

**IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN  
&  
THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH**

**Thursday, the 11<sup>th</sup> day of May 2023 / 21st Vaisakha, 1945  
RP NO. 379 OF 2021(S) IN WP(C) 10659/2021(S)**

**REVIEW PETITIONER/RESPONDENT NO.5:**

**KERALA PRIVATE HOSPITALS ASSOCIATION HAVING ITS REGISTERED  
OFFICE AT KPHA HEAD QUARTERS,ASHIR BHAVAN ROAD,  
KACHERIPPADY,ERNAKULAM,KOCHI-682018,  
REPRESENTED BY ITS PRESIDENT,HUSSAIN KOYA THANGAL.**

**RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 4 & RESPONDENTS 6 TO  
12 IN WP(C)No.10659/2021:**

- 1.ADV.SABU P. JOSEPH ,AGED 46 YEARS,S/O.T.A.JOSEPH,  
VICE-CHAIRMAN,LEGAL CELL,HUMAN RIGHTS FORUM,  
REG.NO.186/IV/19,REGISTERED OFFICE AT  
B NO:XX-638,CLASSIC TOWER,A M ROAD,PERUMBAVOOR-683542.**
- 2.THE STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF  
KERALA,SECRETARIAT,THIRUVANANTHAPURAM-695001.**
- 3.DIRECTOR GENERAL OF HEALTH SERVICES,  
DIRECTORATE OF HEALTH SERVICES,  
GENERAL HOSPITAL JUNCTION,THIRUVANANTHAPURAM-695035.**
- 4.INDIAN COUNCIL OF MEDICAL RESEARCH ,  
V.RAMALINGASWAMI BHAVAN,  
P O BOX NO.4911,ANSARI NAGAR,NEW DELHI-110029.  
REPRESENTED BY ITS SECRETARY AND DIRECTOR GENERAL.**
- 5.UNION OF INDIA, REPRESENTED BY ITS SECRETARY,  
HEALTH AND FAMILY WELFARE,NIRMAN BHAVAN,NEW DELHI-110011.**

**P.T.0**

- 6.STATE HEALTH AGENCY, REPRESENTED BY EXECUTIVE DIRECTOR,  
ARTECH MEENAKSHI PLAZA,5TH AND 8TH FLOOR,OPP.GOV.T.WOMAN  
AND CHILD HOSPITAL,THYCAUD,THIRUVANANTHAPURAM-695014.
- 7.NATIONAL HEALTH MISSION REPRESENTED BY THE EXECUTIVE  
DIRECTOR, NRHM BUILDING,GENERAL HOSPITAL,DIRECTORATE  
OF HEALTH SERVICE, JAI VIHAR,KANNUKUZH, Y,  
THIRUVANANTHAPURAM-695035.
- 8.KERALA MEDICAL SERVICES CORPORATION LTD.  
REPRESENTED BY EXECUTIVE DIRECTOR,C.V.RAMAN PILLAI ROAD,  
WOMAN AND CHILDREN HOSPITAL,THYCAUD,  
THIRUVANANTHAPURAM-695014.
- 9.THE INDIAN MEDICAL ASSOCIATION(IMA),KERALA  
REPRESENTED BY PRESIDENT,HEADQUARTERS,ANAYARA.P.O,  
THIRUVANANTHAPURAM-695029.
- 10.QUALIFIED PRIVATE MEDICAL PRACTITIONERS ASSOCIATION,  
REPRESENTED BY ITS PRESIDENT,FLOOR-V-E/F,  
VALLAMATTAM ESTATE, RAVIPURAM,M.G.ROAD,KOCHI-682015.
- 11.CATHOLIC HEALTH ASSOCIATION OF INDIA,  
REPRESENTED BY THE EXECUTIVE DIRECTOR,PASTORAL  
ORIENTATION CENTRE, CIVIL LINE ROAD,PALARIVATTOM,  
KOCHI-682028.
- 12.MUSLIM EDUCATIONAL SOCIETY ,BANK ROAD,CALICUT-673011,  
REPRESENTED BY ITS PRESIDENT DR.P.A.FAZAL GAFOOR.

