

**AFR****Reserved****Case :-** SERVICE BENCH No. - 769 of 2011**Petitioner :-** Dr. Devendra Pratap Singh And Ors.**Respondent :-** Union Of India Through Secy. Health And Family Welfare**Petitioner Counsel :-** Sandeep Dixit, S. Chandra, R.K.Upadhyay, Shaquiel Ahmad, Aashish Srivastava, Amit Verma, Dinesh Kumar Aarya, A.M. Tripathi, Kapish Srivastava, Brijesh Singh, S.P. Misra.**Respondent Counsel :-** C.S.C.,A.S.G., Jayant Singh Tomar, Neerav Chitravanshi, Pratyush Tripathi, Sagir Hasan Khan.

And

Connected writ petition nos. 790, 793, 794, 797, 799, 765, 768, 770, 771, 772, 773, 774, 783, 785, 786, 787, 784, 801,803, 804, 758, 808, 815, 822, 833, 816, 836, 853, 854, 860, 897, 706, 749, 752, 753, 754, 911 (All (S/B) of 2011)

**Hon'ble Devi Prasad Singh,J.****Hon'ble S.C. Chaurasia,J.**

(Delivered by Hon'ble Devi Prasad Singh, J.)

1- In these bunch of writ petitions, common questions of fact and law are involved, hence with the consent of the parties, writ petitions are decided by the present common judgment.

**FACTS**

2- Petitioners possess BAMS, BHMS and BUMS degrees and the degree with regard to pharmacist from recognized colleges and entitled to practice and discharge their obligations in accordance to statutory provisions. They were appointed under the scheme framed by the Government of India implemented by State of U.P., namely National Rural Health Mission (2005-2012) (in short NRHM) by the State authorities. The scheme commenced in the year 2005 and sheduled to continue upto 2012. The NRHM scheme is wholly financed by Government of India as additional grant to improve health and hygienic condition of the State of U.P. The Government of India is continuing with the original scheme and provided sufficient fund but the State authorities took a decision to discontinue the service of Male Ayush doctors and pharmacists. Being aggrieved with the decision of the

Government, the petitioners have preferred the present bunch of writ petitions.

3- The undisputed facts on record are that the NRHM Programme has been conceived by the Government of India and is being implemented and executed by the State Government through Special Purpose Vehicles created at the State level and also at the District level in the form of State Health Society and District Health Societies registered under the Societies Registration Act. These societies have been entrusted with the work relating to the NRHM under the Project Implementation Plan (in short, PIP). The PIP is approved by the Government of India. The society at State level and District level are executing the work of NRHM as additional support to the mainstream Health Care System of the State Government to run Medical, Health and Family Welfare Department by introducing NRHM. The Government of India had tried to improve deficient health system of the State of U.P. by providing necessary funds, medicines with liberty to engage the doctors having degree of Unani, Homeopath and Ayurved medicines. The PIP is prepared by the State authorities with the active participation of Mission Director, State Project Management Unit (in short, S.P.M.U.), State Health Society of the NRHM U.P.

4- It is not disputed that right from 2005 i.e. from beginning of NRHM scheme the Male, Female qualified Ayush doctors and pharmacists were appointed on contract basis and their tenure of service have been renewed after the grant provided by the Government of India subject to satisfactory work. It has further been admitted by the opposite parties that a memorandum of understanding has been entered into between the Central Government and the State Government, inter alia, provides that the Ministry of Health and Family Welfare, Government of India shall provide resources to support implementation of an agreed State NRHM Sector Programme Implementation Plan. According to memorandum of understanding, Project Implementation Programme is prepared at State level to implement NRHM Programme with due

approval of Central Government. With regard to years 2011-2012, plan has been sent to Government of India and the approval is awaited according to Para 8 of the counter affidavit filed by Mohd. Mustafa, the Mission Director of S.P.M.U.

5- While filing affidavit, it has been specifically pleaded that in the PIP for 2011-2012, provision for Male Ayush doctors and pharmacists has not been made. For convenience, Para 8 of the Counter affidavit filed by Shri Mohd. Mustafa, Mission Director of S.P.M.U is reproduced as under:-

*“Para 8:- That it is in this background that a Memorandum of Understanding has been entered into between the Central Government and State government which inter alia provides that the Ministry of Health and Family Welfare, Government of India will provide resources to support implementation of an agree State NRHM Sector Programme Implementation Plan (PIP). According to said Memorandum of Understanding, the State Programme Implementation Plan is prepared at the State Level and the NRHM Programme is thus implemented and executed only after its approval by the Central Government. It is relevant to point out at this juncture that the Project Implementation Programme for the financial year 2011-2012 has been prepared by the State Programme Management Unit and has been sent to Government of India for its approval.*

*In the said PIP, for valid reasons to be stated hereinafter, provision for having male Ayush Doctors and Pharmacists has not been made. However, the decision regarding approval of PIP submitted to the Central Government is pending before the Government of India and as such any intervention/interference by this Hon'ble Court in the present writ petition at this juncture, that is to say, before any decision on approval of the PIP by the Government of India would be premature and hence the same is not called for.*

*Thus, the writ petition is not maintainable because this reason also and the petitions are liable to be dismissed as premature.”*

6- The reason for justification in not appointing Male Ayush doctors and Pharmacists has been enumerated in Para 11 of the Counter affidavit. filed by Mission Director. It has been stated that the Ayush doctors, who possess degree of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy systems of medicine are not entitled to profess allopathic medicine practice. Ayush Health Care Facility has been provided in Primary Health Care Centre, Community Health Care Centers and District Hospitals. The employment of Ayush Doctors is the responsibility of the Department of Medical Education and to supervise the programme for the purpose of separate cadre of Ayush doctors has been prepared under the scheme. The Ayush doctors from Ayurvedic and Unani stream are posted at PHCs called MOCH (Medical Officer, Community Health) with separate cadre. The function of the NRHM is to mainstream these Ayush doctors and not to employ them. It is further stated that in the year 2009-10, 147 male Ayush Doctors and 500 Pharmacists were engaged for the first time in NRHM. In the year 2010-2011, 1140 male Ayush doctors and 759 Pharmacists were engaged, but on account of non availability of Ayush medicines during 2009-2010 and 2010-2011, their services could not be utilized and the salary paid to these doctors has become waste. It is further stated that the Government of India has not provided essential drugs and medicines to Ayush Hospitals and Dispensaries established under the scheme in terms of Operational Guidelines dated 3.9.2009 as amended upto date. It is further stated that a request of State Government has not been considered by the Government of India to provide medicines and drugs for Ayuush doctors, hence while preparing the revised PIP the State Government took a decision not to appoint Male Ayush Doctors and Pharmacists. Decision to appoint female Ayush doctors has been taken to utilize their services in the Anti Natal and Post Natal care service.

7- While filing counter affidavit, Mission Director, Mohd. Mustafa admitted in para 11 that in the original PIP prepared by the State Government sent to Central Government on 28.3.2011, a request was made with regard to Male Ayush doctors but subsequently PIP was modified on 19.4.2011. Government of India's approval with regard to PIP sent on 19.4.2011 is awaited.

It has been submitted by the petitioners' counsel that in pursuance to original PIP dated 28.3.2011 in 23 districts of the State, Ayush male doctors were appointed. Agreements were signed and they have resumed their work. Later on, under the modified PIP on 19.4.2011, a decision was taken to cancel the contract of respective Male Ayush doctors.

8- State of U.P. through its Principal Secretary Nita Chaudhari took defence that NRHM Scheme is monitored by state unit of NRHM Mission and Govt. has no role to play. Paras 2, 3 and 4 of the affidavit dated 11.5.2011 are reproduced as under:-

***Para 2:-** That in order to implement programmes under National Rural Health Mission, the Ministry of Health and Family Welfare, Government of India has approved a detailed governance framework which the States are mandated to follow. According to this, there is a State Health Society registered under Societies Registration Act, 1861. This Society consists of a Governing Body and an Executive Committee. While the role of Governing Body is the overall supervision and monitoring of various activities and programmes to be implemented under the Mission, the Executive Committee is entrusted with the supervision of day to day activities relating to execution of the programmes. All the funds released by the Ministry of Health and Family Welfare, Government of India in accordance with the approved Project Implementation Plan (PIP) are straightway released to the State unit of National Rural Health Mission and are spent according to the provision contained in the PIP.*

***Para 3:-** That the Principal Secretary in the State Government has no role in either providing the funds nor their disbursements under NRHM. As submitted in the aforementioned paragraph, it is the State unit of National Rural Health Mission which is responsible for formulation of the PIP, seeking its approval, getting funds and making its disbursements and ensuring proper utilization.*

***Para 4:-** That having read the PIP for the current financial year it is submitted that the same has been prepared by the State unit of National Rural Health Mission considering various*

*factors including the need of Ayush Doctors. The State unit on overall evaluation of the functioning of the Mission in the State of U.P. has found that for implementing the scheme Male Ayush Doctors would not be needed. Accordingly, in the PIP for the current financial year, the provision for having male Ayush Doctors has not been made. The said PIP has been sent to the Ministry of Health and Family Welfare, Government of India for its approval.”*

9- On the other hand, learned counsel for the petitioners stated that the petitioners have applied in pursuance to advertisement issued on 23.6.2010 for the year 2011-2012, copy of which has been filed as Annexure no. 6 to the writ petition and appointment letter was issued, but later on they have been disengaged. It is further stated that though in some places, Ayush doctors were disengaged and in other places, have been retained. It is further stated by the petitioners' counsel that once the State Government while sending the PIP on 28.3.2011 followed the decision, which the State Government, Mission Director while preparing the PIP on 20.3.2011 approved for continuance of Ayush Male doctors and Pharmacists then later on they were not justified in changing the PIP on 19.4.2011, more so when no new facts came to light depriving the petitioners' continuance of service that too when the NRHM is still continuing and the Government of India is ready to provide fund for the year 2011-2012 also.

10- Learned counsel for the petitioners has given emphasis on the fact that because of efficient discharge of duty by the Male Ayush doctors, the vaccination and routine immunization programme in the State of U.P. increased enormously i.e. from 27% to 70%. While sending the proposal, the Principal Secretary of the Department of Health and Family Welfare requested the Government of India to increase the posts of Male Ayush doctors as well as to enhance the salary from Rs. 24,000-30,000/- Attention has been invited to the original scheme prepared by the State Government, copy of which has been annexed as Annexure No. 8 to the writ petition no. 769 (S/B) of 2011 where the Government opined that in the year 2011-2012, Government wants to recruit additional 499 Ayush

doctors (199 female and 300 male). However, it has been observed that due to non availability of Ayush drugs, services of doctors have not been fully utilized. The Government had requested to optimally utilize Ayush human resource. The budgetary demands have been increased to Rs. 10,584.00 lacs for the year 2011-2012 and appropriate training may be granted to such staff.

11- Learned counsel for the petitioners further invited attention towards the letter of Medical Superintendent, Gorakhpur dated 31.3.2011 whereby he had requested to renew the services of Ayush male doctors. Such recommendation has been sent by some other Chief Medical Officer/Medical Superintendent for the renewal of services of Male Ayush doctors. Attention has been invited to another letter dated 6.4.2011 of General Manager (Administration) to Director General, Medical and Health, U.P. (Annexure no. 10 to the writ petition) indicating therein that the PIP had granted approval for appointment of Male Ayush doctors in 2011-2012. Letter dated 6.4.2011 of Director General, Family Welfare, U.P. (Annexure no. 11 to the writ petition) further provides that the services of Ayush doctors shall be renewed subject to their satisfactory discharge of duty for the year 2011-2012 keeping in view the sanction granted by the Central Government. Annexure 11 to the writ petition is re-produced as under:-

“प्रेषक,

महानिदेशक,  
परिवार कल्याण उ०प्र०  
जगत नारायण रोड, लखनऊ।

सेवा में

समस्त मण्डलीय अपर निदेशक,  
चिकित्सा स्वास्थ्य एवं परिवार कल्याण,  
समस्त मुख्य चिकित्सा अधिकारी (प०क०)  
उत्तर प्रदेश।

पत्रांक-प०क०/एन०आर०एच०एम०/संविदा      मा०संसा०/2011-12/25-88  
दिनांक 06.04.2011

विषय-राष्ट्रीय ग्रामीण स्वास्थ्य मिशन के अन्तर्गत मण्डल एवं जनपद स्तर पर वर्ष 2011-12 में पुनः संविदा नियुक्ति के सम्बन्ध में।

महोदय,

उपरोक्त विषयक मिशन निदेशक, एन0आर0एच0एम0 के पत्र संख्या— एस0पी0एम0यू0/ एन0आर0एच0एम0/ मा0संसा0/02/2010-11/768-2 दिनांक 06.04.2011 के क्रम में वर्ष 2010-11 की राज्य पी0आई0पी0 में स्वीकृत पदों के सापेक्ष कार्यरत संविदा कर्मियों को उनके कार्य का मूल्यांकन करते हुए वर्ष 2011-12 में पुनः संविदा नियुक्ति हेतु प्रमुख सचिव, परिवार कल्याण, उ0प्र0 शासन ने स्वीकृति प्रदान की है।

1. यह संविदा नियुक्तियां राज्य पी0आई0पी0 वर्ष 2011-12 के अनुमोदन के अधीन होगी। भारत सरकार द्वारा उक्त पदों में से किसी भी पद का अनुमोदन प्राप्त न होने की दशा में उनका अनुबन्ध स्वतः समाप्त माना जायेगा। इस अवधि के मानदेय भुगतान की जिम्मेदारी विभाग की नहीं होगी।

2. आनकाल विशेषज्ञ चिकित्सकों से कार्य लिये जाने के लिए वर्ष 2011-12 हेतु पेनल बनाते हुए आवश्यकतानुसार सेवायें ली जायेगी। उनसे कोई अनुबन्ध नहीं किया जायेगा।

अतः समस्त नियमों का पालन करते हुए पूर्व की भांति जनपद स्तर पर जिला स्वास्थ्य समिति माध्यम से अनुबन्ध सम्पादित कराते हुए क्रियान्वयन सुनिश्चित करें साथ ही पुनः संविदा में नियुक्त कर्मियों/ अधिकारियों का विस्तृत विवरण संलग्न प्रारूप पर एक प्रति महानिदेशालय को एवं एक प्रति मिशन निदेशक, एन0आर0एच0एम0 को शीघ्र उपलब्ध कराना सुनिश्चित करें।

संलग्नक—उपरोक्तानुसार

भवदीय

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महानिदेशक,

परिवार कल्याण

पत्रांक—प0क0/एन0आर0एच0एम0/संविदा मा0संसा0/2011-12 तददिनांक:

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित—

1. प्रमुख सचिव, परिवार कल्याण, उ0प्र0 शासन
2. मिशन निदेशक, एन0आर0एच0एम0, उ0प्र0 लखनऊ।
3. महाप्रबन्धक (प्रशासन), एन0आर0एच0एम0, एस0पी0एम0यू0, लखनऊ।
4. समस्त कार्यक्रम अधिकारी, परिवार कल्याण महानिदेशालय, उ0प्र0 लखनऊ।
5. वित्त नियंत्रक, एन0आर0एच0एम0, उ0प्र0 लखनऊ।

महानिदेशक,

परिवार कल्याण

12- In terms of aforesaid letter, contracts were signed almost in 23 districts with regard to Ayush doctors for the continuance of service from 11.4.2011 to 31.3.2012 copy of which has been filed as Annexure no. 12 to the writ petition no. 769 (S/B) of 2011. It appears that later on in pursuance to revised PIP (supra), the State Government took a decision



to discontinue the services of Male Ayush doctors and Pharmacists. Copy of the impugned order dated 15.4.2011 has been filed with regard to District-Gorakhpur (Annexure No. 16 to the writ petition). The order dated 15.4.2011 has been passed in pursuance to the letter issued by Director General, Medical & Health and Family Welfare Services. By the subsequent order, the Chief Medical Officer/Medical Superintendent have cancelled the renewal of the respective Ayush doctors, though the agreement was entered into between the parties.

