IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

WRIT PETITION (PIL) NO.164 OF 2019
AND
WRIT PETITION (PIL) NO.236 OF 2021

#
WRIT PETITION (PIL) NO.164 OF 2019

Karukola Simhachalam,
s/o Nandesu (late),
Occ: Advocate, High Court of Andhra Pradesh,
Tolusurupalli Village,
Tekkali (Post & Mandal),
Srikakulam District. ..... Petitioner

Versus

Union of India,
Rep. by its Secretary,
Health & Family Welfare Department
'A' Wing Shastri Bhawan,
Rajendra Prasad Road,
New Delhi – 110 001 & 22 others .... Respondents

Counsel for the Appellants : Mr. Simhachalam Karukola

Counsel for Respondent Nos.5 to 17
Respondent Nos.19 to 23 : Learned Advocate General

Counsel for Respondent No.18 : Learned Advocate General

WRIT PETITION (PIL) NO.236 OF 2021

Annepu Mahandhata
s/o late Karu Naidu, age 64 years
R/o 1-160, Main Veedhi, Kanithivooru,
Nandigam Mandal,
Srikakulam District. ..... Petitioner

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Counsel for the Appellants : Mr. M. Lakshmi Narayana

Counsel for Respondent Nos.1 to 4	:	Mr. N. Harinath, Assistant Solicitor General
Counsel for Respondent Nos.5 to 7 And 9 to 14	:	G.P. for Medical & Health
Counsel for Respondent No.8	:	G.P for Revenue
Counsel for Respondent No.15	:	G.P for Environment
Counsel for Respondent No.16	:	G.P for Mines
Counsel for Respondent No.17 to 19:		G.P for Panchayat Raj

JUDGMENT PRONOUNCED ON: 28.01.2022

+ HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?

2. Whether the copies of judgment may be marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

+ HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

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> HEAD NOTE:

? Cases referred

1. 1980 Cri LJ 1075
2. AIR 1992 SC 573,585
3. 1996 (8) SCALE33
4. AIR 1997 Ori 37
5. (1995) 3 SCC 42
6. 1981 (1) SCC 608
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9. AIR 1995 SC 636
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11. 1995 (2) SCC 577
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14. 1997 (2) SCC 83
15. W.P.No.36929 of 1998 dated 20.07.2001
16. AIR 1987 AP 171
17. 1995 (2) SCC 577
18. (1995) 3 SCC 42
19. AIR 1996 SC 3261
20. AIR 1991 SC 420
21. AIR 1990 SC 630
22. AIR 1988 SC 1037
23. AIR 1987 SC 359
24. AIR 1987 SC 990
25. AIR 1993 SC 2178
26. 1999 (1) AWC 847
27. 1995 (3) SCC 42
28. 1997 (2) SCC 83
29. (1996) 4 SCC 37
30. 2010 Crl.L.J 94
31. (1996) 4 SCC 37
32. AIR 1997 M.P. 191
33. (2000) 3 UPLBEC 1969
34. AIR 2002 SC 40

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

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(*Proceedings through Physical mode)*

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COMMON ORDER

Dt.28.01.2022

(Per M. Satyanarayana Murthy, J)

Since the reliefs claimed by the petitioners in W.P. (PIL) NO.164 of 2019 and W.P. (PIL) NO.236 of 2021, are one and the same and based on identical allegations, except additional relief claimed in W.P.(P.I.L) No.236 of 2021, we find it expedient to decide both the writ petitions by common order.

2. Mr. Karukola Simhachalam, a practicing Advocate, claiming to be a public spirited person for public good, filed W.P (P.I.L) No.164 of 2019 under Article 226 of the Constitution of India as public interest litigation claiming the following reliefs:

(i) To direct the Union and the State Government are to undertake periodical national surveys for determining the prevalence rate and new cases detection rate of Uddanam CKD (C.K.D) and at the same time publish the reports of the concerned survey of the authorities and subsequent thereto into the public domain and also the activities must be given wide publicity;

(ii) To direct the Union Of India and State Government should organize massive awareness campaigns to increase public awareness about the signs and symptoms of Uddanam CKD (C.K.D) and the awareness should also be spread about the free availability of medicines at all health care facilities in Uddanam area;

(iii) To direct the Union and state are to ensure that drug for management of Uddanam CKD (C.K.D) and its complications including the drugs are available free of cost and do not go out of stock at all Primary Health Centers PHCs or as the case may be public health facilities in that Uddanam area;

(iv) To direct the Governments that treatment should be provided at free of cost to all Uddanam CKD (C.K.D) cases diagnosed through general health care system;

(v) To direct the Union And the State to organize seminars at all levels which serve as platforms to hear the views and experiences directly from the former patients and their families as well as doctors, social workers experts NGOs and Governments officials;

(vi) To direct the Union and State Government to ensure that both private and public schools do not discriminate against children hailing from CKD (C.K.D) affected families such children should not be turned away and attempt should be made to provide them free education;

(vii) To direct the Union and State Government to appoint the food inspectors for prohibit the food adulteration;

(viii) To direct the Union and State Government Due attention to be paid to ensure that the persons affected with CKD (C.K.D) are issued Below Poverty Line BPL cards so that they can avail the benefits under schemes which would enable them to secure their right to food;

(ix) To direct the Union and State Governments should construct 500 beds super Specialty Hospitals within the limits of Uddanam area with the adequate dialysis Units and testing laboratory;

(x) To direct the State together with the Union Of India should consider formulating and implementing a scheme for providing at least a minimum assistance preferably on a monthly basis to all CKD (C.K.D) affected persons for rehabilitations;

(xi) To direct the Union and the State Governments must proactively plan and formulate a comprehensive community based rehabilitation scheme which shall cater to all basic facilities and needs of the CKD (C.K.D) affected persons and their families The scheme shall be aimed at

eliminating the stigma that is associated with persons affected with C.K.D patients;

(xii) To direct the state and central Government should provide the mobile dialysis units in that Uddanam are who are the suffering with severe CKD (C.K.D);

(xiii) To direct the Union Government may consider framing separate rules for Uddanam Chronic Disease (C.K.D) patients and provide reservations in all governmental Jobs.

3. Similarly, W.P (P.I.L) No.236 of 2021 is filed claiming similar relief as claimed in W.P. (P.I.L) No.164 of 2019. However, an additional relief is sought for, to direct the district legal service authority to sensitize the residents of Uddanam Area (as outreach program) in coordination with medical experts, psychologists with the assistance of government organizations and NGOs initially for at least three years, so as to prevent the people of Uddanam from consumption of alcohol, utilization of cashew nut powder in foods and liquids such as tea and immediately preventing the act of smoking raw tobacco, inside out (adda pogaku chuttalu).

4. The writ petitioner in W.P.(P.I.L) No.164 of 2019 is permanent resident of Tekkali Mandal, claiming to be a person interested to protect the right to life of residents in and around Uddanam area, Srikakulam District, filed this writ petition by way of public interest litigation claiming the reliefs stated supra, alleging that for the last two decades, lakhs were afflicted by this Chronic Kidney Disease (hereinafter referred as 'CKD') known as *Uddanam Nephropathy* and that the issue could not be addressed effectively by successive governments and legislative members during the past two decades.

