof. The terms and conditions of the Lease Deed certainly does not contain the condition of free treatment to poorer sections of the Society but the same was part of the letter of allotment itself and they would be applicable to the allotments mutates mutandi particularly when there is no conflict between them and they duly are supplement to each other.

48. No doubt, the Lease Deed contained a specific clause, Clause No. (xi) which reads as under:

This Lease is granted under the Government Grants Act, 1895 (Act, XV of 1895)

49. On the strength of this clause, the hospitals want to totally dilute the bindingness of their representations, terms and conditions of the letter of allotment and their undertakings etc. In their submissions, only the lease deed being a grant under the provisions of that Act, they are not bound to comply with the conditions of free patient care and treatment to the indigent and poor. Let us examine the provisions of the Government Grants Act, 1895. In terms of the provisions of that Act, it would extend to the whole of India except to the States specifically excluded, and nothing in the provisions of Transfer of Property Act, 1882 would apply to the grants in terms of Section 3, all previous restrictions, conditions and limitations over-contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment to the Legislature to the contrary notwithstanding. In other words, the terms of Grant are paramount and no provision of law, much less anything else, affecting adversely the grant, would have to be construed strictly in the tenor of the conditions of such grant. In view of the principles enunciated by the Supreme Court in the case of The State of U.P. v. Zahoor Ahmad and Anr. [1974]1SCR344a , it can hardly be said that the parties ever intended to be governed by the provisions of the Government Grants Act, 1895 and the allotment of the property to the hospitals is at all a Government grant. We are of the considered view that this cannot be treated as a 'government grant' in absolute terms. The allotment has to be seen and examined along with the documents like letter of allotment of land; the statutory duty of the Delhi Development Authority; the fact that it was a Nazul land controlled by the provisions of the Act and the Rules, and particularly that the letter of allotment was the paramount document containing the terms and conditions and that the Lease Deed was merely a

secondary document in furtherance to the stipulations contained in the letter of allotment.

50. Be that as it may, we would still proceed to discuss in some detail the contentions raised on behalf of the hospitals on the presumption that it can be covered under the provisions of that Act.

51. Like a Crown, the Government has an unfettered discretion under the provisions of the Government of Grants Act. All rights, privileges and obligation are to be regulated only according to the terms of the Grant itself even if they are inconsistent with the provisions of law. The most pertinent expression appearing in Section3 of the Act is 'tenor'. This expression has been explained in the Black's Law Dictionary, Eighth Edition as under:

1. An exact copy of an instrument.

2. The exact words of a legal document, esp. as cited in a pleading.

3. The meaning of a legal document.

52. The Law Lexicon by P. Ramanatha Aiyar, 1997 Edition, defines the term 'tenor' as:

"Tenor" of an instrument imports identity.

1. The exact words of the document; the actual wording of a legal document, what appears on the face of the instrument to be the intention of the parties [Section 10, Negotiable Instruments Act]; 2. the time between the date of issue or acceptance of a note or draft and the maturity date; 3. in ordinary parlance, it means 'purport'....

...By setting forth an instrument according to its tenor in an instrument according to its tenor in an indictment is meant an exact copy of the instrument, while by setting it forth according to its purport and effect the import or substance only is indicated.

TENOR" as used in pleadings alleging that the instruments are set out according to their tenor, binds a party to a strict recital.

53. "Tenor est qui legem dat feuds [It is the tenor of the feudal grant which regulates its effect and extent (Latin for lawyers)] is of great help and assistance in understanding this expression. The judgments relied upon on behalf of the hospitals also proceed on the same basis that a grant is to be regulated by the terms of the grant. Firstly, the terms of grant have to be clear and capable of being understood. In the light of this legal connotation, the letter of allotment issued to the hospitals at the initial stages was not under the provisions of the Government Grants Act, but was in furtherance to the statutory provisions of the Delhi Development Act, the Rules framed there under and the Nazul Land Rules. We have already noticed that the perpetual lease deed is not the document which came into existence at the inception. The letter of allotment e.g. In the case of Escorts Hospital was issued on 8.4.1982. The payments were made much prior to the expiry of 60 days specified in the letter and the possession of the plot was given just after three months i.e. 9.7.1982 while the Lease Deed was executed between the parties in the year