13- During the course of hearing, an affidavit dated 26.5.2011 has been filed to bring on record the project PIP available on the Website of Government of India. While filing affidavit in Writ Petition No. 815 (S/B) of 2011, it has been stated in para 2 that according to revised PIP available on the website for the year 2011-2012, Ayush male doctors and Ayush Pharmacists have been approved by the Government of India for the State of U.P. The Website shows the sanctioned strength of NRHM 2010-2011 and proposed filling up the vacancy as well as contractual engagement for the year 2011-2012. The Website also reveals that in the State of U.P. there is acute shortage of specialist and the post graduate doctors are not willing to join the Government sector. Hence, it has been decided to increase the honorarium in the rural areas, so as to attract them to join contractual appointments under NRHM. Apart from Ayush doctors, Government of India proposed to appoint ANM, Staff Nurses, Paramedical staffs and Data Assistants/Computer Operators. The strength as placed by the Government of India's website filed alongwith affidavit dated 26.5.2011 is reproduced as under;-

**1. “HUMAN RESOURCE FOR SERVICE DELIVERY UNITS**

*Under NRHM, it is being proposed to enhance capacity of facilities and quality of service delivery by contracting human resources at all levels. Facility operationalization plan has been prepared for whole of the state, which includes 45 high focused districts and 27 non-high focused districts. These districts have prepared the details of their MCH centre plan with availability of human resources in the districts, proposal for the*

year 2011-2012 and need in regard to human resources. The details are given in the chapter of MCH Centre Operationalization Plan under Maternal Health Section. Further, the required human resources at district level hospitals have also been worked out and thus the total human resource requirement has been worked out accordingly. The present situation under NRHM is as below:-

State Requirement of HR	Contract for whole month	On call	MBBS/BDS	ISM Male	ISM Female	Nurses	ANMs	Paramedicals-Lab tech/ECG Tech/X-ray Tech/Physio. Opto/Refract,	Data Assistant/computer operator at Dhs	ISM Pharmacists
Santioned Under NRHM (2010-2011)	300	15000	523	1500	901	1500	2500	584	134	1000
Contractual engagement so far through NRHM (2010-2011)	191	12000	523	1126	802	1484	807	239	129	813
Proposed filling up of vacancies for (2011-2012)	800	30000	1250	1500	1100	2500	2500	700	138	850
Additional Contractual engagement proposed under NRHM for 2011-2012	609	18000	727	374	298	1016	1693	461	9	37

*It was evident, that there is an acute shortage of specialists in the state and in spite of various efforts at public service commission level, the*

*post graduate doctors are not willing to join the Government sector. Therefore, it has been decided to increase the honorarium in the rural areas, so as to attract them to join contractual appointments under NRHM.*

## **HUMAN RESOURCE REQUIREMENT-RATIONALE AND FACILITY WISE DISTRIBUTION**

### **ANH-**

*ANMs are to be posted at vacant-sub-centres, or as 2<sup>nd</sup> ANM at sub-centres, which have been identified as Level-I MCH centre with high case load. There are 807 ANMs already working in the state of contractual basis. These ANMs have been posted at vacant sub-centres. About 1900 ANMs are under training, which will be available for posting from April onwards. These ANMS will be posted at 975 sub centres in high focused districts and 718 in other districts, this is also to be clarified that about 200 ANMs posted in Urban Health Posts/PPCs, will be provided an honorarium of Rs. 9000/- per month and remaining 2300 ANMH @ of Rs. 11000/-*

**Staff Nurses-** *These are 1984 staff nurses working in the state on contractual basis. There are 70 DWH and 87 CHCs functional as level III MCH Centre and 495 CHCs, 335 PHCs as level-II in the state. There is requirement of 500 staff nurses at level-III centres and 2000 staff nurses at level-II MCH Centres. Hence, a total of 2500 staff nurses are required to operationalize MCH centres of level-III and level-II in the year 2011-2012. since 70 level-III hospitals are in urban areas, hence the honorarium to be paid at this level has been proposed Rs. 15000/- per month and for remaining 2000 staff nurses @ Rs. 17000/- per month.*

**Paramedical Staff (Pharmacists/Lab tech/ECG Tech/X ray Tech/Physio, tec).**

*The requirement of paramedical staff has been worked out by the districts, as per their MCH centre operationalization plan. As per their plans 150 paramedical staff is required at level-III MCH Centres, established in urban areas and 550 at level II/III MCH Centres in rural areas. Thus,*

*honorarium for paramedical staff, working in level-III MCH centres in urban area has been proposed Rs. 10000/- per month and for remaining working in rural areas @ Rs. 12000/- per month.*

***Data Assistants/Computer Operators-***

*There were 134 district level hospitals in the state, which were projected in the PIP for year 2010-2011 for requirement of data assistant/computer operator. As of today, 4 other hospitals (Rani Laxmibai combined, Rajajipuram-Lucknow, Bhao Devras combined hospital, Mahanagar-Lucknow T.B.Sapru hospital, Allahabad and K.P.M. Hospital-Kanpur) have been included in the list, which cater to high number of OPD/IPD patients and one full time data entry operator is required to compile the”*

Apart from above, the Government of India's website reveals that 1900 ANMs are under training, who shall be available from April onwards and shall be posted at 975 sub centres in high focused districts and 718 in other districts. It further provides that 200 NRMs posted in Urban Health Posts/PPCs will be provided an honorarium of Rs. 9000/- per month and remaining 2300 ANMs @ Rs. 11000/-. Strength of Staff Nurses shows in the Government of India's website is 1584. Total staff nurses are required to operationalize MCH centres and will be paid Rs. 15000/- per month and Rs. 17000/- in Urban areas and other area respectively. The Website further reveals that there shall be 550 Pharmacists/Lab tech/ECG Tech/X-ray Tech/Physio, etc. Apart from above, 150 paramedical and they shall be paid salary of Rs. 10000/- and 12000/- per month in Urban and Non Urban areas. Apart from above, Data Assistants/Computer Operators have also been provided in various hospitals.

Thus, it appears that the Government of India even upto 25.5.2011 took a stand with regard to appointment of Male Ayush doctors, Pharmacists etc. and proposal is under consideration. However, in what manner, the State took a decision to appoint only Female Ayush doctors and not Male Ayush doctors and Pharmacists, is not borne out from record.

14- While defending the impugned order, the State took defence while filing the counter affidavit that in spite of repeated letters sent to the Government of India, medicine was not provided, hence in consequence thereof, the State under compulsion took a decision not to appoint Male Ayush doctors (supra).

Later on, during the course of hearing, there has been shifting of stand by the State. A note sheet dated 15.4.2011 has been produced before the Court with defence that the Government of India had directed to reduce the budget for NRHM Scheme i.e. from Rs. 3733.93 crores to Rs. 3300.00 crores. Hence, in consequence thereof, under compulsion, the State took a decision not to appoint Pharmacists and Male Ayush doctors. Though the defence taken by the State is on account of non-availability of fund, but the note sheet duly signed by the authorities indicates otherwise for the revision of PIP. The first page of note sheet as observed in the order sheet dated 31.5.2011 has not been signed but the second page of note sheet has been signed by General Manager (planning) General Manager, NRHM, Neeta Chaudhari, Chairman, Executive Body countersigned by Shri Anoop Mishra, Chief Secretary, Government of U.P. At the face of record, the argument advanced by the learned Chief Standing Counsel is based on unfounded fact. The note sheet, copy of which has been submitted to the Court as well as perused on 31.5.2011 during the course of hearing does not contain a proposal not to appoint Pharmacists or Male Ayush doctors. Entire note sheet is reproduced as under:-

*“Note Sheet*

प्रमुख सचिव-चिकित्सा स्वास्थ्य एवं परिवार कल्याण

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन की वर्ष 2011-12 की राज्य कार्ययोजना का प्रथम ड्राफ्ट, दिनांक 01.03.2011 को भारत सरकार को प्रेषित किया गया था। प्रेषित की गयी राज्य कार्ययोजना का स्वरूप रू0 3733.93 करोड़ का था। दिनांक 07.03.2011 को नई दिल्ली में सचिव, स्वास्थ्य एवं परिवार कल्याण, भारत सरकार की अध्यक्षता में सबग्रुप की बैठक में राज्य कार्ययोजना का स्वरूप लगभग रू0 3300.00 करोड़ तक सीमित करने हेतु निर्देश प्राप्त हुआ था तथा उनके द्वारा अन्य सुझाव भी दिये गये।

उपरोक्त के क्रम में, पूर्व में प्रेषित की गयी राज्य कार्ययोजना में प्रस्तावित गतिविधियों के सम्बन्ध में महानिदेशक चिकित्सा स्वास्थ्य, महानिदेशक परिवार कल्याण तथा विभिन्न कार्यक्रम अधिकारियों से विस्तृत

विचार-विमर्श एवं सचिव चिकित्सा स्वास्थ्य एवं आप से प्राप्त मार्गदर्शन के अनुसार संशोधित राज्य कार्ययोजना का स्वरूप रू० 3312.96 करोड़ तक सीमित कर दिया गया है तथा सबग्रुप की मीटिंग में दिये गये सभी सुझाव सम्मिलित कर लिये गये हैं। ग्राम स्वास्थ्य एवं पोषण दिवस एवं प्रथम संदर्भन इकाई हेतु वाहनों की व्यवस्था, ए०एन०एम० अनुश्रवण एवं पर्यवेक्षण हेतु वाहन की व्यवस्था, पुरुष आयुष चिकित्सकों तथा फार्मसिस्टों का मानदेय तथा प्राथमिक स्वास्थ्य केन्द्रों एवं उपकेन्द्रों पर सोलर लाइट व्यवस्था, ए०एन०एम० हेतु सी०यू०जी० फोन इत्यादि जैसी महत्वपूर्ण गतिविधियों में संशोधन कर पुनरीक्षित प्रस्ताव तैयार किया गया है।

भारत सरकार के एन०आर०एच० एम० के संयुक्त सचिव द्वारा प्रेषित पत्र में राज्य कार्ययोजना में संशोधन किये जाने हेतु निम्न सुझाव दिये गये। इन सुझावों के अनुसार—

—प्रदेश में 30 सिक न्यूबॉन केयर यूनिट को विकसित किये जाने, का प्रस्ताव सम्मिलित किया गया है।

—प्रदेश के समस्त जनपदों में ब्लड बैंक की व्यवस्था की जा रही है।

—प्रथम सन्दर्भन इकाईयों पर सिजेरियन आपरेशन की व्यवस्था करते हुए इनके समुचित उपयोग किये जाने आदि सम्बन्धी प्रस्ताव भी कार्ययोजना में सम्मिलित कर लिये गये हैं।

—चिकित्सकों एवं कर्मियों के लिए परफारमेंस के मानक एवं इनसेंटिव की व्यवस्था भी की गयी है।

आज दिनांक 15.04.2011 को माननीय चिकित्सा स्वास्थ्य एवं परिवार कल्याण मंत्री जी के सम्मुख भी कार्ययोजना के मुख्य बिन्दुओं पर चर्चा एवं विचार-विमर्श हुआ तथा भारत सरकार को प्रेषित की जाने वाली पुनरीक्षित राज्य कार्ययोजना सम्मुख प्रस्तुत है।

राज्य कार्यक्रम प्रबन्धन इकाई।

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन उ०प्र०

9, जगत नारायण रोड, लखनऊ”

### “Note Sheet

इस कार्ययोजना पर भारत सरकार के साथ नेशनल प्रोजेक्ट कोआर्डिनेशन कमेटी (एन०पी०सी०सी०) की बैठक में विचार-विमर्श के उपरान्त आवश्यक स्वीकृति प्राप्त होगी। भारत सरकार स्तर से प्राप्त स्वीकृति के साथ राज्य कार्ययोजना को प्रमुख सचिव, चिकित्सा स्वास्थ्य एवं परिवार कल्याण की अध्यक्षता में गठित राज्य स्वास्थ्य समिति की कार्यकारी समिति एवं मुख्य सचिव, उत्तर प्रदेश शासन की अध्यक्षता में गठित शासी निकाय के सम्मुख अनुमोदनार्थ पुनः प्रस्तुत किया जाना प्रस्तावित है।

पुनरीक्षित राज्य कार्ययोजना भारत सरकार को प्रेषित किये जाने हेतु पत्रालेख सम्मुख प्रस्तुत है। सहमति की दशा में पत्र पर हस्ताक्षर करना चाहें।

कृपया वर्ष 2011-12 की राज्य एन०आर०एच०एम० कार्य योजना के विषय में पृष्ठ 1-2 पर दी गयी टिप्पणी का अवलोकन करना चाहें। संयुक्त सचिव, भारत सरकार द्वारा संशोधन हेतु भेजे गये सुझावों का समावेश कार्य योजना में कर लिया गया है।

कृपया अवगतार्थ/आदेशार्थ

15.4.11

(नीता चौधरी)

अध्यक्ष

कार्यकारी समिति।  
 राज्य स्वास्थ्य समिति  
 राज्य स्वास्थ्य समिति  
 राष्ट्रीय ग्रामीण स्वस्थ मिशन।

(अनूप मिश्रा)  
 मुख्य सचिव,  
 उत्तर प्रदेश शासन।

राज्य कार्यक्रम प्रबन्धन इकाई।  
 राष्ट्रीय ग्रामीण स्वास्थ्य मिशन उ०प्र०  
 ९, जगत नारायण रोड, लखनऊ”

15- It is unfortunate that the Government has not approached the Court with clean hands with regard to revision of PIP for not appointing Ayuh Male doctors to run NRHM Scheme. During the course of hearing, the statement of Director General, Family Welfare and Director Mission were recorded. The Director General, Family Welfare defended his action with regard to issuance of Circular dated 15.4.2011 suspending the appointment of Male Ayush doctors. The ground as informed by the Director General, Family Welfare is in pursuance to the oral discussion. He issued a letter dated 15.4.2011 which also seems to be another step on the part of State and other authorities to defend their action. Once the NRHM scheme is managed by various bodies constituted in terms of scheme, then prima facie, Director General, Family Welfare does not seem to have got jurisdiction to pass order dated 15.4.2011 keeping in view the provision discussed hereinafter. The Director General, Family Welfare could not have issued an order regulating the employment in his own department for the employees with regard to whom he is not the appointing authority and in the present case he seems to have exceeded his jurisdiction. No decision can be taken by the authorities in pursuance to oral discussion that too when the minutes has not been converted in writing at the later stage. Moreover, the alleged proceeding dated 15.4.2011 produced before the Court (supra) also does not speak that the

Director General, Family Welfare was authorized to issue Circular dated 15.4.2011 by a committee formed under the NRHM scheme.