5. Uddanam area is a fertile, subtropical, low altitude territory, which is well-known for coconut and cashew farms in the Srikakulam district of the southern Indian state of Andhra Pradesh**.** Uddanam area that lies in

north-coastal Andhra consists of seven mandals of Kaviti, Sompeta, Kanchili, Itchapuram, Palasa and Vajrapukotturu, consisting for more than 100 villages in total. By 2015, It was estimated that more than 4500 people had died in the last ten years, and around 34,000 people are suffering from kidney diseases in this area alone. It was reported that each family in the area had at least one person suffering from kidney ailment. The cases had first mysteriously surfaced in the early 90s. Symptoms included hypertension and diabetes, followed by a long asymptomatic period, and later diagnosed with excess proteins in the urine, decreased red blood cell count and high levels of uric acid in the blood. The phenomenon was discussed and termed as *"Uddanam Nephropathy"* at the 2013 International Congress on Nephrology held in Hong Kong.

6. Though it has been close to twenty years since the first cases were reported, the cause of *Uddanam Nephropathy* is yet to be scientifically established. The disease is known to disproportionately affect farmers and agricultural workers. Coconut and cashew are the main crops grown in the area. Although the association of specific occupations with endemic nephropathy has highlighted the issue of environmental toxins and heat stress, the exact cause of *Uddanam Nephropathy* is still an enigma," according to Georgetown University in the May 2016 issue of the American Journal of Kidney Disease. While chemical analyses of cultivated rice or drinking water from the endemic area have been negative, the concern of environmental pollution with organo-chemical pesticides and heavy metal-remnants, because this was not assessed in these studies. In 2011, a group of researchers studied the drinking water

sources of these villages, "the presence of phenols and mercury in drinking water was found to be very high...Phenols and mercury, being very toxic in their characteristic nature, are bio-accumulative. Hence the water is found not suitable for potable purposes." But this finding too could not conclusively term water to be the sole culprit for such a high prevalence.

7. In 2016, The Indian Council of Medical Research (ICMR) along with researchers of Harvard University, Andhra Medical College, Bhabha Atomic Research Centre (BARC) and NTR University of Health Sciences among others looked into the matter. Researchers initially pinpointed “excessive levels of silica in water” as the cause after a preliminary round of examination. According to the World Health Organization, Uddanam is one of the three areas in the world with the highest concentration of CKD after Sri Lanka and Nicaragua. In 2015, the Minister of Medical and Health officially acknowledged that 70% of the total kidney ailments in Andhra came from the Uddanam area.

8. It is contended that, few scientific institutions and organizations conducted several tests of blood, urine, water and soil and opined the reason for kidney diseases as ‘high level of silica in water’, prolonged dehydration, heat stress, anti-inflammatory drug use, gene mutations, high pesticides use and heavy metals in water. Usage of adulterated local made tea power with cashew nut seed coat in Uddanam area was also suggested, which residues with high levels of Anacardic acids, which decreases the activity of human kidney. However, exploring the cause of CKD is still an enigma.

9. The petitioners in both the writ petitions contends that, the disease is intensifying quickly from village to village and it appears more in young male agricultural workers and indigent in rural working population, thereby, 70% of the patients die due to inadequate resources to continue treatment, as such, several families lost their sole breadwinners. The petitioner contends that, due to lack of systematic screening, less number of dialysis centers, expensive treatment in private hospitals, lack of providing free medicines, 80% patients are dying at home due to their non-affordability to costly treatment.

10. It is contended that, Uddanam area is being de-isolated from the State, as most of the schools in the area do not have minimum primary facilities like supply of drinking water, poor sanitation, good hygienic food. In addition to the devastation it caused in Uddanam area, the kidney conundrum has also opened a Pandora's box for the people of this area. With the World Health Organization identifying this area as one of the three areas burgeoning with kidney cases, vacancies in government offices and schools arose in this area. Many state employees who are working in Uddanam prefer to stay in other parts of the district and are scared to drink water here. The situation has also become difficult for youngsters planning to get married in the future as they have to find a girl from the same village or mandal as no one from other districts want to marry a girl or boy from this area due to the fear that they may also contract the disease in future.

11. It is finally contended that, sufferance of public at large in Uddanam area due to CKD is a public issue, as right to health is inclusive

of Right to Life under Article 21 of the Constitution of India. The petitioners' requests to direct the respondents to provide good and adequate health care to the people of Uddanam area and since the governmental agencies are neglecting the CKD sufferers, the petitioners filed the present writ petitions for the welfare and benefit of the residents of Uddanam area, claiming the reliefs as stated supra.

12. Mr.T. Bala Swamy, learned Government Pleader attached to the office of the learned Advocate General represented that the basis for claim in both the writ petitions is one and the same and adopted the counter affidavit filed in W.P (P.I.L) No.164 of 2019 in W.P.(P.I.L) No.236 of 2021. Therefore, the counter affidavit filed by the respondents in W.P (P.I.L) No.164 of 2019 is taken as counter affidavit in W.P (P.I.L) No.236 of 2021, as requested by Mr.T. Bala Swamy.

13. On behalf of Respondent Nos. 5 to 17 and 19 to 23, Dr.K.S. Jawahar Reddy, Special Chief Secretary to Government, Health, Medical and Family Welfare Department, A.P. Secretariat filed counter affidavit, while admitting the sufferance of the people due to CKD in Uddanam area and explained the steps that are taken to treat the patients suffering from CKD.

14. The Government of Andhra Pradesh issued G.O.Ms.No.102, dated 03.09.2019 for establishment of 200 bedded super Specialty Hospital, with Kidney Research Center and Dialysis Unit with an estimated expenditure of Rs.50 Crores (Non-recurring expenditure) and Rs.8.93 Crores per annum (recurring expenditure) alienating land to an extent of Ac.5-57 cents situated in Survey Nos. 253/29, 253/7A and 253/8B in

Ananthapuram Village of Kassibuga, Palasa Manda. In addition to the three existing dialysis centres at RIMS/GGH, Srikakulam, Area Hospital, Tekkali and Community Health Center, Palakonda. Two more centres, one at CHC, Palasa and one at CHC, Sompeta are started under national free dialysis Programme and functioning since May' 2017. One more dialysis center was established on 31.01.2019 at CHC Kaviti in Srikakulam district. Nephrologist services are available once in 15 days at all the 6 dialysis centers. A-V fistula facility, to perform dialysis is made available at RIMS/Government General Hospital Srikakulam, free of cost to all the patients requiring dialysis. The Government of A.P is also providing dialysis facility under the State Government sponsored Dr YSR Aarogyasree Scheme.

15. Nephrologists of George Institute for Global Health, India is conducting survey and research from 2017 in Uddanam area, on identification, diagnosis, investigation and management of CKD. One Special Officer was stationed at Uddanam area to monitor the activities regularly, by George Institute for Global Health. A total of 40 clusters (villages and surrounding hamlets) were selected for survey and interviews and biological samples (blood & urine) were collected from 2419 villagers in that area and survey in 40 Clusters has been completed.