1986. The terms of the letter of allotment had specifically provided that the allottee shall execute the Lease Deed, the conditions of which shall be deemed to have been included and deemed to be part of the letter of allotment and it was obligatory upon the allottee to go through the terms and conditions of the perpetual proposed lease deed, which according to the respondents was available with the DDA at the time of issuance of the letter of allotment. We are unable to understand the said contention as to how the Lease Deed can be treated as an exclusive document governing the terms and conditions of allotment even if in terms of Clause 11, it is to be treated as a grant. The Act does not postulate any statutory terms and conditions and they are left to the discretion of the government and the government in its wisdom had imposed those conditions which even included the representations and assurances given by the allottee prior to execution of the Lease Deed. That is what the opening clause of the Lease Deed provides and further the conditions to be imposed by the Government would even be binding on the allottee in terms of the Lease Deed. If the Lease Deed is a document by which the grant has been given, then all other documents would be part of such grant with letter of allotment being the basic document which binds the parties. Section 21 of the Delhi Development Act regulates the disposal of the land by the authority subject to any directions given by the Central Government under the provisions of the Act, while Section 22 of the Act deals with the power of the Central Government itself to place at disposal of the authorities, all or any undeveloped lands in Delhi, vested in the Union which will be known as 'Nazul Lands". The Delhi Development Authority would have a right to dispose of the lands after development or even of an underdeveloped land. The land will be allotted on such terms and conditions that may be specified by the Central Government and furthermore even after the development and allotment of the land, the land will be dealt with in accordance with the Rules made and the directions given by the Central Government noticed above. These provisions place a statutory obligation upon the DDA to develop, deal with and allot the lands, whether they are Nazul lands or lands covered under Section 21 of the Act. Wherever the land is nazul land, they shall be controlled under the provisions of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (In short 'the Rules'). Under the provisions of these Rules, the policy of the Central Government has been clearly spelled out. The Rules are statutory rules and would have to operate in their own field. It will be pertinent to note the relevant Rules which will have a bearing on the controversy before us. Rules 5, 20 and 23 read as under:

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

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

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

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

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

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

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

(b) it is a society registered under the Societies Registration Act, 1860 (21 of 1860) or such institution is owned and run by the Government or any Local Authority, or is constituted or established under any law [for the time being in force or it is a company, firm or trust for the purpose of establishment of hospital or dispensary];

(c) it is of non-profit making character;

(d) it is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use; and

(e) allotment to such institution is sponsored or recommended by a [Department of the Government of National Capital Territory of Delhi] or a Ministry of the Central Government:

[Provided that in case of allotment to a company, firm or trust for the purpose of establishment of hospital or dispensary by tenders or auction, as the same may be, such company, firm or trust, as the case may be, shall not be required to be sponsored by a Department of the government of National Capital Territory of Delhi or a Ministry of the Central Government.]

23. Agreements between the co-operative societies and their number.- Where Nazul land has been allotted to a co-operative society, such members of the society who are allotted a plot or flat by such society shall execute a sub-lease in favor of the society in respect of each plot or flat allotted to them. The terms and conditions of such sub-lease shall, as nearly as circumstances permit, be in accordance with Form A and Form B appended to these rule. In addition, such sub-lease may contain such covenants, clauses or conditions, not inconsistent with the provisions of Form A or Form B as may be considered necessary and advisable by the society, having regard to the nature of a particular sub-lease.

54. A bare reading of Rule 5 shows that the lands under these provisions can be allotted to Institutions including the hospitals at the rates which may be determined from time to time. Such allotment is controlled entirely by use of an expression of negative language that no allotment of Nazul land to public institutions be made unless they comply with the conditions of Rule 20, which includes that they would operate on no-profit making character and it directly subserves the interest of the population of Delhi. The legislative intent of public convenience and health endure on the part of the State to achieve its social goal of public equality and individual dignity which is not the hypothesis but is a precept discreetly apparent. Rule 43 of the Rules and even other Rules contemplate execution of a Lease Deed, the terms of which are not be in conflict with the form 'C' of the Form in case of these Rules and obviously and

definitely opposed to the substantive Rules. Nothing has been brought during the lengthy argument addressed before us to show that any of the terms and conditions are vocative of Form 'C' or the provisions of Nazul lands. In furtherance to all this, the Government has been framing its guidelines on land management and disposal of Institutional lands. These policies, of course, have been amended from time to time but certain conditions have always formed part of these principles. In relation to the allotment of land to private hospitals, Clause 7.6 of the guidelines are relevant, which reads as under:

Allotment of land to private hospitals:

7.6 On the suggestion of Director General Health Services, Govt. of India and Delhi Admn the following conditions are incorporated for allotment of land to private hospitals at concessional rates as determined by Govt. of India from time to time:

i) The institute shall serve as general public hospital with at least 25% of the total beds reserved for free treatment for weaker sections and other 255 will be subsided.

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

55. The condition of 25% free patient treatment to the poor thus is a condition which has been imposed in furtherance to the policy of the Government which in turn is in strict consonance to the spirit contained in Rules 5 and 20 of the Rules and the Constitutional mandate. The DDA had specifically incorporated this condition at/after the time when on the tall representations and negotiations made by the hospitals and their undertaking to abide by such conditions, was repeatedly accepted that it issued the letter of allotment containing these terms. On facts of the case and in law, they cannot abrogate themselves from completely satisfying the condition of 'free patient treatment'.