16- It has been vehemently argued by the learned Chief Standing Counsel that the revised PIP was prepared in pursuance to discussion between the authorities of State Government and Government of India. Such submission also seems to be based on unfounded fact. Discussion between the authorities of State Government and Union of India seems to be held in Nirman Bhawan, New Delhi on 7.3.2011. This fact is evident from the letter dated 23.3.2011 sent by Shri Ajit Kumar to Shri Pradeep Shukla, Principal Secretary, Department of Health and Family Welfare, Government of U.P. A letter was sent on 23.3.2011 to the State Government to revise the PIP. In pursuance thereof, the State Government sent to the Central Government the PIP on 28.3.2011 as admitted in para 11 of the Counter affidavit filed by Mission Director. In pursuance to the discussion held on 7.3.2011, PIP was sent to the Central Government on 28.3.2011. Unless otherwise established, the PIP dated 28.3.2011 must have been prepared by the Government in pursuance to the discussion held on 7.3.2011, then in what circumstances the PIP was modified on 19.4.2011, is not borne out from the record. Only argument advanced by the learned Chief Standing Counsel is that the letter dated 23.3.2011 was received by the Government on 29.3.2011. Even if the letter would have been received unless otherwise proved, inference may be drawn safely that while sending the PIP on 28.3.2011, the State would have taken the facts and circumstances discussed in a meeting held on 7.3.2011. Needless to say that after issuance of the letter dated 23.3.2011, PIP was sent on 28.3.2011 though the defence has been taken that letter was received on 29.3.2011 that too does not inspire confidence.

The record reveals that while sending the PIP dated 28.3.2011 a lot of exercise was done keeping in view the various points, issues and grounds given in the scheme but while sending the revised PIP on 19.4.2011 nothing has been done as is evident from contents of record



reproduced herein, that not by an authorized committee under the NRHM scheme.

17- Before proceeding ahead to deal with the controversy on merit, it shall be appropriate to deal with the first limb of argument of learned Chief Standing Counsel with regard to maintainability of writ petition. It is not disputed that the majority of the petitioners were appointed as Ayush doctors in terms of NRHM scheme framed by the Government of India. Later on, because of change of decision on the part of State Government, their contractual appointment has been cancelled, though approval for modified PIP is awaited.

18- Shri I.H. Farooqui, learned Assistant Solicitor General of India, stated that there is no change in the NRHM Scheme. He further states that the Government of India is providing fund in terms of scheme right from 2005 till date and shall provide till scheme continues. Accordingly, though the approval with regard to modified PIP is awaited, but the question with regard to availability of fund in respect of appointment of Ayush Male doctors or the Pharmacists is not disputed. On financial part, Government of India took decision to provide fund, hence there is no dearth of fund to appoint Ayush Male doctors or pharmacists in terms of scheme.

#### **MAINTAINABILITY**

19- It is not disputed that under the original PIP a decision was taken to appoint Male Ayush doctors and accordingly Chief Medical Officer/Medical Superintendent of the State of U.P. had taken steps to appoint Male Ayush doctors. In majority of the districts (in 23 districts), appointment letters were issued and they have been continuing. At a later stage, in pursuance to the letter dated 15.4.2011 issued by Director General, Medical, Health and Family Welfare Planning Department, services have been dispensed with. So far as petitioners are concerned, cause of action very well arose for them to prefer the writ petition. Being aggrieved party, the petitioners have right to prefer the writ petition vide **2007 LCD 513, Suraj Singh Vs. State of U.P.**

Learned Chief Standing Counsel while defending the State action had raised various questions for , that being contractual appointment with no clause of extension, services came to an end and the petitioners have got no right for continuance in service. Project Implementation Plan is still pending for approval, hence writ petitions are premature and not maintainable, decision of the State Unit of NRHM not to appoint Male Ayush doctors is a policy decision and no interference is called for by this Court, Mainstreaming of Ayush does not mean employment of Ayush Male doctors in NRHM scheme, Ayush doctors are not entitled to practice Modern System of Medicine i.e. Allopathy, there is no gender discrimination, since public interest has also been argued, the writ petition ought to be treated as Public Interest Litigation, the right of petitioners for renewal may be argued only if scheme implemented for the last financial year is allowed to continue.

20- On the other hand, petitioners' counsel submits that till date the scheme continues and it is funded by the Government of India and keeping in view the fact that the advertisement was issued to appoint Male Ayush doctors and Pharmacists and in 23 districts, appointments were made, the respondents have got no right to come back from their promise. It is further stated that no decision has been taken by the State Mission or the Governing Body in terms of scheme and whatever decision has been taken that too is based on unfounded facts and the arbitrary action of State Government suffers from malice in law. It is also stated that the Director General, Family Welfare was having no jurisdiction to pass the order dated 15.4.2011. The State had cooked up a false case after filing of writ petition in this Court at Allahabad or at Lucknow Bench to defend its action. The action of State Government suffers from extraneous consideration and reasons. Since the State took a decision not to appoint Male Ayush Doctors and Pharmacists, cause of action arose and the writ petition is very well maintainable. It is also stated that in private dispute being right of livelihood protected by Article 21 of the Constitution, public interest may also be looked into by this

Court and it will not change the nature of writ petition. Petitioners were not contesting their case in Public Interest but in their own interest and it is for the Court to look into public interest in case it feels so while deciding the present controversy. Where the public interest and private interest are inter-mixed and the controversy is dominated by private interest, the nature of writ shall not be changed and it may not be treated as PIL.

The first submission of learned Chief Standing Counsel relates to maintainability of writ petition on the ground that it is premature. Submission of learned counsel for the petitioners carries weight that once a conclusive decision has been taken that Male Ayush doctors and Pharmacist shall not be appointed that too in violation of scheme, the petition is not premature but very well maintainable.

Learned Chief Standing Counsel also does not dispute that the decision not to appoint Male Ayush doctors is conclusive and final. Accordingly, though the matter with regard to approval of PIP is pending, but so far as the petitioners are concerned, the writ petition seems to be maintainable since the cause of action had arisen for judicial review of the State action as to whether discontinuance of petitioners' services is justified or valid or not that too when in 23 districts, appointments were made and contracts were signed between the Male and Female Ayush doctors and Pharmacists and authorities of the Mission. In view of this, the arguments advanced by the learned Chief Standing Counsel does not seem to be sustainable.

21- Right to life, right to livelihood, right to dignity of life are the fundamental rights protected by Article 21 of the Constitution. Accordingly, whenever because of arbitrary decision or action, citizens' fundamental right protected by Article 21 of the Constitution is affected, then he or she may approach the Court for redressal of grievance.

22- Right to life includes right to quality of life and dignity of life:--  
**2001(6) SCC 496 Hinch Lal Tewari versus Kamala Devi and AIR 1991 SC 1902 Banglore Medical Trust versus B.S. Mudappa, Hon'ble**

Supreme Court held that right to quality of life is the part and partial of right to life. Right to life includes hygienic, clean and safe environment and has been reiterated by Hon'ble Supreme Court in **AIR 2007 SC 1046 Milkmen Colony Vikas Samiti versus State of Rajasthan and others** and **2006(13) SCC 382 Nagar Nigam, Meerut versus Al Faheem Meat Exports Private Limited and others**.

23- Even in contractual matters, Court has been conferred wide power under Section 226 of the Constitution to interfere in case action of the State Government suffers from arbitrariness. In case, the State took decision without application of mind or arbitrarily that too where citizens' right to livelihood and quality of life and care of health is affected, then the Court may interfere in such matters. Discretionary power cannot be exercised by the State in whimsical manner that too on unfounded ground, more so where livelihood is involved. Article 14 provides that there shall be equality of opportunity for all citizens in the matter relating to employment or appointment to any office under the State. Article 14 is genus while Article 16 is species and when an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14 and if it affects any matter relating to public employment, it shall be violative of Article 16 of the Constitution of India. Articles 14 and 16 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment. The State action must be based on valid relevant principles vide E.P.Royappa Vs. State of Tamil Nadu (1974) 2 SCR 348.

24- It is settled proposition of law that non-arbitrariness, reasonableness and fairness in action are part and parcel of Article 14 of the Constitution. Even in contractual matters or contract assignment, the Court may interfere to protect the fundamental right conferred by Articles 14 and 21 of the Constitution of India vide **2010 (1) SCC 297, Punjab Financial Corporation V. Surya Auto Industries** and **2008) 2 SCC 672: Delhi Development**

**Authority and another Vs. Joint Action Committee,  
Allottee of SFS Flats and others.**

Accordingly, this Court may interfere under Article 226 of the Constitution to test the State action at the touch-stone of Articles 14, 16 and 21 of the Constitution. No doubt, the present controversy is a private dispute with regard to contractual assignment between the petitioners and the respondents-State and the Mission Director, State Project Unit but since the State Project Unit at State and District level is regulated under the terms and conditions of the scheme prepared by the Government of India and hundred percent financial burden is on the Central Government under the scheme and because of deep and pervasive control of the State and Central Government to run the scheme, even if the scheme is run by the Society registered under the Societies Registration Act, it shall be a 'State' within the meaning of Article 12 of the Constitution and the writ petition shall be maintainable.

**PRIVATE AND PUBLIC INTEREST**

25- It shall be appropriate to deal with the argument advanced by the learned counsel for the State with regard to private dispute vis-a-vis public interest litigation. Submission is that since the public interest is involved, the writ petition shall be deemed to be Public Interest Litigation. The argument advanced by the learned State counsel seems to be misconceived.

Public interest is a new branch of law and it has acquired a significant degree of importance in the jurisprudence practised by higher judiciary in India. The strict meaning given to aggrieved party to English and American Court to get its jurisdiction has been considerably liberalized by the Hon'ble Supreme Court to secure public interest. The Discretionary meaning of word litigation is as under:-

26- In Blacks Law Dictionary the word 'Litigation' has been described as under:-

“**Litigation:-** The process of carrying on a lawsuit<the attorney advised his client to make a generous settlement offer in order to avoid

litigation> 2. A lawsuit itself<several litigations pending before the court>litigate, vb.--litigatory, litigational, adj.

**Complex litigation.** Litigation involving several parties who are separately represented, and usu. involving multifarious factual and legal issues.

*“What exactly is 'complex litigation? The problem is that no one really knows-or, more accurately perhaps, various definitions do not agree. Complex civil litigation has an 'I know-it-when-I see-it' quality. Nearly everyone agrees that matters like the massive asbestos litigation, the AT & T antitrust suit, or the remedial phase of a school desegregation case are complex. But trying to find a common thread that both describes these cases and distinguishes them from the run of the mill car crash is difficult.” Jay Tidmarsh & Roger H. Transgrud, Complex Litigation”*

27- The Word and Phrases Permanent Edition 25 A contains definitions of 'Litigation'. Some of them as as under:-

*“D. Mass. 1934. Proceeding in which referee set aside preferential mortgage securing claim filed more than six months after adjudication and allowed claim as unsecured claim held “litigation” so as to permit proving claim in bankruptcy, notwithstanding that trustee did not institute proceeding to set aside mortgage and creditor did not contend for its validity, since referee determined validity of mortgage which was good until adjudicated voidable (Bankr. Act 57n, 11 U.S.C.A. 93 (n). In re Leominster Steam Laundry Co., 7 F. Supp. 849- Bankr. 2897.1.*

*W.D. Wis. 1966. Proceeding by motor carrier before Wisconsin Public Service Commission did not constitute “litigation” within meaning of provision of Interstate Commerce Act that in case of any person who on October 15, 1962 was in operation solely within single state as common carrier by motor vehicle in interstate commerce, and who was also lawfully engaged in such operations in interstate or foreign commerce under certificate exemption provisions, or who would have been so lawfully engaged in such operations but for pendency of “litigation” to determine validity of intrastate operations to extend such “litigation” is resolved in favor of such person, Commission shall issue certificate of registration authorizing continuance of transportation in interstate and foreign commerce if application and proof of operations are submitted. Interstate Commerce Act, 206 (a) (1,7 and (A), 49*

*U.S.C.A. 306 (a) (1, 7 and A)- Valley Exp., Inc. vs. U.S. 264 F. Supp. 1006 Commerce 85.29 (2)”*

Ga. App. 1914. The term “litigation” as employed in section 5189 of the Civil Code 1895, Civ. Code 1910, 5776, in reference to admissions of defendants if fi. fa. is not confined merely to the determination of a possible issue which may arise after levy , between the plaintiff in fi. fa. And some possible claimant, but includes also the previous suit in which the fi. fa. Had its origin. A “levy” is nothing more than the special procedure or step in the suit by which the judgment may be made effective-Smith vs. Johnson, 80 S.E. 1051, 13 Ga App. 837.

Tex. App. Corpus Christi 1994. To determine applicability of privilege for expert reports obtained in anticipation of litigation “litigation” is strictly interpreted to mean institution of lawsuit in courts and does not include other aspects of claims negotiation and settlement outside context of filing of lawsuit. Vernon's Ann. Texas Rules Civ. Proc. Rule 166 b, subd. 3, par. b. Henry P. Robers Investments, Inc. vs. Kelton, 881 S.W. 2 d 952- Pretrial Proc 379.