16. The Government of AP with a view to provide safe drinking water - installed 6 RO Mother plants with 135 Dispensary units. Apart from that, as a permanent measure, the Government has accorded administrative sanction for Rs.700 Crores vide G.O.Ms.No.240, PR & RD (RWS/I) Department Dated 16-01-2020 to provide safe drinking water with house

connections @ 100 lped for the Uddanam area of Srikakulam District by drawing surface water from Heeramandalam Reservoir. Orientation and training program to Medical Officers and staff of 18 primary health centres of Uddanam area on CKD care and identifying patients who need specialist care for referral to higher centres for better treatment were conducted.

17. Uddanam groundwater has lower range of total dissolved solids and aluminum concentrations compared to Machilipatnam population of which, shares an almost similar lifestyle, habits, and climatic conditions. Ground water contamination with phthalates has been observed extensively in Uddhanam area; phthalates are attributable to population from plastic waste.

18. The Government of Andhra Pradesh with the association of Indian Council for Medical Research, under the Ministry of Health and Family Welfare, Government of India, New Delhi have entered an MOU with the George Institute for Global Health, India, New Delhi in two phases. The first phase articulates the clinical prevalence of CKD to measure affected population and to explore community perceptions related to CKD, while the second phase functions to determine the risk factors and progression of CKD while analyzing residue levels of heavy metals and pesticides through atomic absorption, so also to assess the levels of heavy metals in blood, various aspects like cost and health expenditure, economic burden of CKD, cost effectiveness of alternate models of CKD management and other methodological framework.

19. It is submitted that the Department of Public Health and Family Welfare, Government of Andhra Pradesh has conducted the following activities in Uddanam Area of Srikakulam District.

- Initially to identify persons who are affected, Mass screening was done to the public at large in udanam, for the age groups of above 30 years in all the Mandals of Uddanam area and 1,01,593 people were screened from Jan, 2017 to April, 2017 and 13093 people with abnormal tests results were referred to CHCs in the area (CHC Sompeta, CHC Palasa, CHC Haripuram, CHC Kavity and RIMS Srikakulam).
- Two Expert teams from Ministry of Health & Family Welfare, Government of India and Team constituted by Govt. of AP with ICMR have jointly visited Uddanam area in Jan.2018 to study the various aspects of CKD problem.
- CHCs Sompeta, Palasa, Kaviti, Ichapuram, Barua and Haripuram are provided with Lab Equipment and Reagents for testing CKD.
- In addition to the three existing dialysis centres at RIMS/GGH, Srikakulam, Area Hospital, Tekkali and CHC, Palakonda two more centres, 1 at CHC, Palasa and 1 at CHC, Sompeta are started under National Free Dialysis Programme and functioning since May'2017. One more dialysis center was established on 31.01.2019 at CHC Kaviti in Srikakulam district. Nephrologist services are available once in 15 days at all the 6 dialysis centers. A-V fistula facility, to perform dialysis is made available at RIMS Srikakulam, free of cost to all the patients requiring dialysis.

20. Regular survey is undertaken in Uddanam Area of Srikakulam District by the expert teams in association with George Institute for Global Health, India, New Delhi for environmental survey by Government of AP. Technical advisory committee meetings were held to assess the magnitude of the problem, measures required to treat the CKD patients, measures required to eliminate the causative factors. Progress of the measures taken in the previous meetings is being reviewed and further actions are contemplated in the following areas:

- Regular IEC (Information Education and Communication) materials for educating communities especially in uddanam area.
- Nephrologist services are available once in 15 days at all the 6 dialysis centers
- A-V fistula facility, to perform dialysis is made available at RIMS Srikakulam free of cost to all the patients requiring dialysis.
- Regular trainings to the ANMs and ASHAS (field level health workers) were imparted for examination of the patients.

- The required drugs and medicines are sufficiently available in the Central Drug Stores, Srikakulam and all the Government Medical Institutions viz., PHCS, CHCs and Area Hospitals. There are about 20 types of drugs and medicines which are sufficiently available at Central Drug Stores, Srikakulam for Continuous supply for the use of CKD patients as well as general public. Government has taken steps for providing the treatment to the CKD Patients free of cost in all Government medical institutions. Government as a part of Welfare Measures sanctioned the CKDu / Dialysis Pensions enhanced to Rs.10,000/- per month vide G.O.Ms.No. 103, Panchayat Raj and Rural Development (RD.,I) Department dated 30.05.2019.

21. Government also sanctioned financial assistance of Rs.5000/- to CKD patients (Stage 3, 4 and 5) who are not on dialysis vide G.O.Rt.No. 551 HM&FW (D2) Department dated 26.10.2019. Dedicated Kidney Research Institute is established with the support and partnership from Indian Council for Medical Research (ICMR) and George Institute for Global Health, India vide G.O.Rt.No.417, Dated 20.07.2017 at VIMS, Visakhapatnam. Now, it is shifted to Palasa, Srikakulam district and renamed as Kidney Research Innovation and Patient Assistance (KRIPA) centre vide G.O.Rt.No.111, HM&FW(D2) Department dated 12.2.2019.

22. The Government of Andhra Pradesh determined additional risk factors through detailed evaluation of occupational, dietary, heat exposure and NSAIDs (Non steroidal anti-inflammatory drugs, like Aspirin, Ibuprofen, Diclofenac, Aceclofenac etc) usage repeat eGFR and Urine PCR estimation for identifying new incident cases of CKD at 6 monthly intervals. Systematically, validated methodological procedure will be used to observe the heat stress in the study areas. Village level analysis of fluoride and silica levels will be undertaken. A new project proposal for undertaking genetic analysis of newly diagnosed patients and family members – both affected and unaffected members to be tested. In vitro study to be designed to examine the effect of phthalates, fluoride and

silica on renal tubular cells. A technology assisted clinical decision support for CKD screening and referral is facilitated through the KRIPA centre.

23. The respondent also provided statistics from 2003 to 2019 with regard to the measures being adopted for prevention and control of CKDs in Uddanam area.

24. Government of Andhra Pradesh, inaugurated the CKD Special Mobile Medical Clinics on 19.01.2017 at CHC Sompeta, and explained the details of work undertaken in order to combat CKD in Uddanam area.

a) 6 Special Mobile Medical Clinics started CKD screening in Uddanam area from 19.01.2017 & from 01.02.2017 started another 9 SMMC, total 15 SMMC are functioning now.
b) In Uddanam Area constituted 15 Special Mobile Medical Clinics for this purpose for early detection of renal diseases covering total population in the 114 high risk villages in Uddanam Area, each team consist of 1 Doctor, 2 Lab Technicians & 1 Data Entry Operator along with Semi Auto Analyzer, Centrifuge and testing kits.
c) The Government of India has deployed a Central Team of Experts under the Chairmanship of Dr. Sanjay Agarwal, HOD, Department of Nephrology, AIIMS, New Delhi with their team visited the Gunupalli Village of Vajrapu Kottur Mandal on 21.01.2017 and interacted with public and examined the CKD Patients.
d) On 06.02.2017 ICMR Team under the Chairmanship of Dr. T. Raviraj visited Special Mobile Medical Clinic Unit at Sompeta and visited Borivanka village and interacted with public.