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

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

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

58. Further, in the case of Modern School v. Union of India and Ors.: AIR2004SC2236 , the

dictum of the Supreme Court fully supports the case of the official respondents and imposition of such condition. While dealing with the subject of education, approving the concept of reasonable restrictions, the Court in no uncertain terms held that "commercialization of education and diversion of profit surplus for other purposes or use for personal gain was impermissible." The relevant paragraphs read as under:

15. As far back as 1957, it has been held by this Court in the case of State of Bombay v. R.M.D. Chamarbaugwala: [1957]1SCR874 that education is per se an activity that is charitable in nature. Imparting of education is a State, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of Unni Krishnan , J.P. v. State of A.P.: [1993]1SCR594 looking to the above ground realities, this Court formulated a self-financing mechanism/scheme under which institutions were entitled to admit 50% students of their choice as they were self-financed institutions, whereas rest of the seats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including the Medical Council of India, University Grants Commission etc. were directed to make and/or amend regulations so as to bring them on a par with the said Scheme. In the case of T.M.A. Pai Foundation v. State of Karnataka: AIR2003SC355 the said scheme formulated by this Court in the case of Unni Krishnan was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue shortfalls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in Unni Krishnan case were held to be unconstitutional. This Court observed in the said judgment that the right to establish and administer an institution included the right to admit students; right to set up a reasonable fee structure; right to constitute a governing body, right to appoint staff and right to take disciplinary action. T.M.A. Pai Foundation case for the first time brought into existence the concept of education as an "occupation", a term used in Article 19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educations institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, the right to establish an institution under Article 19(1)(g) is subject to reasonable restriction in terms of Clause (6) thereof. Similarly, the right conferred on minorities, religious or linguistic, to establish and administer educations institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which inter alias may be framed having regard to public interest and national interest. In the said judgment, it was observed (vide para 56) that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering were held to be forbidden. Subject to the above two prohibitory parameters, this Court in T.M.A. Pai Foundation case held that fees to be charged by the unaided educational institutions cannot be regulated. Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act. This issue was not there before this Court in T.M.A. Pai Foundation case.

16.The judgment in T.M.A. Pai Foundation case was delivered on 31-10-2002. The Union of India, State Governments and educations institutions understood the majority judgment in that

case in different perspectives. It led to litigations in several courts. Under the circumstances, a Bench of five Judges was constituted in the case of Islamic Academy of Education v. State of Karnataka: AIR2003SC3724 so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure. It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government. As against this, on behalf of the Union of India, State Governments and some of the students, it was submitted, that the right to set up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests. It was contended that imparting education was a state function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in T.M.A. Pai Foundation case. In view of rival submissions, four questions were formulated. WE are concerned with the first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of that educational institution. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise.

59. The reliance placed by the hospitals upon judgment of this Court in the case of Jor Bagh Association v. Union of India (supra) is misplaced in as much as the charge of damages sought to be recovered from the allottee was as a matter of fact found to be beyond any clause of the Lease Deed. The court also held that it was a grant under the Government Grants Act, 1895 and the charges were found to be contrary to such grant. The said judgment even if taken to have enunciated correct law, would have no application to the facts of the present case. Here the letter of allotment, which is the very foundation of allotment of land to the allottee, even if it is treated as a grant, places a specific obligation upon the allottee to carry out the conditions of 'free patient treatment'. In the case of State of Punjab and Ors. v. Ram Lubhaya Bagga and Ors. (supra), the Supreme Court clearly stated that framing of policies and change in such policies by the State, particularly in relation to reimbursement of medical bills of employees was correct, as the State could change its policies with the changing circumstances and subject to its financial resources. The Supreme Court also stated that such a change in policy or limiting of the expenses, was not vocative of the Article 21 of the Constitution of India as these are jural relations and the rights and duties are co-related. While holding that right of health was an

obligation of the State and a command of fundamental rights and directive principles, still individual interest must give way to the rights of the public at large. Reference can be made to the following paragraphs:

26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

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35. Learned Counsel for the appellant submits that in the writ petition filed, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said be such as to be vocative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. No Fundamental Right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that Government will give due consideration and priority to the health budget in future and render what is best possible.

60. The basic principle enunciated in the various judgments relied upon by the parties is that the Government grants would be governed by the tenor of the grant. The tenor, as we have already explained, would mean the terms and conditions of the grant per se. The letter of allotment, the Lease Deed which itself was executed in furtherance to the condition of the letter of allotment, the representations made by the hospitals prior to the execution of the Lease Deed and undertakings given even subsequent thereafter, would have to be looked into and the conditions