28- What are the public interest factors require to be considered by the Court, has been defined as under:-

*“N.D. Iowa 2005. Under doctrine of forum non conveniens, if there is adequate alternative forum, court must balance number of factors in order to determine whether they outweigh deference ordinarily attended to plaintiff's choice of forum, the “public interest factors” are relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling, and cost of obtaining attendance of willing, witnesses possibility of view of premises, if view would be appropriate to action, and all other practical problems that make trial of case easy, expeditious and inexpensive, and “public interest factors” are administrative difficulties flowing from court congestion, forum's interest in having localized controversies decided at home, interest in having trial of diversity case in forum that is at home with law that must govern action, avoidance of unnecessary problems in conflicts of laws or application of foreign law, and unfairness of burdening citizens in unrelated forum with jury duty.--Pro Edge, L.P. vs. Gue, 374 F. Supp. 2d 711, motion denied 377 F. Supp. 2d 694, modified 411 F. Supp. 2d 1080- Fed Cts 45.*

S.D.N.Y 1999. “Public Interest Factors” to be considered in determining whether to dismiss a case on forum

*non conveniens grounds, include (1) the interest in avoiding administrative difficulties arising from court congestion, (2) the interest in avoiding the unfair imposition of jury duty on citizens of an unrelated forum, (3) the local interest in having localized controversies decided at home, (4) the interest in having a diversity case tried in a forum that is at home with the law governing the case, the interest in avoiding unnecessary problems with the conflict of law, or the application of foreign laws, (5) the interest in cases which touch the affairs of many persons in insuring that those individuals will have access to the trial. In re Air Crash Off Long Island, N.Y. on July, 1996, 65 F. Supp. 2d 207 Fed Cts 45”*

29- The “Public Interest Litigant” has been defined as given in Word and Phrases Vol. 35 is reproduced as under:-

**“Alaska 2005:-** *For purpose of attorney fee award, a party is a 'public interest litigant' if (1) the case was designed to effectuate strong public policies, (2) numerous people would benefit if the litigant succeeded, (3) only a private party could be expected to bring the suit, and (4) the litigant lacked sufficient economic incentive to bring suit-Halloran vs. State, Div. Of Elections, 115 P. 3d 547 Costs 194.42.*

**Alaska 1995:-** *Party is “public interest litigant” not subject to award of attorney fees, if case is designed to effectuate strong public policies; if numerous people will receive benefits from lawsuit if plaintiff succeeds; if only private party can be expected to bring lawsuit; and if purported public interest litigant would have sufficient economic incentive to file suit even if action involved only narrow issues lacking general importance-Carr-Gottstein Properties vs. State, 899 P. 2d 136-Costs 194.42.*

**Alaska 1984:-** *Homeowners association, which appealed from decision of zoning board of examiners and appeals finding that use of private airstrip did not violate zoning laws, was a “public interest litigant” where appeal was designed to vindicate strong public policy in effectuating zoning ordinances, numerous people in area would have benefitted had it succeeded, only a private party could have been expected to bring appeal, and association emphasized health and safety to virtual exclusion of economic concerns, and thus, opposing parties were not entitled to attorney fees. Rules Civ. Proc. Rule 52 (a) Rules App. Proc., Rule 508 (e)-Oceanview Homeowners Ass'n, Inc. vs. Quadrant Const. And Engineering 680 P. 2d 793-Zoning 729.*

The expression 'public interest litigation' has not been defined either in the Constitution or in the General Clauses Act or in any other



statute. It is evolved by the Court broadly in the case reported in **AIR 1982 SC 149 S. P. Gupta vs. Union of India.**

30- In Stroud's Law Disctionary 4<sup>th</sup> Edition Vol. 4, Public Interest is defined as under:-

*“Public interest- A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.*

In Black's Law Dictionary, public interest has been defined as under:-

*“Public interest- Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or so the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government....”*

The Supreme Court in the case reported in **AIR 1993 SC 892 Janata Dal vs. H.S. Chowdhary** defined the Public Interest Litigation as under:-

*“Lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected.”*

Aforesaid definition has been reiterated by the Hon'ble Supreme Court in the case reported in **(2004) 3 SCC 349 Ashok Kumar Pandey vs. State of West Bengal, AIR 2004 SC 1923 B. Singh vs. Union of India** and **AIR 2002 SC 350 Balco Employees' Union vs. Union of India.**

31- In a recent judgment reported in *(2010) 3 SCC 402 State of Uttranchal vs. Balwant Singh Chauhal and others*, Hon'ble Supreme Court

after considering the ambit and scope of PIL and tracing out its history in the country, had summarized the ambit and scope of PIL in concluding para 181 of the judgment, which is re-produced as under:-

**“Para 181:-** *We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgment. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:*

*(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.*

*(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.*

*(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.*

*(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL*

*(5) The Courts should fully satisfied that substantial public interest is involved before entertaining the petition.*

*(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.*

*(7) The Courts before entertaining PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.*

*(8) The Courts should also ensure that the petitions filed by the busybodies for extraneous and ulterior motives must be encourage by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”*

A plain reading of aforesaid mandate of Hon'ble Supreme Court shows that to consider the case under the gist of 'public interest' various conditions should be fulfilled out of which condition no. 7 provides that

the Court before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. The condition laid down and the observation made by the Hon'ble Supreme Court distinguishing the PIL from other cases so that a case could be treated as PIL ordinarily only in case, the case is entertained by the Court to secure public interest and not to deal with private interest. The Courts are not debarred to look into the public interest while dealing with the private interest matter. Merely because public interest is considered while deciding private interest, it shall not change the nature of the case. Things would have been different in case the Court itself feels that the public interest dominates the private respondent and the matter should be referred to PIL bench.

32- In the case of **Guruvayoor Devaswom Managing Committee and another Vs. C.K. Rajan and others reported in (2003) 7 SCC 546**, the Hon'ble Supreme Court observed as follows:

*However, in an appropriate case, although the petitioner might have moved a court in his private interest and for Redressal of personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil Vs. Dr. mahest Madhav Gosavi).*

33-- This view was further reiterated by the Hon'ble Supreme Court in **(2005) 5 SCC 298, Ashok Lanka and another vs. Rishi Dixit and others**, relevant paragraph 42 of which is being quoted below:

*"Furthermore it is well settled that even in a case where a petitioner might have moved the Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice (see Guruyayoo Devaswom Managing Committee v. C.K. Rajan, SCC para 50 and Prahlad Singh versus Col. Sukhdev Singh (1987) 1.*

SCC 727)."

The same view (supra) was again reiterated by Hon'ble Supreme Court in **AIR 2003 SC 4531, General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. versus Satrughna Nishad.**

34- Again similar matter cropped up for consideration before this Court in 2006 (4) A.D.J. 106 (All.) (Full Bench), Suo Moto Action Taken by the Court Versus I.C.I.CI. Bank Ltd. Allahabad and others. The Division Bench of this Court dealing with the habeas corpus petition framed certain issues of public importance involved in the case and referred the matter to Hon. The Chief Justice to register as P.I.L. to be decided by the appropriate court. The Chief Justice, Allahabad High Court constituted a Full Bench considering the case of Ashok Lanka and another (Supra). The Full Bench opined that in a matter the Court, while exercising power conferred under Article 226 of the Constitution of India with regard to private dispute, has got ample power to take suo-moto decision with regard to public interest and it shall not change the nature of the writ petition.

The expression "Public Interest Litigation" means a legal action initiated in a Court for enforcement of public interest. It is on this principle, Hon'ble Supreme Court interfered in the matter of appointment of judges commonly called as Additional Judges cases, that case is reported in AIR 1982 SC 149 S.P.Gupta vs. Union of India. The Court ruled that if because of illegal State action, the independence of judiciary is impaired, the lawyers would certainly be interested in challenging the constitutionality or legality of such action. The Hon'ble Supreme Court observed as under:-

*Whenever there is public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such wrong or public injury (page 190).*

Their lordships further proceeded to observe as under:-

*“We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such duty and observance of such constitutional or legal provision.”*

While reiterating the necessity of PIL in India, Hon'ble Supreme Court observed as under:-

*“If public duties are to be enforced and social collective “diffused” rights and interests are to be protected, we have to utilize the initiative and zeal of public minded persons and organizations by allowing them to move the Court and act for a general or group interest, even though, they may not be directly injured in their own rights.”*

35- Learned Chief Standing Counsel has relied upon the judgment reported in **[2010 (8) ADJ 631 (FB)] Smt. Maya Dixit and others vs. State of U.P. and others** and **(2010) 10 Supreme Court Cases 320 State of Uttar Pradesh and others vs. Neeraj Chaubey and others**.

In the case of *Maya Dixit*, the dispute relates to pending matter where the division bench has framed the issue with regard to hazard and damage caused because of irregular and unsystematic mining. Hon'ble Single Judge (Justice Rakesh Sharma) passed an interim order staying the consequential order passed by the State Government in pursuance to interim order in a pending writ petition and referred the matter to larger bench. The issue was decided in the case of *Maya Dixit* (supra) and the full bench had rejected the reference and referred the matter back to the Division Bench with the observation that in case the dominant purpose of writ petition and nature of case is converted into public interest litigation, then keeping in view the roster assigned by the Chief Justice, the matter may be referred to PIL bench. The full bench reiterated the right of Hon'ble Chief Justice. As a matter of fact, no finding has been recorded by the full bench with regard to cases where public interest cropped up while adjudicating the private dispute and whether in every case such

petition should be referred to PIL Bench. The full bench has not considered the various pronouncements of Hon'ble Supreme Court including the case of Guruvayoor Devaswom Managing Committee and another (supra). Accordingly, broadly the issue before the full bench was the primacy of Hon'ble Chief Justice in regulating the roaster and accordingly allocation of work and compliance thereof by the judges discharging their obligations. Accordingly, the full bench judgment does not seem to be applicable in the facts and circumstances of the case.

36- In the case of Neeraj Chaubey (supra) also broadly the issue was with regard to primacy of Hon'ble Chief Justice to provide roaster being the master of roaster. The Hon'ble Supreme Court observed that in case application is filed and the bench comes to the conclusion that it involves some issue relating to public interest, the Court may in its discretion direct the Registry to place it before the Bench which has got jurisdiction to entertain PIL in accordance to rule and roaster. Thus, at the face of record it is for the court to decide whether the nature of writ petition has been changed to public interest litigation and the matters may be relegated to PIL bench. Hon'ble Supreme Court had not held that while deciding the private interest public interest cannot be looked into.

37- The law laid down by the Hon'ble Supreme Court in the case of Guruvayoor Devaswom Managing Committee and another and Ashok Lanka (supra) and earlier full bench of this Court in the case of I.C.I.CI Bank Ltd. Allahabad and others and Ashok Lanka (supra) has not been considered.

In view of discussion made here-in-above, there appears to be no good ground to treat the present writ petition as PIL as it relates to the continuance of service under the NRHM Scheme. While deciding the issue, the Court is not precluded to look into the public interest for the end of justice. Learned Chief Standing Counsel could not take into account earlier judgments of Hon'ble Supreme Court and other full bench while advancing the argument. Apart from above, the judgment of Guruvayoor Devaswom Managing Committee and another (supra) has

been decided by a Bench consisting of Hon'ble Three Judges of Supreme Court which has been followed in the case of Ashok Lanka (supra) by the Hon'ble Supreme Court. Accordingly, submission of learned Chief Standing Counsel does not seem to be sustainable and the nature of writ petition is not substantially changed and the dominant purpose is to maintain the petitioners' continuity in service and the Court is not precluded to look into public interest.

The judgment relied upon by the learned Chief Standing Counsel i.e. the case of Neeraj Chaubey (supra) has been delivered in a Bench of Hon'ble two judges, hence keeping in view the principle of stare decisis, larger bench judgment shall have binding effect, though as observed (supra) the case of Neeraj Chaubey (supra) also does not extend any help as the Hon'ble Supreme Court had left it for the Bench to exercise option to convert the writ petition into public interest litigation and then direct the Registry to place it before the Bench dealing with PIL matters.

38- Public Interest Litigation shall be those litigation where private dispute is not involved and the petitioner approach the Court under writ jurisdiction exclusively in Public Interest Litigation, but in case a petition is filed to resolve private dispute, then while deciding the private dispute, Courts are not precluded to take into account the ground realities keeping in view the Public Interest Litigation.

#### **NRHM SCHEME**

39- Before proceeding to decide the issue with regard to petitioners' continuity in service, it shall be appropriate to deal with NRHM scheme and Operational Guidelines updated as on 13.5.2011 filed with the rejoinder affidavit in Writ Petition No. 769 (S/B) of 2011. The preamble of NRHM scheme provides that it is meant to develop and improve the quality of life of citizen and to adopt a synergistic approach by relating health to determinants of good health viz. segments of nutrition, sanitation, hygiene and safe drinking water. It also aims at mainstreaming the Indian systems of medicine to facilitate health care. The

goal of the Mission is to improve the availability of any access to quality health care by people, especially for those residing in rural areas, the poor, women and children. It further reveals that public health expenditure in India has declined from 1.3% of GDP in 1990 to .9% of GDP in 1999. The Union Budgetary allocation from health is 1.3% while the State' Budgetary allocation is 5.5%. The Curative services favour the non-poor: for every Rs. 1 spent on the poorest 30% population, Rs. 3 is spent on the richest quintile. Data also provides that 40% of hospitalized Indians borrow heavily or sell assets to cover expenses and over 25% of hospitalized Indians fall below poverty line because of hospital expenses. The NRHM scheme seeks to provide effective healthcare to rural population throughout the country with special focus on 18 states, which have weak public health indicators and/or weak infrastructure. The National Rural Health Mission-Vision, Goal and strategies seems to revolutionary. It also defines the role of State Government of Mainstreaming Ayush doctors. The Mission (2005-2012) contains broader details and reasons which is necessitated for the Union Government to enforce the Scheme throughout the country particularly in 18 Districts which includes Uttar Pradesh where health system and programmes are not upto the mark. Relevant headings of the scheme are as under:-

*“(1) State of Public Health (2) National Rural Health Mission-The Vision (3) Goals (4) Strategies (5) Plan of Action (6) Institutional Mechanisms (7) Technical Support (8) Role of State Governments Under NRHM (9) Focus on the North Eastern States (10) Role of Panchayati Raj Institutions (11) Role of NGOs in the Mission (12) Mainstreaming Ayush (13) Funding Arrangements (14) Timelines (For Major Components) (15) Outcomes (16) Monitoring and Evaluation.”*

40- The NRHM scheme launched by Union of India has been made operational through guidelines called operational guidelines which has been made upto date i.e. upto 13.5.2011 by the Department of Ayush, Ministry of Health & Family Welfare, Government of India. It shall be appropriate to re-produce from the operational guidelines certain items i.e. Objective, Components, General Pattern of assistance, General Terms



and Conditions, Processing and sanction of proposals, Evaluation of the Scheme and Modification of the Scheme:-

“ **Objective:-** The main objective of the scheme is to facilitate in and through the government Sector mainstreaming of Ayush through co-location of Ayush facilities at Primary Health Centres (PHCs), Community Health Centres (CHCs) and District Hospitals (DHs) and up-gradation of Ayush hospitals and dispensaries, provide management support at the central and state level, setting up Rogi Kalyan Samitis, Health Management Information System and specialized Ayush facilities in Government tertiary Ayush hospitals with Public Private Partnership Mode take up PPP Projects in tertiary level hospitals.

**Components:-** Financial assistance will be provided to the States/UT Governments for (1) Co-location of Ayush facilities at PHCs, CHCs and District Hospitals (11) Upgradation of existing Government Ayush Hospitals (111) Upgradation of existing Government/Panchayat/Government aided Ayush Dispensaries and (IV) Supporting facilities such as Programme Management Units at State level, Health Management Information System and Rogi Kalyan Samities, for Ayush Hospitals subject to terms and conditions as indicated.