25. The respondent also furnished details about abstract of Special Mobile Medical Clinics screening in Uddanam area from 17.01.2017 to 15.04.2017; details of referred cases of male and female from 19.01.2017 to 15.04.2017; details of below 30 years and above 30 years age group referral to CHC's in Uddanam area.

26. The respondent also furnished second level screening particulars viz, details of dialysis patients, pension amount distributed to dialysis

patients in seven mandals. The Government also established one research centre at Palasa of Uddanam area in collaboration with George Institute for Global Health, New Delhi with the name 'STOP CKDu' in Andhra Pradesh.

District initiatives to stop CKD in Uddanam area:

- Awareness camps conducted in 7 mandals, 853 villages in Uddanam area to create awareness among the public of Uddanam area on prevention and control of CKD through public meetings, distribution of pamphlets, display of posters, etc.
- As a district initiative, the District Collector, Srikakulam has established 17 laboratories with semi auto analyzers for testing of serium creatin and blood urea levels which are basic tests for assess CKD levels of the Uddanam area public.
- PHC Wise tests are conducted in the Uddanam area

27. Finally it is contended that, the State is taking every step, both to prevent and treat CKD, more particularly in Uddanam area and that there is no negligence on the part of the State and its officials to prevent and cure CKD disease and requested to dismiss the writ petition.

28. Additional counter affidavit is filed by Mr. Anil Kumar Singhal, Principal Secretary to Government of Andhra Pradesh, Health, Medical and Family Welfare Department on behalf of Respondent Nos. 5 to 17 and 19 to 23, bring to the notice of this Court about the historical background of the CKD of Undetermined Etiology (CKDu) and the preventive measures being undertaken by the State Government to alleviate the suffering of the people in the Uddanam Area and further the test and studies which are being conducted to understand the reason behind the CKDu (CKD of unknown origin)

29. In the year 2003, kidney diseases were noticed in Gunupalli and Matturu of Vajrapu Kothuru Mandal of Srikakulam District, AP. The Medical Officers and Staff of concerned Primary Health Centre detected 25 suspected kidney cases. The Areaal Laboratory, Visakhapatnam examined the water samples of those area and reported that the water of those villages contains Nitrogen Nitrate and recommended for frequent and continuation chlorination of water sources. Medical Camps were organized at Kavity on 15-12-2006 under the Supervision of Dr. Raviraj, Nephrologist, King George Hospital, Visakhapatnam and about 63,000 from 20 villages persons were educated on the subject. At the specialist camp conducted 610 suspected cases were attended to, out of which 41 cases suffered from kidney diseases. The Specialist Doctors Team under the supervision of Nephrologists of NIMS Hospital, Hyderabad visited Uddanam Area about the cause of prevalence of Kidney diseases. The water was found to contain silicon which may have caused the Kidney diseases in Uddanam Area of Andhra Pradesh. Further the teams found the following reasons were identified for the likely cause of Kidney diseases namely (a) Personal Dietary Habits like low intake of water, alcoholism, chewing of tobacco products, excess eating of dry fish (b) frequently inhalation of pesticides and sprays at time of agricultural operations and (c) Irregular and frequent usage of NSAID (Nonsteroidal Anti-inflammatory Drugs), tablets and Analgesic drugs without prescription of qualified Doctors. From the year 2003 to 2013 various organizations including the World Health Organization, the Indian Council for Medical Research, Harvard Medical College, Christian Medical College, King George Medical College etc had conducted various studies and tests and also created awareness among the people of the Uddanam

area. However, inspite of the numerous studies and tests no specific reason or cause could be identified for the CKD. So much so, this condition was discussed and named Uddanam Nephropathy at the 2013 International Congress of Nephrology held in Hong Kong, China. This medical condition prevalent in Uddanam is one of the 7 such instances around the world where no specific reason has been identified for the cause of the disease. By the year 2017 the Government had identified six Mandals namely Kaviti, Palasa, Sompeta, V.Kotturu, Mandasa, and Kanchali with high prevalence of CKD in the Uddanam area. A total of 167 villages fall within these 6 mandals with a population of 2,67,493. Mass screening was done to the population in above the age of above 30 years in all the Mandals of Uddanam area in year 2017 about 1,01,593 people were screened from Jan 2017 to April.2017 and 13,093 people with abnormal tests results were referred to CHCs in the area (CHC Sompeta, CHC Palasa, CHC Haripuram, CHC Kavity and RIMS Srikakulam). Two Expert teams from MOHM & FW, GOI and Team constituted by Government of AP with ICMR have jointly visited Uddanam area in Jan.2018 to study various aspects of CKD problem. CHCs Sompeta, Palasa, Kaviti, Ichapuram, Barua and Haripuram were provided with Lab Equipment and Reagents for testing CKD and the same continues till date. In addition to existing dialysis centres at RIMS, Srikakulam, AH, Tekkali and CHC, Palakonda two more centres, 1 at CHC, Palasa and 1 at CHC, Sompeta were started and have been functioning since May, 2017. One more dialysis center was established on 31.01.2019 at CHC Kaviti in Srikakulam district. Further regular sessions with Nephrologists are available once in 15 days at all dialysis centers.

30. Based on the tests and studies conducted thus far the following causes have been attributed to the high incidence of CKD in Uddanam area.

a) Tobacco usage and regular alcohol consumption
b) Extensive use of pain killers/ analgesic medications
c) Family history of CKD.
d) Heat stress due to occupational exposure.
e) Silica and Fluoride, phthalates contamination in ground water through the exact cause has not been pinpointed it may be a combination of all these causes and hence the Government is taking all steps to ensure that the people in the Uddanam Area are educated about the same.

31. The respondents also explained the steps taken by the State Government at different levels about control of tobacco usage and alcohol consumption, control of pain killers usage, genetic testing and early treatment for persons with family history of CKD, heat stress, provision for drinking water. Finally, it is stated that, the Government took all steps including providing drinking water to the residents of Uddanam area from Reverse Osmosis water plants. The Government is taking steps to ensure that more families come forward to register themselves and procure drinking water. This existing Uddanam project was designed for 40 liters per capita per day (LPCD). The Government now proposes to upgrade the existing facility to provide 100 LPCD. Towards this end, the State Government has given administrative sanction for the work “providing drinking water supply to Uddanam area of Srikakulam District” vide G.O. RT. No. 624 dated 29-04-2020 with an estimated cost of Rs. 700 crores. Under the scheme raw water sourced from the Hiramandalam Reservoir will be treated in plants and clear water will be supplied to 807 habitations in the Uddanam Area. The said work is in progress and the project related components like head works, balancing reservoirs, service

reservoirs etc are in progress and the work is likely to be completed within the next two years.