stated in the letter of allotment could be the conditions of allotment which were undoubtedly and unconditionally accepted and acted upon by the hospitals. The arguments that allotment of additional land for carrying on the main project for which initially the land was allotted, would not take such allotment beyond such condition. The provisions of the DDA Act read with Nazul Land Rules leaves no scope for doubt that the condition of free patient treatment is squarely applicable to all allotments. It is not in dispute before us that the lands allotted to the hospitals are Nazul lands and are covered under the provisions of Nazul Land Rules. This condition is, thus, backed not only by the specific terms and conditions of allotment but by the command of the statutory rules and even the government policies as declared in the guidelines on land management and disposal. Reliance of the hospitals exclusively on the Lease Deed is contrary to the basic rules of interpretation of documents as no secondary document could be relied upon in preference and, in fact, while completely ignoring the principle and basic document, that is the letter of allotment. The language of the Lease Deed and terms of the allotment letter does not help the hospitals to wriggle out of their contractual, statutory and public law obligation. There is no scope for reading and confining the rights and obligations of the parties in isolation. The Lease Deed in no uncertain terms has to be held as ancillary to the letter of allotment. We have already noticed that generally where in the allotment letter such a condition is missing, those were the lands which were provided for other purposes, than for extension of the hospitals or as patient care buildings. They related to green areas, staff quarters etc. Even where the condition is not specifically stated in respect of the hospitals, it being continuation of the original project and in view of the statutory scheme and public policy of the government, the condition would have to be read into such allotment. Any breach to the contrary would be obstructive of the very object of institutional allotment by DDA and the Government and in fact would be contrary to a very laudable purpose for which these hospitals came into existence as per their own documents. They were contemplated to be public charitable trusts and were to work for the benefit of poorer sections of the society to a much higher percentage than even specified in the letters of allotment.

61. As far as the question of hospital running into losses is concerned, it is an imagination based on self-created data and computation by the hospitals and is of no consequence. Firstly, with their eyes open, the hospitals had accepted the condition in regard to the free patient treatment of indigent persons and accepted the same without any reservations. That was the time when they should have come out with their objections, if any, and requested the government/authorities to deal with and/or not to impose such a condition. We even wonder whether any authority would have such a jurisdiction in face of the statutory provisions. But there is no dispute before us that any of the hospitals, subject matter of the present writ petition, ever approached the authorities at that point of time and particularly before making the payments and/or taking possession of the plot in question. It has been averred and with some emphasis by these hospitals that these are super-specialty hospitals and are not expected to treat patients free, particularly the indoor patients as the cost which they would incur, may not be financially viable and may affect the deposits and assets of the company/hospital. This concept of profiteering is foreign to social policies. The government and authorities allotted them land in the heart of the town at such rates to achieve the social goal of providing best possible health facilities to the residents of Delhi. This condition is the spirit behind the statutory rules, policies and letter of allotment. The Escorts Hospital on its own showing have been making a pre-tax profit of Rs. 27 crores every year and certainly has come up in the city as one of the significant

super specialty hospital. If they would have complied with their obligations in a regular phased manner which they have admittedly not, at best their profits might have reduced to some extent. In contrast, a hospital like VIMHANS, which again is a super specialty hospital, relating to neurological problems where the condition for free treatment required them to provide free patient treatment to 70% of the patients as the land was allotted by the L&DO, they have attempted their best to adhere to the condition despite losses. Thus, it hardly lies in the mouth of the Escorts Hospital and even the Dharamshila Hospital to raise such a plea, despite the fact that they have made crores of profit. In any case they are consistently violating this condition for all these years and in face of the report of the Committees, they do not deserve any sympathetic view and must be compelled to adhere to the conditions imposed, failing which the law must take its own course including closure of these hospitals. They cannot thrive at public cost and State expense without fulfilling the minimum conditions imposed upon them to achieve a greater social goal and to look after the interest of the public at large. These are the cases where the individual interest must bend in comity to the public interest even if at some cost.

62. It was also argued before us that a super specialty hospital is incapable of complying with the terms of the allotment letter and particularly this condition, in as much as that requires the hospitals to be a 'general public hospital' which is impracticable and thus, this condition is not even enforceable. The arguments is that a super specialty hospital dealing with diseases like Cardio, neurology and cancer etc. cannot be expected to open a general hospital to treat 25% free patients in their hospital or even an Out-Patient Door (OPD). This argument is a fantasy of the innovative arguments advanced on behalf of these hospitals. Firstly, the general public hospital is not a term which can be construed as opening of a general hospital but clearly states that the percentage of beds and patients specified in the clauses are meant for general public in that hospital. This approach was fully accepted on behalf of all the parties and the Government. It cannot be said, much less held, that the term requires the hospitals to create a multi-specialty hospital for the purposes of compliance to the conditions of free patient treatment.

63. The purpose and object appears to be that the hospital should be available to the general public with particular reference to poorer sections and not a generalized multi-specialist treatment. Certain enough, all these hospitals essentially must have a first aid or emergency unit so that in the case of emergency relating to any specialty, if a patient particularly in a dire need of medical help is brought to that hospital, they should be in a position to provide the first-aid/emergent treatment and arrange for the patient to be sent to the appropriate hospital for treatment. This limited counter facility is expected to be opened by all these hospitals. But the contention that they are expected to open a multi-specialist or a general hospital in that sense of the term is without any basis. A 'general hospital' would have to be construed in ad jus generam to the terms of the allotment which are primarily to open a super specialty hospital. It could neither be contended on the principle of impossibility of performance nor frustration of contract, and in fact, cannot be justified on any legal premise that super specialization hospitals are incapable or the condition of free patient treatment is impracticable of performance. Most of the hospitals have enriched themselves on the concessions at the cost of discharging their contractual and social obligations over a long period. This argument itself is nothing but another attempt to wriggle out of a solemn term of contract and undertaking given by them at the relevant time.