1- Co-location of Ayush facilities at PHCs, CHCs and DHs:

1. A. Establishment of Auush OPD Clinics in the Primary Health Centres (PHCs)

One time grant

Up to Rs. 15.00 lacks for undertaking addition/alteration of existing premises; furniture, fixtures, equipments, etc. subject to the condition that expenditure on addition/alteration of existing premises will not exceed 75 per cent of the total amount.

Recurring Grant Rs. 0.30 lakhs per annum as lump Sum Contingency Fund.

Rs. 3.00 lakhs per annum for procurement of drugs, Medicines, Diet and other consumables.

Establishment of Ayush IPDs in Community Health Centres (CHCs)

One time grant

Upto Rs. 25.00 lakhs or undertaking addition/alteration of existing premises, furniture, fixtures, equipments, etc. subject to the condition that expenditure on addition/alteration of existing premises will not exceed 75 per cent of the total sanctioned amount.

Recurring grant

Rs. 0.50 lakh per annum as lump sum contingency fund.

Rs. 5.00 lakhs per annum for procurement of drugs, Medicines, Diet and other consumables.

Setting up of Ayush Wings in District Hospitals

One time grant

Up to Rs. 30.00 lakhs for undertaking addition/alteration of existing premises; fixtures, equipments, etc. subject to the condition that expenditure on addition/alteration of existing premises will not exceed 75 per cent of the total amount.

Recurring grant

Rs. 70 lakhs per annum as lump sum contingency fund.

Rs. 2.50 lakhs per annum for procurement of drugs, Medicines, Diet and other consumables.

Supply of Essential Drugs and Government Ayush Hospitals and Dispensaries

Rs. 0.50 lakhs per annum for essential drugs (Ayurveda/Siddha/Unani).

Rs. 0.25 lakhs per annum for essential drugs (Homoeopathy)

Upgradation of Government Ayush hospitals (other than PHCs/CHCs/DHCs) at the District/sub-District level.

Upgradation of Government/Panchayat/Government aided Ayush Dispensaries.

Setting-up of Programme Management Units (PMUs)

Setting Up of Health Management Information System (HMIS)

**Constitution of Rogi Kalyan Samitis:**

Rogi Kalyan Samitis (Hospital Management Committee) for Ayush Hospitals will be set up on the pattern approved for allopathic hospitals under NHRM so as to provide flexibility and autonomy to the Ayush Hospitals at the district/sub-district level. No separate funding will be provided for this purpose.

However, assistance for the same will be met from the contingency to be provided under the Scheme for Upgradation of Ayush hospitals with a ceiling of Rs. 0.70 lakh per year per unit.

Details on constitution and operation of PMU, HMIS and Rogi Kalyan Samiti are given in Annexure III.

**3. General pattern of assistance:-**

Pattern of assistance under the various components of the Scheme shall be as indicated below:

(1) Funding of different components will be done on a gap filling basis, based on the State Programme Implementation Plans (PIPs). The financial assistance for the components will be limited to the actual requirement, subject to the ceiling prescribe.

(11) 85% of the admissible assistance will be provided as grants-in-aid by the Central Government and balance 15% shall have to be met by the State-UTs concerned, except for the North-eastern State, where the Central share will be 90% and balance 10% to be met by the States.

(111) Assistance for setting up Hospital Management Information System for Ayush shall be met by the Central and State/UTs Governments on 50:50 basis.

(IV) Assistance for setting up 'Programme Management Units for Ayush shall be met by the Central and State/UTs Governments on 85:15 basis, including NE States.

**General Terms and Conditions**

(i) Under the scheme, financial assistance will be provided to the State/UT government for the specified components for promotion of Ayush health care facilities.

(ii) Proposal seeking assistance under the scheme shall have to be submitted in duplicate in the prescribed format enclosed as Annexure 1 alongwith requisite information details.

(iii) Admissible financial assistance under the scheme will be released to the State Health Society.

(iv) Financial assistance under the scheme will be normally released in two instalments for establishment provided that the Screening committee may release the total amount in one instalment.

(v) The grantee organization shall take necessary action to utilize the amount within the financial year provided that in the event of failure to utilize part or full of the amount during the year, details thereof shall be reported to the department for placing before the Screening Committee for decision.

(vi) The grantee organization shall have to submit six monthly reports indicating physical progress of the work, attendance of the patients/visitors in the Ayush unit, receptivity 7 acceptability of the facilities of health care rendered from the unit for specific disease as well as financial position of expenditure alongwith relevant documents.

(vii) The grantee organization shall have to take action for provision of required manpower (as indicated in Annexure IV) and space (as indicated in Annexure V) by availing support provided under the NRHM flexipool and under this scheme.

(viii) The grantee organization shall have to use the fund sanctioned under this scheme to procure quality medicine from public sector/operative managed by central/State Government as per details indicated in Annexure VI.

#### Evaluation of Scheme

A mid-term review of the scheme is proposed to be done through an independent agency after two years of implementation of the scheme.

The Provision has been made to constitute State level body under State Health Mission and other units like Governing Body and Executive Body. The Institutional set at State level has been provided in the

scheme, which includes Governing body and Executive Body is as under:-

**“Governing Body.**

Chairperson: Chief Secretary/Development Commissioner

Co-Chair : Principal/Secretary (Health & Family Welfare)

Vice-Chair : Officer designated as Mission Director of State Health Mission.

**Members:**

Secretaries of the NRHM related Departments: Health & FW, Finance, Ayush, Women and Child Development, Public Health Engineering, Water and Sanitation, Panchayati Raj, Rural Development, Tribal/SC Welfare, Urban Affairs and Planning and Programme Implementation.

DHS, Director Ayush.

Gol representative(s). MoHFW nominee.

Representatives of Development Partners supporting the NRHM in the State.

Nominated non-official members: Four to six members (Public Health Professionals, MNGO representatives/representatives of the Medical Association)

Regional Directors.

**Executive Committee**

- 1- Chairperson : Principal Secretary/Secretary, F.W.
- 2- Co-Chair (s) Principal Secretary, Health/FW ( in case of separate secretaries in the State)
- 3- Vice Chair: Director, Health & FW
- 4 Convenor Executive Director/ Mission Director (To be as IAS officer of JAG/Selection Grade)
- 5- Joint Secretaries State Programme Managers/Project Directors of National Disease Control Programme.

**Member.**

- 1- Director, Ayush
- 2- Secretaries/technical officers from NRHM related sectors
- 3- Executive Secretary, State AIDS Control Society [for the States which decide not to merge it with State Health & FW Society]
- 4- MoHFW, Gol, representative.
- 5- Regional Directors.

41- Thus, the Executive Committee possesses ten members and the NRHM scheme is run by Governing Body and Executive Body and Programme Committee and such other bodies prescribed by Governing Body, like State level committee under NRHM scheme in every district.

40- From the record, as we have noted in the order sheet the original PIP was prepared after considering the entire infrastructure necessary for the State but while changing the same, the authorities who have taken decision have not applied their mind to the ground realities of the State. It appears that no agenda was circulated nor all the members were present. At the face of record, while sending the revised PIP, the procedure prescribed under the scheme has not been followed. The Circular issued by the Director General seems to be an act done for extraneous reasons that too without jurisdiction, may be on the instruction of higher up. The Director General had not assisted the Court fairly to bring on record the factual position. Para 5.3 of the Operational guidelines provides that body set up under the scheme will consider appropriate change which deems necessary under the Scheme. Deemed necessary means the decision must be taken under some compelling circumstances on the basis of record. In the present case, no material has been placed before the Court which has necessitated to change the PIP. It shall be appropriate to reproduce the order dated 31.5.2011 which is as under;-

*“Dr. Ram Ji Lal, Director General, Family Welfare is present in person in pursuance to the order, passed by this Court.*

*A specific query has been made by the Court as to on whose behalf or on what ground he has passed the order dated*

*15.4.2011 modifying the earlier one by which he has communicated all the authorities of the State to disengage or suspend the male Ayush Doctors. In response to the query made by the Court, he submits that the order was passed on the basis of the discussion for revised PIP. In spite of sufficient time granted by this Court, he failed to make statement as to when the discussion took place to revise the PIP. In spite of repeated query, made by the Court, the Director General, Family Welfare failed to make statement as to when and how and in what manner he decided to pass the order dated 15.4.2011 for disengagement of Male Ayush Doctors.*

*Mr. Lokesh Kumar Singh, General Manager, Administration of NRHM is also present along with the Mission Director Mohammad Mustafa. Mr. Lokesh Kumar Singh submits that he resumed duty on 16.4.2011, so he is not aware as to whether any discussion took place for revised PIP.*

*Mr. A.K. Dixit, Finance Controller of the NRHM submits that there is no written minutes or record available in the mission which may indicate that some discussion took place to revise the PIP prior to 15.4.2011. He submits that oral discussion had taken place. Mr. Mohd. Mustafa submits that since he was not the Mission Director when the order dated 19.4.2011 was passed, he is not in a position to inform the court as to how and in what manner a decision was taken.*

*The Mission Director as well as Mr. Lokesh Kumar Singh, General Manager, Administration submit that they do not possess any record or minutes with regard to revised PIP issued on 19.4.2011 and when the decision was taken to disengage male Ayush Doctors. They are given one more opportunity to appear at 2.00p.m. today itself along with record relating to minutes of the meeting held to issue revised PIP on 19.4.2011. The officers shall again appear at 2.00 p.m.”*

*“Written Submissions filed by Sri D.K.Upadhyay, Chief Standing Counsel as well as other counsel are taken on record.*

*Copy of document titled as “National Rural Health Mission: Institutional Setup at State Level” filed by Sri I.H.Farooqui, learned Assistant Solicitor General of India, is taken on record.*

*Copy of letter dated 19<sup>th</sup> April, 2011 filed on behalf of State is taken on record.*

*We have heard Sri S.K.Singh Kalhans, Sri Sandeep Dixit, Sri Amrendra Nath Tripathi, Sri R.K.Upadhyay, Sri Gibran Akhtar Khan, Sri Amit Verma, Sri Brijesh Singh, Sri Sanjay Pandey, Sri Dinesh Kumar Pushpakar, Sri Shaqeel Ahmad, Sri Satyajeet Singh, Sri Dinesh Kumar Arya, Sri*

*Ashish Srivastava, Sri Ratnesh Chandra, Sri O.P.Kushwaha & Sri Ashish Srivastava, learned counsel for the petitioners, Sri D.K.Upadhayay, learned Chief Standing Counsel on behalf of State, Sri I.H.Farooqui, learned Assistant Solicitor General of India, Sri Rafat Siddiqui, Sri Vijay Kumar, Sri Shamshad Alam, Ms. Alka Saxena, Sri Zaheer Ahmad Khan, Sri Sagir Ahmad Khan, Sri Gaus Beg, Sri Fareed Ahmad, Sri Ram Sakal Mishra and Sri Mahmood Alam, on behalf of Union of India and perused the record.*

*In pursuance to order passed by this court in pre-lunch period today, the Mission Director, Mohd. Mustafa is present in the court alongwith Sri Lokesh Kumar, General Manager, Administration.*

*In pursuance to the query made by this court, it has been submitted by the officers present in the court that there was no Mission Director on 15<sup>th</sup> April, 2009. However, a decision was taken to revise the original P.I.P. of the record. Note-sheets of two papers have been produced before this court which are numbered as page nos. 1 & 2. Page no. 1 of the note sheet does not contain the signature of any officer. Page no. 2 of the note-sheet contains the official noting which is reproduced as under:-*

*“Note Sheet*

*इस कार्ययोजना पर भारत सरकार के साथ नेशनल प्रोजेक्ट कोआर्डिनेशन कमेटी (एन०पी०सी०सी०) की बैठक में विचार-विमर्श के उपरान्त आवश्यक स्वीकृति प्राप्त होगी। भारत सरकार स्तर से प्राप्त स्वीकृति के साथ राज्य कार्ययोजना को प्रमुख सचिव, चिकित्सा स्वास्थ्य एवं परिवार कल्याण की अध्यक्षता में गठित राज्य स्वास्थ्य समिति की कार्यकारी समिति एवं मुख्य सचिव, उत्तर प्रदेश शासन की अध्यक्षता में गठित शासी निकाय के सम्मुख अनुमोदनार्थ पुनः प्रस्तुत किया जाना प्रस्तावित है।*

*पुनरीक्षित राज्य कार्ययोजना भारत सरकार को प्रेषित किये जाने हेतु पत्रालेख सम्मुख प्रस्तुत है। सहमति की दशा में पत्र पर हस्ताक्षर करना चाहें।*

*कृपया वर्ष 2011-12 की राज्य एन०आर०एच०एम० कार्य योजना के विषय में पृष्ठ 1-2 पर दी गयी टिप्पणी का अवलोकन करना चाहें। संयुक्त सचिव, भारत सरकार द्वारा संशोधन हेतु भेजे गये सुझावों का समावेश कार्य योजना में कर लिया गया है।*

*कृपया अवगतार्थ/आदेशार्थ*

15.4.11

(नीता चौधरी)

अध्यक्ष

कार्यकारी समिति।

राज्य स्वास्थ्य समिति

राज्य स्वास्थ्य समिति

राष्ट्रीय ग्रामीण स्वस्थ मिशन।



(अनूप मिश्रा)  
मुख्य सचिव,  
उत्तर प्रदेश शासन।

राज्य कार्यक्रम प्रबन्धन इकाई।  
राष्ट्रीय ग्रामीण स्वास्थ्य मिशन उ०प्र०  
9, जगत नारायण रोड, लखनऊ”

*From the aforesaid perusal of the note-sheets, it appears that on 15<sup>th</sup> April, 2011, a note was prepared with regard to revised P.I.P. That was signed by Dr. Aruna Narain, General Manager, N.R.H.M and Dr. Madhu Sharma, General Manager(Planning). It has also been signed by Neeta Chaudhary, Chairman, Executive Committee, which has been counter-singed by Sri Anoop Misra, Chief Secretary, Government of U.P., Lucknow. It has been submitted by Mission Director that no further record is available with the Mission Directorate with regard to revised P.I.P.*

*It has been submitted by Sri Lokesh Kumar, General Manager, Administration that there is no official noting on record which has necessitated to prepare the official note on 15<sup>th</sup> April, 2011.*

*From the perusal of original record with regard to original P.I.P., it appears that all the ground work was done by the authorities while preparing the P.I.P. and a decision was taken to appoint the Ayush Doctors under the scheme. A detailed discussion was held amongst various authorities while preparing the P.I.P.*

*At the time of perusal of record, it has been submitted by learned Chief Standing Counsel that P.I.P. was revised and modified in pursuance to the request made by the government of India to reduce the budget. Learned Chief Standing Counsel has provided photostat copy of one of the note-sheets during the course of the day itself.*

*The note-sheets in two pages at the face of record shows to be not the part and parcel of original record containing the official notes while preparation of the first P.I.P.*

*A specific query has been made during the course of hearing from the learned Chief Standing Counsel that who is to officiating on the post of Mission Director, in case the original incumbent is not available or relieved from the job.*