32. The State Government is taking all steps to ensure that the future generation of people in the Uddanam area are not effected by the CKD. More kidney dialysis centers will be launched as and when the need arises. A Dedicated Kidney Research Institute is established with the support and partnership from ICMR and George Institute for Global Health, India vide G.O.Rt.No. 417, dated 20.07.2017 at VIMS, Visakhapatnam. Now it is shifted to Palasa, Srikakulam district and renamed as Kidney Research Innovation and Patient Assistance (KRIPA) centre vide G.O.Rt.No.111, HM&FW(D2) Department dated 12.2.2019. There are about 20 types of drugs and medicines which are used in treatment of CKD and these are sufficiently made available at Central Drug Stores, Srikakulam and treating hospitals for Continuous supply for the use of CKD patients. Orientation to Medical Officers and staff of 18 primary health centres of Uddanam area on identification, referral and specialist care was given and is being continuously given to keep them updated with latest treatment protocols. A special officer has been appointed by the George Institute and is stationed in the Uddanam area to keep a daily check on the activities. Continuous education programs are being taken up by the District machinery and people are educated regularly about the ill effects of tobacco, alcohol and pain killers. Provision of clean drinking water is being taken as a priority for this area and the Government is taking all steps in that direction to prevent further spread of CKD, and requested to issue appropriate direction.

33. Respondent No.18 – Mr. Gopal Krishna Dwivedi, Principal Secretary, Panchayat Raj and Rural Development Department filed separate counter affidavit. But the allegations in the counter affidavit filed by Respondent No.18 is nothing but reiteration of the contentions raised by Dr.K.S. Jawahar Reddy, Special Chief Secretary to Government, Health, Medical and Family Welfare Department, A.P. Secretariat. Therefore, there is no need to reiterate the contentions specifically urged by Respondent No.18, only with a view to avoid repetition.

34. During hearing, Mr. Simhachalam Karukola, petitioner-in-person contended that, the State has failed to take necessary action to prevent CKD in Uddanam area by taking effective steps and that, Uddanam Neuropathy remained as an enigma and that, failure to provide effective treatment and failure to take steps to prevent spread of CKD is violation of fundamental right guaranteed under Article 21 of the Constitution of India, besides violation of human rights and unless effective directions are given to the State and Central Governments for control of CKD and to prevent CKD providing adequate medical care, it is difficult for the people of Uddanam area to survive for their full lifetime, sought the directions as stated supra.

35. Mr. Posani Venkateswarlu, learned counsel appearing on behalf of Mr. M. Lakshmi Narayana, learned counsel on record in W.P. (P.I.L) No.236 of 2021 raised a specific contention that, unless stern action is taken to prevent spread of kidney disease in Uddanam area, it is difficult for survival of future generations and submitted that, the average kidney patients in the country is 10 to 15% of unknown etiology. But, in

Uddanam region in Andhra Pradesh, the tests revealed 66% male and 34% female are suffering from Chronic Kidney Disease and majority of the patients were between the age group of 40 to 59 years i.e. 52%. Learned counsel also furnished the details of serum creatine levels in kidney patients and also assessment of stages of chronic kidney disease by way of Glomerual Filteration Rate. Therefore, most of the kidney patients in the State of Andhra Pradesh in Uddanam Area are in dangerous health condition and at least to protect the future generations from kidney diseases in Uddanam area, State Government is under obligation to take immediate steps to prevent spread of such CKD among the people of Uddanam area to protect the future of the residents of Uddanam area consisting of seven mandals will become bleak and their survival after some time in that area is doubtful. Hence, requested this Court to issue necessary directions to prevent further spread of CKD among the residnets of Uddanam area.

36. Whereas, T. Bala Swamy, learned Government Pleader attached to the office of the learned Advocate General appearing for the State respondents explained the palliative, preventive and curative steps taken while drawing attention of this Court to various documents placed on record to substantiate the contention of the Government and to establish that the State has never violated the fundamental right of residents of Uddanam area, guaranteed under Article 21 of the Constitution of India. On the other hand, it is contended that the respondents are discharging their constitutional duties under Article 47 of the Constitution of India by providing necessary medical facilities to the people who are suffering from CKD and also providing water to the Uddanam area habitants as a

measure of prevention of CKD and ensured that the State will continue to monitor the same by taking effective steps both to eradicate CKD at their level, consequently requested to dismiss the writ petition.

37. No counter affidavit is filed and no argument is advanced by learned Assistant Solicitor General on behalf of Union of India.

38. Considering rival contentions, perusing the material available on record, the points that need to be answered by this Court are as follows:

1. ***Whether failure to provide adequate medical facilities or health care for the patients suffering from CKD in Uddanam area amounts to denial of right to life guaranteed under Article 21 of the Constitution of India and to discharge the fundamental duty by the State, as enshrined under Article 47 of the Constitution of India, so also, human rights guaranteed under various international covenants. If so, whether any direction be issued to the State Government?***

2. ***Whether the State and Central Governments took adequate steps both to prevent further spread of CKD and to cure the patients who are suffering from CKD. If not, whether any directions are required be issued by this Court to protect the lives of residents of Uddanam area?***

P O I N T Nos.1 & 2:

39. Since, both the points are inter-connected, we find that it is expedient to decide both the points by common discussion.

40. The grim and sad health care situation prevailing in Uddanam area consists of seven mandals and the inadequate measures taken by the State and its instrumentalities to prevent spread of CKD and cure the patients who are suffering from CKD is questioned in the present writ

petition and sought directions. The State explained the steps taken to prevent and cure CKD in Uddanam area. In view of the specific measures taken by the State, the Court has to examine the issue in two dimensions, viz. (1) Constitutional perspective and (2) Human Rights perspective, to decide whether the State is able to provide adequate health care facilities to prevent and cure CKD in Uddanam area consisting of seven mandals.

***In Re Constitutional perspective**:*

41. The Indian Constitution guarantees Right to Life with Dignity under Article 21. It reads that "No person shall be deprived of his life or personal liberty except through procedure established by law." Till 1970s the courts, by and large, had interpreted 'life' literally i.e. right to exist- right not to be killed. In late 1970s, the Supreme Court expanded the meaning to the term 'life' appearing in Article 21. Over the years it has come to be accepted that life does not only mean animal existence but the life of a dignified human being with all its concomitant attributes. This would include a healthy environment, effective and adequate health care facilities. Today, the health care is a fundamental right to life in the broader perspective of the 'life' under the term 'life' under Article 21 of the Constitution of India.

42. Fundamental Rights are enforceable by and large only against the State and it is the duty and obligation of the State to provide adequate health care to its citizens. The 'Right to Health' is inseparable from 'Right to Life', and the 'Right to Medical Facilities' as a concomitant of 'Right to Health' is also part and parcel of Right to Life. In a welfare state, the corresponding duty to the right to health and medical facility lies with the State.