SCOPE & EXTENT OF THE CONDITION RELATING TO FREE TREATMENT

64. On behalf of some of the hospitals, the contention raised was that neither they are bound by the condition nor the condition was practicably implement able in their cases. We have already rejected both these contentions. In regard to some of the hospitals, particularly the hospitals to whom the land has been allotted by the L& DO (UOI), the percentage of free treatment to be provided to the poorer section of the society is 70%. These hospitals are super-specialty hospitals. For example, VIHMANS which deals with neurological problems. This hospital has placed on record the documents and even had shown to the authorities that it has been running into losses of crores of rupees every year and finds it very difficult to survive despite heavy donations and contributions given by the different persons or bodies. This aspect can certainly be not ignored in its entirety. The condition besides being reasonable has to be one which can be implemented without frustrating the very object of the scheme. If these super-specialty hospitals are required to treat 70% of the patients free while providing them free admission, bed, nursing care, doctor visits, treatment, surgery and all consumables and non-consumables medicines etc., then in all probability, they would not be able to survive and they may have to shut such hospitals. If that happens, the very object of formulating such a policy would stand defeated. Thus, it is in the interest of all concerned, that this condition should be reasonably construed. The condition enforceable against different hospitals has different percentage. It varies from 10% to 70% for IPD and 25% to 70% for OPD. This immense discrimination as well as the possibility of closing the hospitals, compelled the authorities concerned to reconsider this condition and the scope of its enforcement.

65. The Lieutenant Governor of Delhi had constituted a special committee being Justice Qureshi Committee for this purpose. This committee after taking into consideration various aspects including workability of this condition had recommended that 10% IPD and 25% OPD patients should be treated free in all respects in every such hospital. Such patients belonging to the poor strata of the society should not be required to pay any charges. The relevant part of the report of the committee reads as under:

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

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3. The free treatment should be totally free and not partly free and should be uniform for all hospitals that have been allotted land by the Govt.

4. It is also suggested that all those institutions should provide the free services to the extent of 10% also who have not been allotted Govt. land. Even Nursing Homes should provide 5% of their beds for poor and needy patients.

5. In consideration of persistent violation of expressed and implied terms by the institutions, the allotment of land should be cancelled and should be re-allotted by a new lease deed on new and uniform terms and conditions for thirty years, on commercial rates of ground rent, to a new management in which Govt. should have at least 3 nominees nominated by Lt. Governor having wide experience of rendering free services. The renewed lease must clearly mention that the lease is not transferable and any contravention would result in automatic cancellation.

66. The above recommendation of the Committee has been accepted by the Government of NCT of Delhi and even before the Court their stand was that the condition suggested by the Qureshi Committee is reasonable and should be enforced. However, it was stated on behalf of the UOI that the matter is under consideration of the Government and despite pendency of this petition for a considerable time, they have not taken a final view in the matter. In fact, it was conceded before us by the learned Counsel appearing for the various parties that the condition of 70% and even 25% indoor free treatment would prove very harsh and incapable of performance in the cases of super-specialty hospitals especially for Neuro, Cardiac, Cancer and other life-threatening diseases as the treatment for the same is very expensive and is to be given to the patient over a long span of time. If the percentage is kept very high, the hospitals would not be able to run without incurring heavy losses. Undoubtedly, in terms of allotment; under the Nazul Land Rules and the scheme of the Government, the hospitals are expected to run on no-profit basis but certainly it cannot be construed as nothing but losses.

67. Even the members of the Committees including the Maninder Acharya Committee had also expressed the similar view that the condition should be reasonable but its implementation should be strictly enforced and in the event of default, strict action should be taken.

68. With some seriousness, it was argued on behalf of these hospitals that the term 'free treatment' for the weaker section of the society as referred to in the condition impugned by the hospitals before us, would mean providing of only free bed, nursing or doctoring attendants but all other consumable or non-consumable expenses on medicines, surgery would have to be paid by the patient. The Qureshi Committee report besides the above suggestions for percentage of free patient treatment had stated that the free treatment should be totally free and not partially free and should be uniform for all hospitals which have allotted land at concessional rates. The recommendations made by the Qureshi Committee had been accepted with some variation in the meeting of the Government of NCT of Delhi presided over by the Chief Secretary on 23rd October, 2002 wherein it was specifically stated as under:

...The free treatment means totally free and not partly free and partly paid. The free IPD patient will not have to pay for anything, including medicines and medical consumables, as in the case of government hospitals.

69. Another suggestion which was made was that all the Government hospitals do not provide totally free consumables and as such the condition can hardly be applied to the private hospitals. There is an apparent fallacy even in this submission. The Government hospitals provide consumables free but the super-specialty government hospitals may be charging for some consumables, though there is doubt even on that. But still, they provide such care to 100% patients and not partially while the other general hospitals provide it totally free to 100%

patients. We are unable to understand the analogy that is sought to be made from such hospitals. The private hospitals which have not only taken the lands at concessional rates but even other concessions by way of exemption in duties etc. from the State are expected to run these hospitals in consonance with the terms of allotment and provisions of law under which they have received such benefits.