\*ADDL. R13 IMPEADED

13.THE STATE POLICE CHIEF, KERALA

\*ADDL R13 SUO MOTU IMPEADED AS PER ORDER DATED 09.09.2021  
IN RP 379/21 IN WPC 10659/21.

P.T.O.

**ADDL. R14 IMPEADED**

14.DR.ARAVIND C.S., S/O.SREEDHARAN, AGED 50 YEARS,  
RESIDING AT THIRUVANANTHAPURAM, GENERAL SECRETARY,  
KERALA GOVERNMENT MEDICAL COLLEGE TEACHERS ASSOCIATION,  
THIRUVANANTHAPURAM-695 011.

ADDL. R14 IS IMPEADED AS PER ORDER DATED 19/01/2023 IN  
IA.1/2023 IN RP 379/21 IN WPC 10659/21.

**ADDL.R15 IMPEADED**

15. KERALA UNIVERSITY OF HEALTH SCIENCES

REPRESENTED BY REGISTRAR DR MANOJ KUMAR,  
AGED 58 YEARS, S/O KUNJAN PILLAI,  
MEDICAL COLLEGE P.O, THRISSUR, KERALA 680 596.

ADDL. R15 IS IMPEADED AS PER ORDER DATED 10/05/2023 IN  
IA 9/2023 IN RP 379/21 IN WPC 10659/21

Review petition praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to allow the above the Review Petition, review the judgment dated 10/05/2021 in WP(C)No.10659/2021, and to pass such other order or further orders as this Honourable Court may deem fit and proper in the circumstances of the case.

This petition again coming on for orders upon perusing the petition, this Court's judgment dated 10/05/2021 in WP(C)10659/2021 & order dated 10/05/2023 in RP.379/2021 and upon hearing the arguments of SRI.SYAM DIVAN (SENIOR ADVOCATE) along with SRI.K. ANAND, Advocates for the petitioner, ADVOCATE GENERAL & GOVERNMENT PLEADER for R2 & R3, DEPUTY SOLICITOR GENERAL OF INDIA for R4 & R5, DR.S. GOPAKUMARAN NAIR (SENIOR ADVOCATE) along with SRI.SURAJ T.ELENJIKKAL, Advocate for R9, M/S.M.GOPIKRISHNAN NAMBIAR, K.JOHN MATHAI, JOSON MANAVALAN, KURYAN THOMAS, PAULOSE C. ABRAHAM, JAI MOHAN & RAJA KANNAN, Advocates for R10, SRI.S. KANNAN, SENIOR GOVERNMENT PLEADER for Addl.R13 and of SRI.P.SREEKUMAR, ADVOCATE for Addl.R14 & STANDING COUNSEL for Addl.R15, the court passed the following:

P.T.O.

**DEVAN RAMACHANDRAN &  
Dr.KAUSER EDAPPAGATH, JJ.**

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I.A.No.10 of 2023 in RP No.379 of 2021  
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Dated this the 11<sup>th</sup> day of May, 2023

**ORDER**

**Devan Ramachandran, J.**

Read order dated 10.05.2023.

2. The directions in the afore order are confirmed since the learned Senior Government Pleader – Sri.S.Kannan says no modifications are necessary, particularly because Section 2 of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012, covers medical students, interns, house surgeons and every other person involved in the Health Sciences Education.

3. As directed by us, the State Police Chief (SPC) has appeared online, assisted by Sri.Ajith Kumar, Additional Director General of Police (ADGP).

4. The SPC and ADGP explained in detail as to the manner in which the incident, we focus upon herein,

happened; but we must say that we are not concerned about the same, as much as we are to ensure that no further attacks are caused on any Health-care professional in the future.

5. We are told that an investigation into the death of Vandana Das is going on and we direct the SPC to ensure that investigation is carried out in her name faithfully, truthfully and diligently. He has assured that every step in that regard will be taken.