43. Part IV of the Constitution lists the Directive Principles of State Policy. These are the principles which should be followed by the State as the guiding principles while enacting laws and policies but have traditionally been believed not to be enforceable in courts of law. A citizen cannot go to court for enforcing a claim which is purely based on Directive Principles. The importance of these principles, however lies in the fact that in interpreting Fundamental Rights the Courts can use the Directive Principles so as to interpret these rights as much in consonance with the Directive Principles as is possible. The obligation of the State to provide health care facilities is set out in the 'Directive Principles of State Policy'. The relevant provisions of the Directive Principles which cast a duty on State to ensure good health and adequate healthcare for its citizens are:

44. According to Article 38, State shall strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. In other words, no person will be deprived of a ***healthy life*** because he cannot afford it. The State must provide facilities that an economically better off person can afford out of his own pocket.

45. At the same time, Article 39 envisages certain principles of policy to

be followed by State- The State shall, in particular, direct its policy towards securing-

a) that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and

b) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

46. Article 47 of the Constitution of India deals with duty of 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 medical purposes of intoxicating drinks and of drugs which are injurious to health.

47. To begin with, the right to health as a fundamental right grew as an offshoot of environmental litigation initiated by environmental activists regarding the environment issues. Undoubtedly the right to environment was crucial because a polluted environment affects public health. A pollution free environment as a fundamental right presupposes right to health as a fundamental right. Logically, the explicit recognition of the fundamental right to health should have preceded the fundamental right to good environment. However, the development of jurisprudence in this branch has been the reverse. The right to unpolluted environment was

recognized as a right in the first instance and from that followed the right to public health, health and health care. Secondly, the right to health care has also been debated by the courts in the context of rights of Government employees to receive health care. A number of observations of the Court concerning the importance of these rights are to be found in cases dealing with denial or restriction of health care facilities for Government employees, and not to the general masses. This is the context of judicial pronouncements on health care.

48. In one of the earliest instances of public interest litigations - ***Municipal Council, Ratlam vs. Vardhichand & Ors***[1], the municipal corporation was prosecuted by some citizens for not clearing up the garbage. The corporation took up the plea that it did not have money. While rejecting the plea, the Supreme Court held that "The State will realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties."

49. In ***CESC Ltd. vs. Subash Chandra Bose***[2], the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness:

> "The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate

[1] 1980 Cri LJ 1075
[2] AIR 1992 SC 573,585

> reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Articles 22 to 25 of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal whose realization requires interaction by many social and economic factors."

(emphasis supplied)

50. In "***Mohd. Ahmed (Minor) v. Union of India***" (W.P.(C).No.7279 of 2013) the Apex Court while referring to the address of Martin Luther King Junior that "of all forms of inequality, injustice in health care is the most shocking and inhumane" and after discussing various principles laid down in various judgments including "***T. Soobramoney v. Minister of Health (Kwazulu-Natal)*** (Case CCT 32/97)" and ***Niteki v. Poland*** (Application No.65653/2001), concluded that the right to health or right to adequate health care is a fundamental right guaranteed under Article 21 of the Constitution of India.

51. The Apex Court in "***Rakesh Chandra Narayan v. State of Bihar***[3]" held that the Government has an obligation to ensure that medical attention is provided to every citizen in the country.

52. In view of the law laid down by the various Courts, it is obvious that right to adequate medical facilities or health care is not only obligation of the State under part IV and Article 47 of the Constitution of India and also fundamental right guaranteed under Article 21 as providing medical care is a facet of protection of right to life under Article 21 of the Constitution of India.

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[3] 1996(8)SCALE33

53. In the facts of the judgment in ***Mahendra Pratap Singh vs. Orissa State***[4] the petitioner, an ex-sarpanch of Pachhikote Gram Panchayat approached the court for issuance of appropriate writ commanding the opposite parties to take effective measures to run Primary Health Centre at Pachhikote within Korei block in the district of Jaipur by providing all amenities and facilities for proper running of the said health centre. The Government of Orissa decided to open certain primary health centres in different areas in 1991-92 subject to fulfilment of certain conditions, on basis of demands of the local people and public at large. The conditions fulfilled were as follows:

> *(i) The local people should provide minimum one acre of land duly pledged in favour of the Panchayat Samiti for the Medical Institution within a period of one month from the date of issue of this order.*
>
> *(ii) The local people should provide permanent buildings for the medical institutions as well as for the staff within six months from the date of issue of this order."*

54. The Court observed that great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life. Health is life's grace and efforts are to be made to sustain the same. In a Country like ours, it may not be possible. To have sophisticated hospitals but definitely villagers of this Country within their limitations can aspire to have a Primary Health Centre. The Government is required to assist people, and its endeavour should be to see that the people get treatment and lead a healthy life. Healthy society is a collective gain and no Government should make any effort to smother it. Primary concern should be the Primary Health Clinic (hereinafter will be referred as 'PHC') and technical fetters cannot be introduced as subterfuges to cause hindrances in the establishment of health centre.

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[4] AIR 1997 Ori 37

55. In ***CERC vs. Union of India***[5], the Supreme Court was dealing with the rights of workers in asbestos manufacturing and health hazards related to it. The Court was dealing essentially with private employers involved in asbestos mining and industry. To begin with, the Court noted that the right to health and health care of a worker is a component of the fundamental right to life guaranteed under Article 21 of the Constitution of India. The Court observed that, Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

56. The Supreme Court, while interpreting Article 21 of the Constitution ruled that the expression 'life' does not connote mere animal existence or continued drudgery through life but includes, inter alia, the opportunities to eliminate sickness and physical disability. In ***Francis Coralie Mullin v. Union Territory of Delhi***[6], it was held that, right to life guaranteed in Article 21 of the Constitution in its true meaning includes the basic right to food, clothing and shelter.

57. The Apex Court, in ***Paschim Banga Khet Mazdoor Samity v. State of West Bengal***[7] while widening the scope of Article 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare

[5] (1995) 3 SCC 42
[6] 1981 (1) SCC 608
[7] (1996) 4 SCC 37

state. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities.

58. In ***Unnikrishnan, J.P. v. State of Andhra Pradesh***[8], it was held that the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution.

59. In ***Consumer Education and Research Centre v. Union of India***[9], the Supreme Court explicitly held that the right to health and medical care is a fundamental right under Article 21 of the Constitution and this right to health and medical care, to protect health and vigour are some of the integral factors of a meaningful right to life.

60. In ***Bandhua Mukti Morcha v. Union of India***[10]**,** the Apex Court addressed the types of conditions necessary for enjoyment of health and said that right to live with human dignity also involves right to 'protection of health'. No State, neither the central government nor any state government, has the right to take any action which will deprive a person the enjoyment of this basic essential. In ***Virender Gaur v. State of Haryana***[11], the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution. In ***Vincent v. Union of India***[12], it was held that a healthy body is the very foundation for all human activities. In a welfare state, therefore, it is the obligation of

[8] AIR 1993 SC 2178
[9] AIR 1995 SC 636
[10] AIR 1984 SC 802
[11] 1995 (2) SCC 577
[12] AIR 1989 SC 2039

the state to ensure the creation and the sustaining of conditions congenial to good health.

61. The Apex Court, in its landmark judgment in ***Pt.Parmanand Katara v. Union of India***[13], ruled that every doctor whether at a government hospital or otherwise has the professional obligation to extend his service with due expertise for protecting life, whether the patient be an innocent person or be a criminal liable to punishment under the law. No law or state action can intervene to avoid/delay, the discharge of the paramount obligation cast upon members of the medical profession.