70. We are of the considered view that the Qureshi Committee report as accepted by the Government and even otherwise clearly recommended that the free treatment does not need to be given any restricted or a meaning which would frustrate the very purpose of the scheme and the object of introducing such an expression. To illustratively examine this aspect, let us say, a private hospital would give free advice to a poor, indigent person suffering from cardiac problems requiring an open heart surgery but he is expected to pay lakhs of rupees for open heart surgery and the consumables used for such surgery. Such an approach would be destructive not only of the scheme but even of the rosy picture demonstrated by the hospitals at the initial stages. Thus, we find that the term 'free treatment' should be given liberal meaning and meaning understandable in common parlance i.e. providing of treatment, consumables, non-consumables and all other facilities free of any charges to the poorer section of the society.

71. In view of the unanimity of the views of the Committees and particularly the Qureshi Committee report which has even been accepted by the Government as afore-noticed, we consider it appropriate that the condition of free patient treatment to the indigent strata of the society shall be read and construed as 25% for OPD and 10% for IPD. This percentage of patients will not be liable to pay any expenses in the hospital. In other words, they will be provided free admission, bed, medication, treatment, surgery facility, nursing facility and consumables and non-consumables. The hospitals charging any money from such patients shall be liable to be proceeded against in accordance with law. Besides that, this would be treated as violation of the orders of the court. The Director/Medical Superintendent and Members of the Trust or Society who are running the hospital shall be held liable personally in the event of breach/default. The records to be maintained by the hospital shall reflect the name of the patient, his father's name, his residence, disease from which the patient is suffering, the details of expenses incurred on his treatment, the facilities provided to him, identification of the patient and verification done by the hospital authorities. Furthermore, the records would also contain complete details of reference from Government hospital and reports submitted by the private hospital to the Government hospital. Such records would be produced before the Inspection Committee and the Director General of Health Services as and when demanded and in any case, in every three months to be submitted in the first week of the 4th month.

METHODOLOGY FOR REFERENCE OF PATIENTS UNDER THIS CONDITION TO VARIOUS HOSPITALS AND FOR THE MAINTENANCE OF THE RECORDS.

72. Another ancillary but a very important facet of this case is how the patients should be referred and treated at these hospitals in furtherance to the condition for free patient treatment for the poor. From the report of the Committees and even during the course of arguments, no satisfactory records have been produced even in the cases of the hospitals who according to their own version are complying with this condition to show that actually free treatment to the patients belonging to the poorer strata of the Society is being provided. A methodology has

thus, to be worked out so as to make reference of needy and poor patients to these hospitals and scope of treatment of those patients in the referral hospitals.

73. Despite such specific directions, there has been hardly any implementation, much less proper adherence of the condition imposed. The committees have submitted their reports which clearly show that large number of hospitals to whom the lands have been allotted by the authorities or the Union of India, are not complying with the condition and few of them, of course, are partially complying with the condition. What is procedure for free treatment and what regular records are being maintained by the hospitals to show compliance/partial compliance of the condition, has been again left to the guess work. Thus, the court has to evolve a procedure which would be not only fair and impartial but also practicable. Having examined this aspect from different point of views and taking opinion of the experts, doctors and the Directorate of Health, we are of the considered view that most appropriate way to ensure implementation of this condition is reference from the Government hospitals (Casualty/OPD patients) to the private hospitals keeping in view their specialty and/or super-specialty. It is a matter of common knowledge that poorer and most poorer categories of persons in our society go for treatment to public or general government hospitals as they cannot afford any other mode of treatment for their sickness. Some stray cases, compelled by their circumstances, who are suffering from life-endangering diseases, do approach these hospitals but are totally dependent on the absolute discretion of the management of the hospital. The purpose of incorporating this condition is not to provide discretion to the hospitals where the medical treatment is already expensive but is to ensure that poorer section of the society is treated by these hospitals without any reservations. Thus, it would be appropriate to direct that every Government hospital having specialty or super-specialty and even if it is general hospital, shall create and establish a 'Special Referral Centres (counters/rooms)'. This Centre shall be part of the casualty as well as the regular OPD of the hospital. The patients in critical conditions who are brought to casualty of the hospital, if necessary, would be referred by the Doctor on duty in consultation with the Chief Medical Officer or the Senior Resident on duty and with the approval of the Professor on duty for immediate treatment to any of the specialty or super-specialty private hospitals to whom the land has been allotted by the State or any authority and in the present case, 20 hospitals which are being dealt with by this judgment.

74. At the time of making a reference, a record in triplicate shall be prepared. One copy thereof will be given to the patient, second copy will be given to the Director General of Health Services and third copy will be maintained by the hospital. The private hospitals shall admit such patients and treat them free of any expense in relation to admission, bed, treatment, surgery etc. including consumables and non-consumables. In other words, such patients would not be required to incur any expenditure for their entire treatment in the hospital.