6. The ADGP on his part, confirmed that though there are protocols with respect to the manner in which accused and other persons in custody of the Police are to be presented before medical professionals or in hospitals, they are not up to the mark at the present time and require modification; and he offered that submissions in this regard will be made by the next posting date. We record the afore.

7. As far as the incident in question is concerned, there can be little doubt that the killing of a young doctor by a person who was in custody of the police — be that as an accused or in any other capacity — points at a systemic failure. The Police Officers above were also *ad idem* that it

is the fundamental duty of any officer to guard a citizen, even at the cost of their own lives. The preliminary information that we have, which is gathered from the statements filed on behalf of SPC and others, is that, for some reason, Vandana Das was alone in the observation room at the particular point of time, which opportunity was seized by the accused to repeatedly stab her. This is a gruesome incident, which, as we have already said in our earlier order, should have never happened.

8. Obviously, therefore, protocols will have to be immediately evolved as to the manner in which doctors, healthcare professionals, students, interns, house surgeons and such others are to be protected because, otherwise, the faith in the system will surely erode.

9. We, therefore, direct the SPC to evolve sufficient and effective protocols with respect to the manner in which persons in custody – be that accused or otherwise – are to be presented in hospitals and before medical professionals as part of the criminal justice system or such other; and, as we have already said in our earlier order, it would be apposite to reflect upon the protocols that are applicable in the case of the production of accused before

a learned Magistrate. We must, however, say that even the protocols with respect to learned Magistrates are extremely lacking and it is only a matter of providential grace that we have yet to come across a situation where such an officer is attacked. The Police will have to certainly pull up their socks on a war-footing.

10. As matters now stand, lack of protocols or inefficiency of the same, can never be impelled as a reason to justify another crime. We, therefore, direct that, for the time being, every protocol applicable for production of the accused or persons in custody of the Police before the learned Magistrate shall apply in the case of the production of such persons in the hospitals or before the doctors or health care professionals concerned.

11. As far as the security in various hospitals, particularly those in the Government sector, is concerned, we have no doubt that it is the fundamental duty of the SPC to ensure such. In fact, he also agreed to this and submitted that he will place on record necessary requirements and protocols in this regard, including considering whether members of the State Industrial Security Force (SISF) can be deployed for such purposes.

Of course, we have to give the SPC some time to consider all these aspects and inform us; but, in the meanwhile, we are constrained to ensure that effective security is provided in all hospitals in the manner as is legally possible, so as to avoid any further incidents or attacks. We remind the SPC, as we have already indited above, that it is the fundamental obligation of the police force, headed by him, to ensure that hospitals and the personnel who man them are adequately and sufficiently protected on a day-to-day basis, for the 24 - hour time frame.

12. At this time, Sri.Gopakumaran Nair – learned senior counsel, instructed by Sri.Prasanth, intervened to say that Government has been assuring his client – the Indian Medical Association and others, that an Ordinance will be brought in to amend the '2012 Act' appositely. He prayed that directions be issued to them to do so quickly; with an adscititious plea that Government be also directed to consider the appointment of a Special Prosecutor for trial of the case that we are concerned about.

13. Sri.S.Kannan – learned Senior Government Pleader, in response, submitted that the afore requests of the learned senior counsel will be certainly taken note of



by the Government with all seriousness; and that, as far as the Ordinance is concerned, discussions are going on with all stakeholders and the prayers will be made known to this Court by the next posting date.

14. We permit the Kerala University of Health Sciences (KUHS) to make their suggestions, regarding the Ordinance or the amendments - as the case may be, before the Government, which shall also be taken into account appositely.

15. Finally, Dr.Rajeev Joshi submitted that he has certain IAs to which the Government has not yet responded. We, therefore, direct the learned Senior Government Pleader to look into these interim applications and respond by the next posting date.

List on 23.05.2023.

H/o

**Sd/- DEVAN RAMACHANDRAN,  
JUDGE**

**Sd/- Dr. KAUSER EDAPPAGATH,  
JUDGE.**

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