62. In ***State of Punjab vs. Mohinder Singh Chawla***[14], which dealt with right to medical treatment of Government employees, the Supreme Court observed that it is now settled law that right to health is integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an inpatient.

63. Environment Pollution is linked to Health and effect of violation was dealt in ***T. Ramakrishna Rao vs. Hyderabad Development***

[13] 1989 AIR 2039
[14] 1997 (2) SCC 83

Authority[15], the Andhra Pradesh High Court observed that protection of the environment is not only the duty of the citizens but also the obligation of the State and it's all other organs including the Courts. The enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution of India. It is therefore, as held in ***T. Damodar Rao and others vs. Special Officer, Municipal Corporation of Hyderabad***[16], the legitimate duty of the Courts as the enforcing organs of the constitutional objectives to forbid all actions of the State and the citizens from upsetting the ecological and environmental balance. In ***Virender Gaur vs. State of Haryana***[17], the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution. It is right to state that hygienic environment is an integral facet of the right to healthy life and it would not be possible to live with human dignity without a humane and healthy environment. In ***Consumer Education and Research Centre vs. Union of India***[18], ***Kirloskar Brothers Ltd. vs. Employees' State Insurance Corporation***[19], the Supreme Court held that right to health and medical care is a fundamental fight under Article 21 read with Articles 39(e), 41 and 43. In ***Subhash Kumar vs. State of***

[15] W.P.No.36929 of 1998 dated 20.07.2001
[16] AIR 1987 AP 171
[17] 1995 (2) SCC 577
[18] (1995) 3 SCC 42
[19] AIR 1996 SC 3261

Bihar[20], the Supreme Court held that right to pollution-free water and air is an enforceable fundamental right guaranteed under Article 21. Similarly in ***Shantistar Builders v. Narayan Khimalal Totame***[21], the Supreme Court opined that the right to decent environment is covered by the right guaranteed under Article 21. Further, in ***M.C. Mehta vs. Union of India***[22]***, Rural Litigation and Entitlement Kendra v. State of U.P***[23]***, Subhash Kumar vs. State of Bihar*** (supra), the Supreme Court imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of life and dignity and for elimination of water and air pollution. It is also relevant to notice as per the judgment of the Supreme Court in ***Vincent Panikurlangara vs. Union of India***[24]***, Unnikrishnan, J.P vs. State of A.P***[25], the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution. Adequate and Quality medical care is part of Right to Health and Right to Life: The Allahabad High Court in ***S.K. Garg vs. State of U.P***[26] was dealing with conditions of public hospitals. The Petition had been filed raising concerns about the pitiable nature of services available in public hospitals in Allahabad. Complaints were made concerning inadequacy of blood banks, worn down X- ray equipment, unavailability of essential drugs and unhygienic conditions. The Court appointed a Committee to go into these aspects and report back to the Court. The High Court held: “In our opinion, the allegations in the petition are serious. The Supreme

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[20] AIR 1991 SC 420
[21] AIR 1990 SC 630
[22] AIR 1988 SC 1037
[23] AIR 1987 SC 359
[24] AIR 1987 SC 990
[25] AIR 1993 SC 2178
[26] 1999 (1) AWC 847

Court in ***Consumer Education and Research Centre and others v. Union of India and others***[27]**,** similarly in ***State of Punjab and others v. Mohinder Singh Chawla and others***[28] Courts are of the view that the right to health is a part of the right to life guaranteed by Article 21 of the Constitution. It is indeed true that most of the Government Hospitals are in a very bad shape and need drastic improvement so that the Public is given proper medical treatment. Anyone who goes to the Government Hospitals in the State will find distressing sanitary and hygienic conditions. The poor people, particularly, are not properly looked after and not given proper medical treatment. Consequently, most of the people who can afford it go to private nursing homes or private clinics. This is a welfare State, and the people have a right to get proper medical treatment. In this connection, it may be mentioned that in U.S.A. and Canada there is a law that no hospital can refuse medical treatment of a person on the ground of his poverty or inability to pay. In our opinion. Article 21 of the Constitution, as interpreted in a series of judgments of the Supreme Court, has the same legal effect." Can the State be compelled to start hospitals or primary health care centres?: No direct guidelines are available on this issue. But somewhat similar cases are cited below In ***Paschim Banga Khet Mazdoor Samiti vs. State of West Bengal***[29] the Supreme Court though primarily dealing with the issue of obligation of the State to provide emergency health care to patients made a general observation of significance: **"Providing adequate medical facilities is an essential part of the obligation undertaken by the State in a welfare state. The Government discharges this obligation by running**

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[27] 1995 (3) SCC 42
[28] 1997 (2) SCC 83
[29] (1996) 4 SCC 37

hospitals and health centres. Article 21 imposes an obligation on the State to safeguard right to life of every person."

In Re Human Rights Perspective:

64. India joined the UN at the start on October 30th, 1945 and on 12th December, 1948 when the Universal Declaration of Human Rights (UDHR) was proclaimed, India was a party to this. The formulation of India's Constitution was certainly influenced by the UDHR and this is reflected in the Fundamental Rights and the Directive Principles of State Policy. Most of the civil and political rights are guaranteed under the Indian Constitution as Fundamental Rights. But most of the Economic, Social and Cultural Rights do not have such a guarantee. The Constitution makes a forceful appeal to the State through the Directive Principles to work towards assuring these rights through the process of governance but clearly states that any court cannot enforce them. The experience of governance in India shows that both Fundamental Rights and Directive Principles have been used as a political tool. While the Fundamental Rights are justiciable, and on a number of occasions citizens and courts have intervened to uphold them, there have also been numerous instances where even the courts have failed either because the ruling government has steamrolled them or the court orders have been ignored. In case of the Directive Principles it is mostly political mileage, which determines which of the principles get addressed through governance. Articles 41, 42 and 47, which deal with social security, maternity benefits and health, respectively, have been addressed only marginally.

65. Article 25(2) of the UDHR ensures right to standard of adequate living for health and well being of the individual including medical care, sickness and disability, Article 2(b) of the International Convention on Economic, Social and Cultural Rights (ICESCR) protects the right of worker to enjoy just and favourable conditions of work ensuring safe and healthy working conditions. The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread winning to him and his dependents should not beat the cost of the health and vigour of the workman.