75. When the patient is treated and is discharged by the hospital, the hospital shall submit a report to the referring hospital with a copy to the Director General of the Health Services indicating the complete details of treatment and the expenditure incurred thereupon.

76. This admission reference shall be continued by all the hospitals for free treatment of the patients belonging to poor strata of the society.

77. Every person who has no income or has income below Rs. 5,000/- per month shall be treated under this category to begin with and unless and until the Committee constituted vide this judgment takes a final view in regard to fixation of criteria of minimum income for receiving benefit under this scheme.

78. In case a patient who is being treated as an indoor or out-door patient in the regular course, needs to be referred to the private hospitals which are specialty or super-specialty hospitals, then the reference would be made by the treating doctors in consultation with and on confirmation by the Head of the Department/Medical Superintendent of that specialty in the general hospital.

79. The private hospitals even would be entitled to admit patients in casualty of their own hospitals and within two days of such admission, they would send intimation of such admission to the Director General of Health Services and the nearest Government General Hospital. The Chief Medical Officer/Head of Department of that specialty shall be under obligation to visit the private hospital and verify the fact in regard to genuineness of poverty of the person, the treatment provided to him and the cost likely to be incurred by the hospital in this regard.

80. Except for the patients admitted in the above manner, no hospital would be entitled to claim compliance of this condition in the cases which are admitted contrary to the above stated procedure.

81. Every general hospital and private hospital shall open such referral centres within two weeks from the date of pronouncement of this judgment and the Director of the Private Hospitals would be personally liable in the event of default.

82. Creation of such referral centres with samples of record shall be submitted to the Director General of Health Services within one week thereafter.

83. We have already noticed that none of these hospitals have fully complied with the condition of free patient treatment as per percentage provided under the letters of allotment and even otherwise.

84. All the hospitals which were awarded land by DDA and/or L&DO were expected to make hospitals functional within two years from the date they had taken possession of the plots in question. Thus, these hospitals were expected to complete their construction activity within a period of two years of taking possession of plot and immediately start complying with the condition of free patient treatment. The hospitals which have not complied with or have partially complied with the condition in terms of the reports submitted on the record of this file, are at fault and they could not be exempted from complying with the condition in all its strictness. In fact, we must notice that the authorities including DDA and L&DO have failed to perform their public duty and have placed the poor section of the society at great loss. There is no justification whatsoever on the part of the general, specialty or super-specialty hospitals not to comply with the mandate of the condition. Thus, they would be asked to make good of the non-compliance of the condition and they must repay to the authorities and the society at large for the unwarranted profits, at the cost of the poor, made by them for all these years to the

extent of the percentage of free patient treatment (in terms of money) proportionate to the number of patients treated by them during the relevant period and they must pay that money to the authorities who shall create a central corpus/pool which shall be utilized for the welfare, health care and treatment of the poorer section of the society in Government hospitals. A Division Bench of this Court in its order dated 7.11.2002 (referred supra) had passed such a direction. Despite orders of this Court from time to time, the hospitals which were in default persisted with the same and showed complete dis-obedience to the orders of the court. The conduct of these hospitals even during the pendency of the writ petition is not worthy of any appreciation. Rather, it would tilt towards denial of relief on equitable grounds. Thus, we direct that a special committee shall be constituted which shall carry out these directions in its best wisdom and which shall ensure that the directions of the court are neither diluted nor rendered ineffective by such steps:

85. The 'Special Committee' shall consist of the Chief Secretary of NCT of Delhi, Finance Secretary, NCT of Delhi, the Director General of Health Services and Medical Superintendent of the general public hospital of that area, the case of which is being considered by the authority.

86. The Committee shall be entitled to appoint Chartered Accountants or any other officers from the office of the Comptroller General of Accounts for examination of the records, books of accounts and other material of the concerned private hospital which may have bearing on the matters which are being considered by the 'Special Committee.'

87. The officers so appointed by the committee shall submit a report to the Special Committee which after providing hearing to the hospital affected by such report, shall pass orders.

88. The order of the Special Committee shall determine the amount which is payable by the private hospital (20 of the hospitals stated in the judgment) and/or such other hospitals which are similarly situated. The amount payable shall be determined in terms of the above observations keeping in view the period commencing from two years after the date when the possession was taken and the hospital was made functional and expenses of 25% OPD and 10% IPD free patient treatment of the total number of patients treated by the hospital during that period.

89. This process of determination shall be concluded by the Special Committee within six months from the date of passing of this order.

90. Payment of the determined amount shall be made by the hospital concerned within a period of one month from the date on which the order is communicated to them. The order passed by the Committee shall be sent by speed post as well as delivered by the departmental official personally to the in charge of the concerned private hospital. The amount collected shall be deposited in a 'Central Corpus/Pool' to be created by the Director General of Health Services and shall only be utilized for providing of free treatment and upliftment of health standards of the poorer section of the society in Delhi. There shall be annual auditing of the said accounts by the Government Auditors as per rules.