*Sri D.K.Upadhyay, learned Chief Standing Counsel wants time to make submission. The officers present in the court have also failed to reply as to who was officiating as Mission*

*Director during the period from 15<sup>th</sup> April April, 2009 to 29<sup>th</sup> April, 2011.*

*Learned Chief Standing Counsel has produced the photostat copy of letter dated 23<sup>rd</sup> March 2011, which contains the minutes of the Meeting. The same is taken on record.*

*Sri I.H.Farooqui, learned Assistant Solicitor General of India, submits that Government of India has not taken any decision to revise the budget in pursuance to the original P.I.P. dated 28<sup>th</sup> March, 2011. He submits that the budget allocated by the Government of India on the basis of original P.I.P. will continue and Government of India is likely to provide funds in terms of other P.I.Ps., but, a decision is to be taken and the matter is pending with the authorities for approval. However, he has invited attention of this court towards writ petition no. 816(S/B)/2011. He submits that after the original P.I.P. dated 28<sup>th</sup> March, 2011, the Government of India, has not issued any direction for reduction of budget.*

*Judgment reserved.”*

42- During the course of hearing, we have directed the State authorities to bring on record the infrastructure available in the Medical & Health Services (Allopathic) and infrastructure under the Indian drugs system. Shri S.P. Ram, Director General, Medical & Health Services has brought on record human resources available in the State of U.P. The total vacant post in the Medical & Health Department, State of U.P. is given in the chart which is as under:-

“Feeding Cadre	Vacant
<b>Feeding Cadre</b>	
Level 1 Male	410
Level 1 Female	49
<b>Promotional Cadre</b>	
Level 2 Male	2247
Level 2 Female	284
Level 3 Male	791
Level 3 Female	117
Level 4 Male	243
Level 4 Female	80
Level 5 Male	60

Level 5 Female	7
Level 6 Combined	17
Level 7 Combined.	2
Total	4307
<b>Dental Cadre</b>	
Dental Surgeon	82
Dental Hygienist	145
Dental Mechanics	0
<b>Nursing Cadre</b>	
Sister	130
Upcharika (staff Nurse)	132
<b>Paramedicals</b>	
Chief pharmacist	178
pharmacist	955
X-ray technician	112
Dark room sahayak	184
Lab technician	209
Senior lab technician	74
Gramin lab assistant	773
<b>Eye</b>	
Optometrist	9
<b>Leprosy</b>	
Health Educator	13
Non Medical Assistant	761
Non Medical Supervisor	77
<b>Tuberculosis</b>	
BCG technician	121
BCG team leader	9
TB swasthya paridarshak visitor	18
<b>Department of Family Welfare UP</b>	
Basic Health Worker-Female	4412
Basic Health Worker Male	6291

Health Supervisor Male	1586
Health Supervisor Female	303

It is unfortunate that the PIP has not been revised either by the executive committee or a committee authorised under the operational guideline that too without looking into the available medical strength and vacant posts, because of which public is suffering seriously to deal with health problem.

43- In the year 2010-2011 in the State of U.P. 24.99% fund allocated for the medicines were not utilized as is evident from the chart. Relevant portion of the chart is re-produced as under:-

मुख्यालय से औषधि हेतु आवंटित बजट की धनराशि	औषधि हेतु निर्गत आदेश (धनराशि)	हेतु क्रय	कुल औषधि प्राप्त (धनराशि)	कुल औषधि उपभोग (धनराशि)	औषधि जो वित्तीय वर्ष के अन्तिम माह में अवशेष रही (प्रतिशत में)
1184	यू0पी0डी0एल0 को अग्रिम				
<b>23904.89</b>	<b>22277.88</b>	<b>21883.79</b>	<b>16414.9</b>	<b>24.99%</b>	

44- With regard to medicine also, the State Government is suffering with acute shortage as is evident from the affidavit filed by Dr. S.P. Ram on the basis of information received from respective departments, even then fund has not been utilized. Alongwith affidavit, a letter dated 26.5.2011 has been annexed sent by the Director, Unani Services, indicating therein the available vacancy, which is reproduced as under:-

प्रेषक,

निदेशक,  
आयुर्वेद सेवायें,  
उ0प्र0 लखनऊ।

सेवा में,

महानिदेशक,  
चिकित्सा एवं स्वास्थ्य सेवायें,  
उत्तर प्रदेश स्वास्थ्य भवन, लखनऊ।

संख्या— 7033 /अधि0, दिनांक 2615/11

विषय— प्रदेश में आयुर्वेदिक सेवाओं के आधारभूत ढाँचा एवं मानव संसाधन की जानकारी उपलब्ध कराये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक कृपया अपने पत्र संख्या-महा0नि0/सी/657, दिनांक 26.05.2011 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा मा0 उच्च न्यायालय इलाहाबाद खण्डपीठ लखनऊ में योजित रिट याचिका संख्या-एस0बी0769/2011 में दिये गये निर्देश के अनुक्रम में आयुर्वेदिक सेवाओं के चिकित्सा कार्य से सम्बन्धित चिकित्साधिकारी संवर्ग, फार्मेसिस्ट संवर्ग एवं नर्सिज संवर्ग की सूचना निम्नवत है:-

क्र०सं०	संवर्ग का नाम	स्वीकृत पद	भरे पद	रिक्त पद
1	चिकित्साधिकारी (आयुर्वेदिक) संवर्ग	2186	2005	181
2	चिकित्साधिकारी (सामुदायिक स्वास्थ्य) संवर्ग	1678	1608	70
3	फार्मेसिस्ट संवर्ग	2098	1666	432
4	चीफ फार्मेसिस्ट संवर्ग	155	60	95
5	नर्सिज संवर्ग	515	254	261

आयुर्वेद विभाग के अन्तर्गत राजकीय आयुर्वेद महाविद्यालयों की संख्या 08 एवं राजकीय आयुर्वेदिक चिकित्सालयों की संख्या- 2357 है। तदनुसार कृपया प्राप्ति स्वीकार करने का कष्ट करें।

भवदीय,

ह0अ0

(डा0जे0डी0 सिंह)  
प्रभारी अधिकारी,  
कृते-निदेशक

**आयुर्वेद सेवायें:-**

राजकीय आयुर्वेदिक महाविद्यालय - 8  
राजकीय आयुर्वेदिक चिकित्सालय - 2357

संवर्ग का नाम	स्वीकृत	कार्यरत	रिक्त
चिकित्साधिकारी आयुर्वेदिक संवर्ग	2186	2005	181
चिकित्साधिकारी सामुदायिक स्वा0 संवर्ग	1678	1608	70
फार्मेसिस्ट	2098	1660	432

**होम्योपैथिक सेवायें:-**

राजकीय होम्योपैथिक महाविद्यालय - 7  
राजकीय होम्योपैथिक चिकित्सालय - 1575

संवर्ग का नाम	स्वीकृत	कार्यरत	रिक्त
चिकित्साधिकारी होम्योपैथिक संवर्ग	1610	1189	421
फार्मेसिस्ट	1572	1095	477

**यूनानी सेवायें:-**

राजकीय यूनानी महाविद्यालय	-	2
राजकीय यूनानी चिकित्सालय	-	253

संवर्ग का नाम	स्वीकृत	कार्यरत	रिक्त
चिकित्साधिकारी यूनानी संवर्ग	265	191	74
फार्मसिस्ट	253	189	64

**REVISED PIP**

45- In the counter affidavit dated 22.5.2011, Mohd. Mustafa, the Mission Director has given details of unutilized fund under the NRHM Scheme. The averment contained in Para 14 of the counter affidavit is reproduced as under:-

*“That as regards the funds provided by the Government of India in each financial year and its utilization, it is submitted that NRHM is centre-sponsored scheme which was introduced in the State of U.P. with effect from the financial year 2005-2006. As per the scheme, 85% expenditure is borne by the State. Under the scheme, Central Government provides funds as per approved PIP for every financial year on the basis of which the funds are allocated to the District Health Societies. Similarly, the money spent by the State Units is allocated to the State level society. The funds sanctioned by the Government of India and the funds utilized since the financial year 2005-2006 till date is as follows:-*

Financial year	Sanctioned PIP funds (Rs. in Crores)	Funds spent (Rs. in Crores)
2005-2006	873.3	547.74
2006-2007	985.34	709.37
2007-2008	1499.25	935.73
2008-2009	1846.88	1501.58
2009-2010	2900.48	2203.43
2010-2011	2793.48	2660.26
2011-2012	A PIP for Rs. 3310.87 Crore has been sent to the Government of India for approval	

Thus upto 2010-2011, total Rs. 2340.62 Crores of rupees given by

Government of India under the NRHM scheme, remained unutilized in this poor State of U.P. where people is facing acute shortage of doctors and medicine and related infrastructure.

The Governing Body is the highest body of NRHM scheme. The Executive Body seems to a body, which has been empowered to take a decision to regulate the working of scheme. Under the operational guideline, the Executive Body has got ten members, out of which five are officer bearers and while calling the meeting of executive body, there must be some agenda which seems to be lacking. Out of ten members, five are office bearer, whereas decision to revise PIP has been taken by three individual members. Thus, at the face of record, the PIP has not been revised by the body authorized under the scheme.

Under the operational guideline, the processing and sanction of proposal is to be done by eight members body which is as under:-

**“Processing and sanction of proposals:**

A screening committee, constituted with following members, will consider the proposals under the Scheme for sanction of admissible assistance.

(i)	Secretary (Ayush)	Chairperson
(ii)	Joint Secretary (Ayush)	Member
(iii)	Joint Secretary & F.A. or his nominee	Member
(iv)	Advisor (Ayurveda)	Member
(v)	Advisor (Unani)	Member
(vi)	Advisor (Homeopathy)	Member
(vii)	Director (CCRYN)	Member
(viii)	Concerned Director/ Dy. Secretary	Member

Under the Operational Guideline, the scheme may be modified by Empowered Programme Committee and Mission Steering Group chaired by the Secretary, Health and Family Welfare and the Minister of Health and Family Welfare set up that too seems to have not been complied

with.

Para 5.3 of the Guideline is reproduced as under:-

**“Modification of the Scheme**

*The Empowered Programme Committee (EPC) and Mission Steering Group (MSG) chaired by the Secretary, Health and Family Welfare and the Minister of Health and Family Welfare, respectively set up under the NRHM will consider and approve changes, as deemed necessary, in this scheme.*

*There could be possible some changes required from time to time in the scheme due to operational classification in the scheme.”*

In view of above, the PIP was not revised by duly constituted committee under the scheme, but by the officers in their individual capacity that too on unfounded ground (supra). Accordingly, the revision of PIP seems to be an incident of exceeding of jurisdiction in violation of Operational Guideline and NRHM scheme.

46- From the description of available infrastructure referred to here-in-above and fund provided by the Government of India under the NRHM Scheme, it is obvious at the face of record that modified PIP suffers from substantial illegality and based on unfounded fact broadly for the following reasons:-

(1) While sending the original PIP dated 28.3.2011, a committee was constituted in accordance to scheme (supra) and operational guidelines (supra) by the appropriate authority. The revised PIP was sent by the persons who were not authorised under the scheme or the operational guidelines (supra). No meeting was called by the authorities constituting the governing body or the executive body to revise the PIP or the committee in view of clause 5.3 of the operational guidelines or other provisions under the Scheme.

(2) While revising the PIP, the respondents had not taken into account the acute shortage of doctors including the employees in the Allopathic, Ayurvedic, Homeopathy and Unani services and mechanical decision was taken on unfounded ground. Under the note sheet dated 15.4.2011 (supra) there was no decision to deprive Ayush male doctors.



(3) While filing counter affidavit, defence is taken that the PIP was revised because of non availability of medicines. Letter sent by the State Government was not honoured by the Central Government to provide medicine under the Ayush scheme. Later on, the State changed its stand before the Court and submitted the minutes of meeting held on 15.4.2011. The minutes (supra) provides that the decision was taken for continuance of Male and Female Ayush doctors and Pharmacists. It is nowhere on record in the minutes of the meeting held on 15.4.2011 that the decision was taken not to recruit the Male Ayush doctors/Pharmacists.

4- Government of India has provided sufficient fund, but in the last six years, Rs. 2340.62 crores of rupees remained unutilized by the State Mission/Government of U.P. False and incorrect statement has been made by the State counsel to defend their action.

5- Discontinuance of Ayush Male doctors and Pharmacists is based on unfounded facts, in violation of NRHM Scheme.

6- State Mission cannot discharge its obligation in violation of operational guideline and the NRHM scheme, which seems to have been done.

47- The Director General, Family Welfare had passed the order dated 15.4.2011 without jurisdiction. The order of circular could have been issued only by the Director of the Mission or whosoever officiates on the post in pursuance to decision taken by the executive committee or the governing body authorised under the Operational Guidelines. In spite of repeated query made by the Court, learned Chief Standing Counsel had not informed as to who was officiating the post of Mission Director. At the face of record, the State seems to conceal the material fact and not assisted the Court with clean hand. The revised PIP was sent on 19.4.2011 that too in pursuance to alleged direction dated 23.3.2011 issued by the Government of India, the letter dated 23.3.2011 is based on meeting held at Dehli on 7.3.2011. In pursuance to meeting dated 7.3.2011, the original PIP was prepared by the duly constituted

committee under the scheme as apparent from the record and PIP was sent on 28.3.2011.

48- Accordingly, even if the letter dated 23.3.2011 was received at a later stage, it does not make out a ground to send revised PIP that too when in pursuance to meeting held on 7.3.2011, after considering the necessary grounds and conditions original PIP was sent on 28.3.2011.

49- A thing should be done in the manner provided by statute or regulatory provision and not otherwise vide **Nazir Ahmed Vs. King Emperor, AIR 1936 PC 253; Deep Chand Versus State of Rajasthan, AIR 1961 SC 1527, Patna Improvement Trust Vs. Smt. Lakshmi Devi and others, AIR 1963 SC 1077; State of U.P. Vs. Singhara Singh and other, AIR 1964 SC 358; Barium Chemicals Ltd. Vs. Company Law Board AIR 1967 SC 295, (Para 34) Chandra Kishore Jha Vs. Mahavir Prasad and others, 1999 (8) SCC 266; Delhi Administration Vs. Gurdip Singh Uban and others, 2000 (7) SCC 296; Dhanajay Reddy Vs. State of Karnataka, AIR 2001 SC 1512, Commissioner Of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and others, 2002 (1) SCC 633; Prabha Shankar Dubey Vs. State of M.P., AIR 2004 SC 486 and Ramphal Kundu Vs. Kamal Sharma, AIR 2004 SC 1657, Taylor Vs. Taylor, (1876) 1 Ch.D. 426; Nika Ram Vs. State of Himachal Pradesh, AIR 1972 SC 2077; Ramchandra Keshav Adke Vs. Govind Joti Chavare and others, AIR 1975 SC 915; Chettiam Veettil Ammad and another Vs. Taluk Land Board and others, AIR 1979 SC 1573; State of Bihar and others Vs. J.A.C. Saldanna and others, AIR 1980 SC 326, A.K.Roy and another Vs. State of Punjab and others; AIR 1986 SC 2160; State of Mizoram VS. Biakchhawna, 1995 (1) SCC 156.**

In the present case, the revised PIP was prepared neither by the governing body nor executive body or any other committee authorized under the Operational guideline. Hence, in view of settled proposition of law, it seems to suffer from substantial illegality.