91. In addition to the above specific directions issued under each topic, it is necessary for this Court to issue following general directions as well:

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

B. The hospitals who have partially or fully complied with even the condition of higher percentage in the past, would not be entitled to any benefit as they were bound by that condition at the relevant times and would not be entitled to any set off of the expenses or otherwise on that ground.

C. The conditions imposed in this judgment qua those hospitals who have fully or partially complied with the condition, shall be prospective.

D. The hospitals which have not complied with the conditions at all and have persisted with the default despite issuance of even show cause notices by the authorities, for them the condition shall operate from the date their hospitals have become functional.

E. We also constitute an Inspection Committee consisting of Ms. Maninder Acharya, Mr. Ashok Aggarwal and the Medical Superintendent of Dr.RML Hospital. This Committee would be at liberty to inspect any or all the 20 hospitals to examine whether the directions issued by the court are being carried out truly and sincerely. The committee would obviously work probono publico. They have already put in lot of work and effort in brining this petition to an end.

F. The Inspection Committee would be at liberty to revive this petition or apply to the court for issuance of any directions and wherever necessary even for action being taken against the defaulters under the provision of Contempt of Courts Act read with Article 215 of the Constitution of India.

G. In the event, any hospital is found lacking in complying with the directions or conditions stated in this judgment and fails to pay the amounts as demanded by the authorities in terms of this judgment, the Head of the concerned hospital amongst others would be liable to be proceeded against in accordance with law.

H. Without prejudice to the above action, the competent authority or the Government of India would be entitled to take any steps under the terms and conditions of the letters of allotment as well as under the terms and conditions of lease deed and any law for the time being in force for cancellation of lease, re-entry in the premises and including taking possession of the hospital in accordance with law.

92. The general conditions stated by us would mutates mutandi apply with the special directions given under different heads. They shall be supplementary to each other.

93. Where it is the obligation of the State to provide best possible health facilities to its citizens, there it equally imposes an unquestionable duty on the ones who take advantage of concessional

rates of land from the State for development of hospitals to help the State, in terms of the letters of allotment, in achieving that object.

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

95. The writ petition is disposed of with the above directions with no order as to costs.

WP(C) 10697/2004

96. Now we revert back to WP(C) No. 10697/2004. As already noticed by us that the writ petition was primarily directed against malfunctioning of Safdarjung Hospital in relation to patient care, maintenance and hygiene. Various orders were passed by the Court during the pendency of this petition and a Committee was also appointed, which inspected the said Hospital from time to time and reported back to the Court the improvements, which took place and possibility of taking such other measures, which may be necessary for further improvements.

97. During the course of hearing, it was also brought to our notice that the Government has made out a complete distinct plan for improving the Hospital and large amount is being allocated for this purpose. The Committee consisting of Mr. Sidharth Mridul, Senior Advocate, Ms. Maninder Acharya, Ms. Anjana Gosain and Ms. Monika Garg, who has been appearing for the Safdarjung Hospital, was also constituted, which reported that the specific improvements have taken place in regard to Surgical and Gynecological wards. The Gynaecological Ward has further been improved and standards of patient care have been made more stringent. The maintenance of the kitchen from where the food is supplied to the patients, was also in a bad condition. Some improvements have been made but still there is lot of scope for improvement. Steps have been taken to clean the Labour Room and to make it more hygienic and infection free in order to avoid any infection to the newly born.

98. The direction in relation to increase of holding area in Casualty has been complied with.

99. After hearing the counsel appearing for the parties as well as the officers concerned, we pass the following further directions to ensure consistent positive approach by the authorities for improvement of the Safdarjung Hospital and to make it more patient friendly, easily accessible and improving the standards of patient care:

(i) The Hospital shall earmark proper space in front of the Casualty for parking of Ambulances as it was contended that there is no space where the Ambulances should drop the patients for

being taken up to the Casualty Ward as sometimes the delay is fatal to the patients.

(ii) Equally, the space already provided being less, more space shall be provided by the Hospital Authorities for keeping the Trolleys in covered area in front of the Casualty Ward so that without any delay, the patients can be shifted to Trolleys and then brought to the Casualty Room/Ward.

(iii) The Hospital shall create and construct referral counters in terms of the directions contained in WP(C) No. 2866/2002. To avoid inconvenience to the patients, the Hospital Authorities shall ensure that all pathological laboratories are commonly located and in any case, the sample collection for different tests is at one place i.e. one patient should not be asked to go to different places for giving samples of blood/urine etc. Each place, where the samples are being collected, must have more than three counters in order to avoid unnecessary delay and to reduce the waiting period of the sick patients.

(iv) All other steps will be taken by the Hospital Administration for consistently improving the Surgical Word, Operation Theaters, Labour Rooms, Gynecological Ward etc. They will maintain complete cleanliness in the Hospital and ensure complete Hygiene. The Inspecting Committee appointed under WP(C) No. 2866/2002 during the course of inspection of this Hospital would also record their observations in this regard.

100. This writ petition is also disposed of with the above additional directions while leaving the parties to bear their own costs.