Subject to aforesaid discussion and finding, the State Mission at district level has to discharge its obligation in terms of NRHM scheme and Operational guideline. The State or its instrumentalities or the State Mission cannot travel beyond the procedure provided by Operational guideline in view of binding nature of the scheme, more so the

Government of India is providing budget to run the scheme at Block, Tehsil and District level under NRHM scheme. Ayush doctors are to be appointed in addition to available infrastructure of the State. Therefore, the State does not seem to be justified in taking decision contrary to spirit of the NRHM scheme.

50- In view of above, the revised PIP sent by the State seems to be based on unfounded fact and that too by the authorities who lacks jurisdiction under the scheme. It also suffers from non application of mind to the ground realities of the State. It creates reasonable doubt over the conduct of the authorities and the revised PIP suffers from extraneous reasons.

**WHETHER REVISED PIP IS OUTCOME OF POLICY  
DECISION OF THE STATE GOVERNMENT, HENCE NOT  
AMENABLE TO WRIT JURISDICTION**

Learned Chief Standing Counsel vehemently submits that being policy matter, the Court should loath to interfere with the revision of PIP. The argument advanced by the learned Chief Standing Counsel seems to be misconceived. The controversy in question does not relate to policy decision of the State Government but it relates to implementation of Rural Health Mission in the State of U.P. where people are facing acute problem for the lack of health facility as noted by the Government of India in the scheme (supra). The State is not entitled to move on its own way on account of agreement entered into between the State and the Government of India. It is obligatory on the part of State to enforce NRHM scheme in its letter and spirit keeping in view the operational guidelines. The State cannot take any policy decision beyond the scheme. Otherwise, at no stage either orally or through counter affidavit. Learned Chief Standing Counsel or the other State counsels had invited attention of the Court to any material on record with regard to policy decision of the State not to enforce NRHM scheme or not to make appointment of Male Ayush doctor, as a matter of policy, rather defence taken by the State is that the revised PIP was sent by the State

Government to cut short the budget or in the absence of medicine provided by the Government of India. The shifting of stand by the State Government itself gives reasonable doubt over the bona fides. However, decision of the State Government to implement NRHM scheme or the consequential appointment thereon must be within the framework of NRHM scheme and its operational guideline (supra).

51- The right of the petitioner cannot be thrown away or writ petition may be dismissed on mere submission that it is a policy decision that too without placing any material on record. Otherwise also, it is well settled law that in case policy decision of the State Government is capricious, malicious and highly arbitrary affecting the fundamental right of the citizen, this Court may interfere under judicial review. It is further settled law that all administrative decisions of the State should be just, fair and proper and subject to judicial review vide **2011 (1) SCC 640 Bajaj Hindustan Ltd. vs. Sir Shadi Lal Enterprises Ltd**, **(2011) 3 SCC 193 Shree Sidhali Steels Ltd. vs. State of U.P.**, **(2005) 5 SCC 181 State of NCT of Delhi vs. Sanjeev and Bittoo**, **(2009) 9 SCC 610 Babubhai Jamnadas Patel vs. State of Gujrat and others**, **(2008) 3 SCC 484 Moni Shanker vs. Union of India** and **AIR 1986 SC 81 Dwarika Nath vs. Income Tax Officer**.

52- Reliance placed by the learned Chief Standing Counsel in the cases reported in **(2007) 4 SCC 737 Directorate of Film Festivals vs. Gaurav Ashwin Jain**, **2011 (2) SCC 575 Transport & Dock Workers Union vs. Mumbai Port Trust**, **2011 (1) SCC 640 Bajaj Hindustan Ltd. vs. Sir Shadi Lal Enterprises Ltd.** seems to be unfounded. In the case of Gaurav Ashwin (supra), the Hon'ble Supreme Court held that it is not for the Court to examine the correctness, suitability and appropriateness of a policy nor the courts are advisor to the executive on matters of policy which the executive is entitled to formulate.

53- In the present case, the case at hand does not relate to formulation of any policy. The policy has already been framed by the Government of India in the form of NRHM scheme and operational guidelines. State is

only to implement the scheme. Having agreement between the State and the Central Government, it is not open for the State to take a decision in violation of NRHM scheme and the Operational guideline.

In the case of Transport & Dock Workers Union (supra), their Lordships held that the Government has right to take policy decision with some band in its own choice and court should not interfere in a policy matter or executive decision.

54- As observed (supra), here it is not a case where the State has to formulate its own policy but the question relates to implementation of NRHM scheme under the operational guideline which can be done only by the restrictive condition or bodies constituted under the operational guideline. State has got no right to discharge its obligation whimsically, arbitrarily in its own way in violation of operational guideline or NRHM scheme and it may be subject to judicial review. Things would have been different in case some independent policy would have been framed by the State for its citizens under its own guidelines and procedure prescribed for the purpose in public interest but it is not the case here. Hence, this judgment also does not cover the present controversy.

In the case of Bajaj Hindustan Ltd. (supra), Hon'ble Supreme Court itself ruled that though ordinarily in administrative action, Court should not interfere but it does not mean that the judiciary should never interfere. The interference should be within narrow limits i.e. when there is violation of statute or constitutional provision or there is arbitrariness in the Wednesbury sense.

55- Needless to say, the controversy in question falls in latter part of the judgment of the Hon'ble Supreme Court where the petitioners have approached the Court with the grievance that the Provision contained in NRHM scheme and the Operational guideline (supra) have been violated and they have been treated arbitrarily with regard to employment and discharge of obligation under the scheme that too by the competent person.

#### RIGHT TO PRACTICE OF AYUSH DOCTORS

It has been vehemently argued by the learned Chief Standing Counsel that the Ayush doctors have no right to practice in the Allopathic field. Relying upon the case reported in **(1998) 7 Supreme Court Cases 579 Dr. Mukhtiar Chand and others vs. State of Punjab and others**, the argument advanced by the learned Chief Standing Counsel again seems to be misconceived. From the very beginning of the argument, Shri Sandeep Dixit and Amrendra Nath Tripathi had emphatically submitted that neither they pleaded nor they intend to advance any argument claiming right to practice in Allopathic side. They are claiming the rights flowing from NRHM scheme and Operational guideline. Accordingly, submission of learned Chief Standing Counsel does not call for any finding on the right to practice on Allopathic side.

#### GENDER DISCRIMINATION

56- Other submission of learned Chief Standing Counsel is that by depriving Ayush Male doctors to seek appointment, State has not caused any gender discrimination. Again it has been submitted by the petitioners' counsel that the petitioners are claiming their right under the NRHM Scheme and Operational Guideline and its implementation. Hence, no finding is required with regard to gender discrimination since it is not the case set up by the petitioners.

#### CONSTITUTIONAL LIABILITY OF STATE AND CENTRAL GOVERNMENT

Apart from food, clothe and shelter, the most important thing which the public required, is the health and education. Now it is settled law that right to livelihood, right to dignity of life, right to quality of life, right to life etc. are the fundamental rights protected by Article 21 of the Constitution of India. The State and the Union of India both have responsibility to care and rejuvenate the health system in their own field. Schedule VII of the Constitution deals with respective field for which Government of India and the State Government should exercise their power in public interest.

Under the Directive Principles contained in Part IV of the

Constitution, Article 47 provides that it is the duty of State to raise the level of nutrition and the standard of living and to improve public health. For convenience, Article 47 of the Constitution is re-produced as under:-

**“Duty of the State to raise the level of nutrition and the standard of living and to improve public health:-**

*The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”*

Entry VI of list II of the Constitution (State subject) is re-produced as under:-

*“Public Health and Sanitation; hospital and dispensaries.”*

List III of the Constitution is the current list with regard to subjects contained therein. The State and the Central Government both will have jurisdiction to discharge their obligation in public interest. Under List III of the Schedule 7 Entries 8, 16, 26, 28 and 29 contains subjects broadly related to hygienic condition and public health. For convenience, these are re-produced as under:-

**“Entry 8-** *Actionable wrong,*

**Entry 16-** *Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient,*

**Entry 26-** *Legal, medical and other professions,*

**Entry 28-** *Charities and charitable institutions, charitable and religious endowments and religious institutions.*

**Entry 29-** *Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.*

57- A combined reading of entries 8, 16, 26, 28 and 29 reveals that the Union Government and the State Government may frame law in public interest or proceed in appropriate manner with regard to subjects, namely, lunacy, mental deficiency, population control, family planning, legal, mental and other matter with regard to profession and prevention of the

extension of infected or contagious diseases or pests affecting men, animals or plants. The overall reading of NRHM scheme framed by the Government of India not only relates to public health, sanitation and hospitals but also cover the subjects contained in Entries 8, 16, 26, 28 and 29.

58- In view of above, various subjects contained in List III of Schedule 7 (supra), the NRHM scheme and operational guidelines framed by the Government of India have got binding effect on the States. The State or its instrumentality lacks jurisdiction to take a decision against NRHM scheme or its operational guidelines. Since broadly the aims and object of the scheme are also covered by List III of Schedule 7 of the Constitution, now it is well settled law that in case Union of India discharges its obligation under List III of Schedule 7 of the Constitution, then in view of provision contained in Articles 256 and 257 of the Constitution, subject to repugnancy, Union of India will have overriding power with regard to subjects contained in List III of Schedule 7. Meaning thereby the State lacks jurisdiction to take a policy decision or frame law which may contravene the decision of the Government of India with regard to subjects which falls within the domain of List III of Schedule 7 of the Constitution. Article 257 of the Constitution further provides that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose vide **AIR 1977 Supreme Court 1361 State of Rajasthan vs. Union of India**. For convenience Articles, 256 and 257 are re-produced as under:-

**“Article 256:- Obligation of State and the Union:-**  
*The executive power of every State shall be so exercised as to ensure compliance with laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.*



**Article 257:- Control of the Union over States in certain cases:-**

*(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.*

*(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance.*

*Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.*

*(3) The Executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.*

*(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.”*

59- In view of above, since the NRHM scheme and operational guidelines are broadly also covered by the subjects contained in List III of Schedule 7, the State Government does not possess jurisdiction to violate the terms and conditions contained in the NRHM scheme and its Operational guidelines.

60- The Hon'ble Supreme Court in the case reported in **(1981) 1 SCC 246 Akhil Bhartiya Soshit Karamchari Sangh and others vs. State of**

**U.P. and another**, while considering the directive principle of State and fundamental right held as under:-

*“The difference between the Fundamental Rights and Directive Principles lies in this that Fundamental Rights are primarily aimed at assuring political freedom to the citizens by protecting them against excessive State action while the Directive Principles are aimed at securing social and economic freedoms by appropriate, State action. The Fundamental Rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to Courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a Court of law. It is unimaginable that any Court can compel a legislature to make a law. If the Court can compel Parliament to make laws then Parliamentary democracy would soon be reduced to an oligarchy of Judges. It is in that sense that the Constitution says that the Directive Principles shall not be enforceable by Courts. It does not mean that Directive Principles are less important than Fundamental Rights or that they are not binding on the various organs of the State.*

*This Court has, on former occasions, upheld executive and legislative action hovering "perilously near" but not plunging into unconstitutionality (see In re: Kerala Education Bill (1959 SCR 995 at 1064). It is a constant guideline which we must vigilantly remember, as we have stated earlier, that our Constitution is a dynamic document with destination social revolution. It is not anaemic nor neutral but vigorously purposeful and value-laden as they very descriptive adjectives of our Republic proclaim. Where ancient social injustice freezes the 'genial current of the soul' for whole human segments our Constitution is not non-aligned. Activist equalisation, as a realistic strategy of producing human equality, is not legal anathema for Arts. 14 and 16. To hold otherwise is constitutional obscurantism and legal literalism, allergic to sociologically intelligent interpretation.*

*The authentic voice of our culture, voiced by all the great builders of modern India, stood for*

*abolition of the hardships of the pariah, the mlecha, the bonded labour, the hungry, hard-work in half-slave, whose liberation was integral to our Independence. To interpret the Constitution rightly we must understand the people for whom it is made—the finer ethos, the frustrations, the aspirations, the parameters set by the Constitution for the principled solution of social disabilities. This synthesis of ends and means, of life's maladies and law's remedies is a part of the know-how of constitutional interpretation if alienation from the people were not to afflict the justicing process.*

*A statute rarely stands alone. Back of Minerva was the brain of Jove, and behind Venus was the spume of the ocean.*

*These broader observations are necessary to set our sights right, to appreciate that our Constitution lays the gravestone on the old unjust order and the cornerstone of the new humane order. This constitutional consciousness is basic to interpretative wisdom. We may now start with the facts of the case and spell out the particular problems demanding our consideration. Constitutional questions cannot be viewed in vacuo but must be answered in the social milieu which gives it living meaning. After all, the world of facts enlivens the world of words. And logomachy is not law but a fatal, though fascinating, futility if alienated from the facts of life. So, before pronouncing on the legality of the impugned ten orders we must sketch the social setting in which they were issued and the socio economic facts which clothe Art. 16(4) with flesh and blood.*

*'The wisest in council, the ablest in debate and the most agreeable companion in the commerce of human life, is that man who has assimilated to his understanding the greatest number of facts.'*

In Famous case **Keshawananada Bharati vs. State of Kerala** reported in (1973) 4 SCC 225, the Hon'ble Supreme Court held as under:-

*“No one can deny the importance of the Directive Principles. The Fundamental Rights and the Directive Principles constitute the 'conscience' of our Constitution. The purpose of the Fundamental Rights is to create an egalitarian society, to free all citizens*

*from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the Constitution seeks to fulfil the basic needs of the common man and to change the structure of our society. It aims at making the Indian masses free in the positive sense.*

*Part IV of the Constitution is designed to bring about the social and economic revolution that remained to be fulfilled after independence. The aim of the Constitution is not to guarantee certain liberties to only a few of the citizens but for all. The Constitution visualizes our society as a whole and contemplates that every member of the society should participate in the freedoms guaranteed. To ignore Part IV is to ignore the substance provided for in the Constitution, the hopes held out to the Nation and the very ideals on which our Constitution is built. Without faithfully implementing the Directive Principles, it is not possible to achieve the Welfare State contemplated by the Constitution. A society like ours steeped in poverty and ignorance satisfying the minimum economic needs of every citizen of this country. Any Government which fails to fulfil the pledge taken under the Constitution cannot be said to have been faithful to the Constitution and to its commitments.*

*Indeed the balancing process between the individual rights and the social needs is a delicate one. This is primarily the responsibility of the "State" and in the ultimate analysis of the Courts as interpreters of the Constitution and the laws.*

*If convicting and punishing a person twice for an offence by a judgment is equivalent to the "State passing a law in contravention of the rights conferred by Part III" for the purpose of enabling the person to file a petition under Article 32 to quash the judgment, I can see no incongruity in holding, when Article 37 says in its latter part. "it shall be the duty of the State to apply these principles in making laws", that judicial process is 'state action' and that the judiciary is bound to apply the Directive Principles in making its judgment.*

*Theories of political science, sociology, economics and philosophy were copiously quoted before us. Some of these contain a valiant defence of*

*the right of property without which, it is said, all other fundamental freedoms are as writ in water. Others propound the view that of all fundamental rights, the right to property is the weakest, from which the conclusion is said to follow that it was an error to include it in the chapter on Fundamental Rights. Our decision of this vexed question must depend upon the postulate of our Constitution which aims at bringing about a synthesis between 'Fundamental Rights' and the 'Directive Principles of State Policy', by giving to the former a pride of place and to the latter a place of permanence. Together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience."*

61- In (1996) 4 SCC 37, the Hon'ble Supreme Court held that it can not be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people which includes free legal aid to the poor class and merely on the ground of financial constraints, State cannot deprive the citizen from their rights.

In (1987) 2 SCC 165 Vincent Panikurlangara vs. Union of India, their lordships held as under:-

“ A healthybody is the very foundation for all human activities. That is why the adage "Sariramadyam Khaludharma Sadhanara". In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. This Court in Band-hua Mukti Morcha v. Union of India, [1984] 3 SCC 161 aptly observed:-

*"It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin's case--[1981] 1 SCC 608--to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities*

*for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just as humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State--neither the Central Government---has the right to take any action which will deprive a person of the enjoyment of these basic essentials".*

While endorsing what has been said above, we would refer to Article 47 in Part IV of the Constitution. That Article provides:--

*"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."*

*This Article has laid stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the State. In Akhil Bharatiya Soshit Karmachari Sangh v. Union of India, [1981] 1 SCC 246 this Court has pointed out that, "the Fundamental Rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justifiable. However, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a Court of Law, but it does not mean that Directive Principles are less important than Fundamental Rights or that they are not binding on the various organs of the State.*

*"In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of*

*these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority--perhaps the one at the top."*

62- In view of above, though the health subject falls within the domain of the State Government but in case Government of India proceeds in public interest which includes health related subjects given in List III Schedule 7 of the Constitution under NRHM scheme, then the State or its instrumentality have to follow the scheme and enforce the same in its letter and spirit being substantially funded by the Government of India. The State and its instrumentality have no right to move in their own way that too in violation of scheme and its operational guidelines. Any decision or policy taken by the State Government in contravention of NRHM scheme and its operational guidelines shall not be sustainable and may be set aside under judicial review by the Court while exercising power under Article 226 of the Constitution of India. Accordingly, submission of learned counsel for the petitioners carries weight.

#### **CONTRACTUAL ASSIGNMENT AND THE SCHEME**

63- Learned Chief Standing Counsel vehemently argued that being contractual assignment, it is not open for the Court to interfere with the impugned order. Reliance has been placed on the case reported in **(2006) 4 Supreme Court Cases 1 Secretary State of Karnataka and others vs. Umadevi (3) and others**. In this case, their Lordships of Supreme Court held that if it is an contractual appointment, the appointment comes to an end at the end of contract. The temporary employee could not claim to be made permanent on the expiry of his term of appointment. Relevant portion of the judgment of Umadevi's case is reproduced as under:-

*"Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16*

*of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.”*

64- A plain reading of Hon'ble Supreme Court judgment reveals that the contractual appointment shall continue upto the end of scheme subject to terms and conditions of the scheme. Now it is settled law that the appointment under the scheme ordinarily is liable to continue till the end of scheme. Contractual appointments done in pursuance to scheme framed by the Government are liable to continue till end of scheme. The Government or its authority have got no right to act arbitrarily in violation of scheme. It shall be obligatory for the Government to act fairly with due application of mind under the scheme vide **(2009) 16 SCC 385 Raji Kumar and others vs. Director of Health Services, Kerala and others, (2009) 6 SCC 611 Mohd. Abdul Kadir and another vs. Director General of Police Assam and others, (2008) 5 SCC 1 P.**



**Venugopal vs. Union of India, AIR 2005 SC 4413 Center for Public Interest Litigation vs. Union of India, (2010) 28 LCD 1248 Dhirendra Kumar Rai vs. State of U.P. & others and (2008) 3 SCC 484 Moni Shanker vs. Union of India.**

65- In the case of Mohd. Abdul Kadir (supra) the law on the question with regard to contractual appointment has been sum up by the Hon'ble Supreme Court after considering the constitution bench judgment of Uma Devi (supra). For convenience paras 15, 16, 17 and 18 of the judgment of Abdul Kadir's case (supra) are reproduced as under:-

*“Para 15- On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such Project or Scheme cannot claim any right to continue in service, nor seek regularization in some other project or service. (See Bhagwan Dass v. State of Haryana - 1987 (4) SCC 634, Delhi Development Horticulture Employees Union v. Delhi Administration - 1992 (4) SCC 99, Hindustan Steel Works Construction Ltd., vs. Employees Union-1995 (3) SCC 474, UP Land Development Corporation vs. Amar Singh - 2003 (5) SCC 388, Madhyamik Shiksha Parishad UP v. Anil Kumar Mishra-2005 (5) SCC 122, Secretary, State of Karnataka v. Umadevi- 2006 (4) SCC 31, Indian Council of Medical Research vs. K. Rajyalakshmi-2007(2) SCC 332, and Lal Mohammed vs. Indian Railway Construction Co. Ltd. - 2007 (2) SCC 513). In view of this settled position, the appellants will not be entitled to regularization.*

*Para 16- We may next consider the challenge to the procedure of annual termination and reappointment introduced by the circular dated 17.3.1995. The PIF Scheme and PIF Additional Scheme were introduced by Government of India. The scheme does not contemplate or require such periodical termination and re-appointment. Only ex-servicemen are eligible to be selected under the scheme and that too after undergoing regular selection process under the Scheme. They joined the scheme being under the impression that they will be continued as long as the PIF Additional Scheme was continued. The artificial annual breaks and reappointments were introduced by the state agency entrusted with the operation of the Scheme. This Court has always frowned upon artificial breaks in service.*

*Para 17- When the ad-hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.*

*Para 18- We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the scheme. The circular dated 17.3.1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be is quashed.”*

66- Thus, it is evident that the right of the petitioners co-relates not only with the appointment letter but also with the terms and conditions given in the NRHM scheme. Subject to satisfactory discharge of duty, they have right to continue in service.

67- An argument is also advanced by some of the petitioners' counsel that State and the Mission authorities are not appointing Male Ayush doctors for extraneous reasons to misappropriate funds by making fake appointment but no material has been placed on record. However, such possibility may be removed by making the system more transparent. Every appointment and financial transaction under the NRHM scheme be

placed on website with all particulars, name, address, post/designation, salary, tenure of appointment etc. Salary to all the employees whether contractual or regular under NRHM scheme must be paid and transferred to the Bank Account of the respective employee. Government of India is directed to make necessary amendment in the NRHM scheme and its Operational Guideline forthwith and ensure its compliance by making the governance of NRHM scheme transparent.

#### FINDINGS

68- In view of above, to sum up:-

(i) State Government has not approached the Court with clean hands and initially while filing counter affidavit a defence is taken that because of non supply of medicines by the central government, State took a decision not to appoint Male Ayush doctors, but latter on the State came forward with a case that on account of reduction of budget, State was compelled to take a decision not to appoint Male Ayush doctors and pharmacists while revising the PIP. Both the grounds set up by the State seems to be an afterthought by shifting of stand.

(ii) The Director General, Family Welfare, who appeared before the Court alongwith officers of the Mission had not brought on record the correct facts. The Director General, Family Welfare under the scheme was not authorized to issue Circular dated 15.4.2011 restraining the appointment of Male Ayush doctors and pharmacists. Director General has exceeded his jurisdiction. He tried to evade the query of Court and made incorrect statement while asserting his right to issue circular by oral discussion that too does not seem to be fortified by record.

(iii) The meeting of officers dated 15.4.2011 for revising the PIP is not in accordance to Operational guidelines. Under the Operational guidelines, the executive committee contains ten members, out of which five are office bearers and the Director General is its member.

From the record produced before the Court, it is evident that the meeting was attended by Neeta Chaudhari, President, Executive Body NRHM scheme and Anoop Mishra, Chief Secretary, Govt. of U.P. and

not by all the members or majority of the members constituting the executive body. No agenda was circulated for the meeting. Thus, the entire proceeding dated 15.4.2011 at the face of record vitiates since the decision was not taken by the duly constituted committee under the Operational guidelines. Otherwise also, the Note Sheet dated 15.4.2011(supra) does not transpire that the decision was taken not to appoint Male Ayush doctors and pharmacists, rather from the note sheet it is evident that the budget was confined to Rs. 3312.96 Crores and accordingly the entire set up was revised which includes appointment of Male Ayush doctors and pharmacists. From the note sheet, it is obvious that even the Government of India has not directed to deprive the State of U.P. from Male Ayush doctors and pharmacists.

Thus, the State has filed false affidavit contrary to its own record while defending its action and State counsels have also not taken note of the material on record while defending the State action. Though on 31.5.2011, statement was made by learned Chief Standing Counsel to inform the Court, as to who was holding the post of Mission Director but till delivery of judgment, Court has not been informed as to who was the In-charge Mission Director when the decision to revise the PIP was taken, though compilation of case law and written argument was filed.

(iv) The Government of India owes responsibility and has right to exercise power since part of the aim and object of the NRHM scheme is also covered under the List III Schedule VII of the Constitution. The State cannot take any decision contrary to NRHM scheme and its Operational guidelines. It is also incorrect on the part of the State Government to say that fund is not available, more so when Rs. 2340.62 crores was unutilized upto 2010-2011 by the State Mission and the State authorities that too when the State is suffering from acute health problem and thousands of vacancies have not been filled up in all three branch i.e. Allopathy, Homeopathy and Ayurved (supra).

Accordingly, State is not justified in not implementing the scheme

in the State of U.P. in its letter and spirit when citizens' fundamental right of life, quality of life and hygienic condition etc. protected by Article 21 of the Constitution is in distress. In view of Mohd. Abdul Kadir's case (supra), Male and Female Ayush doctors and pharmacists appointed under the scheme, are entitled to continue in terms of NRHM scheme and Operational guideline subject to finance provided by the Government of India till the scheme continues and subject to satisfactory discharge of duty.

(v) The revised PIP was prepared on unfounded ground by the persons who were not authorised under the scheme or the operational guidelines. In the State of U.P. thousands of posts are lying vacant in all three medical faculties (supra) which suffers from substantial medical deficiency. The incumbents, who were appointed under original PIP are entitled to continue under NRHM scheme subject to approval and availability of fund granted by Union of India.

69- There appears to be crack in the system of governance. The judiciary is not powerless to give a dent but first bureaucracy should be cautioned to correct themselves. Shifting of stand, filing of affidavit on unfounded ground and against the record, not coming forward with correct facts before the Court (supra) are all such instances which creates reasonable doubt with regard to bona fides on the part of government while assisting the Court. We have earlier noticed that how the State authorities have acted in misappropriating the fund and transporting the food grains outside the State in food scam case reported in **2010 ADJ 504 Vishwanath Chaturvedi Vs. Union Of India Through its Secy. Rural Dev. & Ors.** A division bench, of which one of us was member (Hon'ble Devi Prasad Singh, J) while deciding Writ Petition No. 9416 (MB) of 2010 vide judgment and order dated 29.4.2011 (Mohd. Kausar Jah vs. Union of India and others) taken note of a report in one another writ petition (para 20) with regard to unauthorised and unsystematic mining activities in the State of U.P. causing damage to river course and environment hazards. Situation of governance is grim.

Now in the present case effort was made not to apprise the Court with correct facts.

Present scenario may be expressed from Paradise Lost by John Milton, to quote:-

*“With ruin upon ruin, rout on rout,  
Confusion worse confounded.”*

70- Dr. B. R. Ambedkar in Constituent Assembly canvassed for the permanent bureaucracy at par with Britain over and above the spoiled system sometimes prevailing in United States of America since he was impressed by the opinion given by his private secretary while in charge of PWD department against installation of statute contrary to wishes of Governor General. Dr. Ambedkar noted that function of the government was to lay down policy and not to interfere and to make any discrimination or use the power for glorification. (Dr. Baba Saheb Ambedkar's writes and speeches Volume 17 Part III Page 479-480). However, the wishes of chief architect of Indian Constitution seems to be eroding very fast.

71- Bureaucracy is loosing people's faith and it seems to be at lowest eb. Even courts are not spared for extraneous reasons. Whether it is the beginning of 'break up' of constitutional machinery in the State of U.P.? Chief Secretary, Government of U.P. is directed to look into the matter and ensure that the statement given before the Court are correct and records are produced as required with correct information in dispensation of justice, otherwise there shall be no option except to proceed against erring officers in accordance with law.

Lord Alfred Tennyson has rightly said, to quote:-

*“And trust me not at all or all in all.”*

*(Idylls of the King 'Merlin and Vivien' (1959))*

72- There appears to be no option except to evolve corrective measures or new principles of law to set the things right. The higher judiciary cannot shirk its responsibilities to ensure fairness in governance in due course of time.

Jo Grimond while giving speech on 14 September, 1963 in Liberal Party Annual Assembly said, to quote:-

*“In bygone days, commanders were taught that when in doubt, they should march their troops towards the sound of gunfire. I intend to march my troops towards the sound of gunfire.”*

73- In view of above, the writ petitions deserve to be and are allowed. A writ in the nature of certiorari is issued quashing the order dated 15.4.2011 issued by Director General, Family Welfare and all other orders and circular issued by the State of U.P. or the State Mission in pursuance to revised PIP. Subject to approval of Government of India and fund made available, all incumbents which includes Male and Female Ayush doctors and pharmacists shall be entitled to continue in service till the scheme continues.

However, it shall be open to the State and the Mission to revise PIP strictly in accordance to NRHM scheme and Operational Guidelines in case exigencies of services required and pass fresh order.

A writ in the nature of mandamus is issued directing the State Government and the Mission authorities to display each and every appointment made under the NRHM scheme in the State of U.P. on a website, indicating therein the name, address, post or designation, qualification, salary and tenure of appointment of the employee/person concerned, forthwith.

Subject to observations and the directions as above, the writ petitions are allowed accordingly. No cost.

Let a copy of this judgment be sent to the Chief Secretary, Government of U.P. to adopt corrective measures and streamline the system of governance keeping in view the observations made and findings recorded in the body of judgment.

(Hon'ble S.C. Chaurasia, J.)      (Hon'ble Devi Prasad Singh, J.)