66. When we look at **"right to health"** and **"healthcare"** in the legal and constitutional framework, it is clearly evident that the Constitution and laws of the land do not in any way accord health and healthcare, the status of rights. There are instances in case law where, for instance the right to life, Article 21 of the Constitution, or various Directive Principles have been used to demand access to healthcare, especially in emergency situations or references made to the International Covenants. These are exceptional cases, and even if the Supreme Court or the high courts have upheld some decisions as being a right, for instance getting at least first aid in emergency situations from private clinics or hospitals, or access to public medical care as a right, in life threatening situations, or right to healthy and safe working environment and medical care for workers etc., the orders are rarely respected in day to day practice unless one goes back to the courts to reiterate the orders. In fact, this is often the case

even with Fundamental Rights, which the State has failed to respect, protect, or fulfill as a routine, and one has to go to the courts to demand them. For a population, which is predominantly at the poverty or subsistence level, expecting people to go to the courts to seek justice for what is constitutionally ordained as a right is unrealistic as well as discriminatory. The mere constitutional provision is not a sufficient condition to guarantee a right, and more so in a situation like health and healthcare wherein provisions in the form of services and commitment of vast resources are necessary to fulfill the right. Despite the above, it is still important to have health and healthcare instituted as a right within the Constitution and/or established by a specific Act of Parliament guaranteeing the right. Ruth Roemer discussing this issue observed that:

> *"The principal function of a constitutional provision for the right to health care is usually symbolic. It sets forth the intention of the government to protect the health of its citizens. A statement of national policy alone is not sufficient to assure entitlement to health care; the right must be developed through specific statutes, programs and services. But setting forth the right to health care in a constitution serves to inform the people that protection of their health is official policy of the government and is reflected in the basic law of the land".*

67. To take an example, government policy vis-à-vis healthcare services has mandated entitlements under the Minimum Needs Programme started with the Fourth Five Year Plan. Each district should have a civil hospital in each district, a primary health centre in rural areas for each 20,000 –30,000 population (depending on population density and difficulty of terrain) and five such units supported by a 30 bedded Community Health Centre (CHC), a sub centre with two health workers for a rural population unit of 2500-5000 population, and similarly a Health Post for 50,000 persons in urban areas. But what is the real situation? No district (except perhaps the very new ones) has a civil

hospital (and each district did have a civil hospital even during the colonial period!). The situation regarding PHCs varies a lot across states from 1 per 7000 rural population in Mizoram to 1 per over 100,000 in some districts of the EAG7 states. The villagers deprived of this entitlement cannot go to the courts demanding the right to a PHC for their area because such a legal backing does not exist. Further, in many states where this ratio is honoured for PHCs or CHCs, adequate staff, medicines, diagnostic facilities, maintenance budgets are often not available to assure that proper provision of services is available to the people accessing these services [MoHFW, 2001].

68. While right to health care is recognized as human right, it becomes discriminatory because the entitlement as a right is selective and not universal. Mere entitlements having basis only in policy or as selective rights does not establish a right and neither can assure equity and non-discrimination. At the global level the International Covenant on Economic, Social and Cultural Rights (ICESCR) mandates right to health through Article 9 and Article 12 of the covenant:

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

a) *The provision for the reduction of the stillbirth□rate and of infant mortality and for the healthy development of the child;*

b) *The improvement of all aspects of environmental and industrial hygiene;*

c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

d) *The creation of conditions, which would assure to all medical service and medical attention in the event of sickness*.

69. Article 12 of the International Covenant on Economic, Social and Cultural Rights states that right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual reproductive freedom, and the right to be free from interference, such as the right to be free from torture, nonconsensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health, protection which provides equality of opportunity for people to enjoy the highest attainable level of health. It further state 'Non-discrimination and equal treatment by virtue of Article 2.2 and Article 3, the Covenant prescribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS) sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. It is appropriate to stress on many measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information (Vide ***Naz Foundation vs. Government of NCT of Delhi***[30])

70. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the

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highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social condition. Health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States. The achievement of any State in the promotion and protection of health is of value to all. Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger. Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development. The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health. Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people. Governments have a responsibility for the health of their peoples, which can be fulfilled only by the provision of adequate health and social measures.

71. "Everyone has the right to a standard of living adequate for … health and well-being of himself and his family, including food, clothing, housing, medical care and the right to security in the event of … sickness, disability. Motherhood and childhood are entitled to special care and assistance." - **Universal Declaration of Human Rights, Article 25**.

72. "States Parties shall ensure to women access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. States Parties shall eliminate discrimination against women in health care to ensure, on a

basis of equality of men and women, access to health care services, including those related to family planning; ensure appropriate services in connection with pregnancy. States Parties shall ensure that [women in rural areas] have access to adequate health care facilities, including information counseling and services in family planning" - **Convention on the Elimination of All Forms of Discrimination Against Women, Articles 10, 12, and 14**.

73. "States Parties undertake to eliminate racial discrimination and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, the right to public health, medical care, social security and social services." -**Convention on the Elimination of All Forms of Racial Discrimination, Article 5**.

74. "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health." - Convention on the Rights of the Child, Article 24 In the 1977 World Health Assembly member states pledged a commitment towards a health for all strategy, "the attainment by all citizens of the world by the year 2000 of a level of health that will permit them to lead a socially and economically productive life." (AL Taylor –Making the World Health Organization Work : A legal framework for universal access to the conditions for Health, American Journal of Law and Medicine, Vol. 18 No. 4, 1992, 302). At the International conference which followed in 1978 at Alma Ata this was converted into the famous primary health care declaration whereby Governments would be responsible to the people to assure primary health

care for all by the year 2000. Primary health care is "essential health care which is to be universally accessible to individuals and families in the community in ways acceptable to them, through their full participation at a cost the community can afford" (WHO, Primary Health Care, 1978, p. 3) **- Alma Ata Declaration on Health For All by 2000**.

75. "Health and development are intimately interconnected. Both insufficient development leading to poverty and inappropriate development can result in severe environmental health problems. The primary health needs of the world's population are integral to the achievement of the goals of sustainable development and primary environmental care - Major goals - By the year 2000 eliminate guinea worm disease; eradicate polio. By 1995 reduce measles deaths by 95 per cent; ensure universal access to safe drinking water and sanitary measures of excreta disposal; By the year 2000 [reduce] the number of deaths from childhood diarrhoea by 50 to 70 per cent" - **Agenda 21, Chapter 6, paras. 1 and 12**.

76. "Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care. The role of women as primary custodians of family health should be recognized and supported. Access to basic health care, expanded health education, the availability of simple cost□effective remedies should be provided" - **Cairo Programme of Action, Principle 8 and para. 8.6.**

77. “We commit ourselves to promoting and attaining the goals of universal and equitable access to the highest attainable standard of physical and mental health, and the access of all to primary health care, making particular efforts to rectify inequalities relating to social conditions and without distinction as to race, national origin, gender, age or disability” - **Copenhagen Declaration, Commitment 6**

78. “The explicit recognition of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment. We are determined to ensure equal access to and equal treatment of women and men in health care and enhance women’s sexual and reproductive health as well as Health.” - **Beijing Declaration, paras. 17 and 30**.

79. “Women have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life. Women’s health involves their emotional, social and physical well□being and is determined by the social, political and economic context of their lives, as well as by biology. To attain optimal health - equality, including the sharing of family responsibilities, development and peace are necessary conditions.” - **Beijing Platform for Action, para. 89**.

80. “Strategic objective - Increase women’s access throughout the life cycles to appropriate, affordable and quality health care, information and related services - Actions to be taken: Reaffirm the right to the enjoyment of the highest attainable standards of physical and mental health, protect

and promote the attainment of this right for women and girls and incorporate it in national legislation; Provide more accessible, available and affordable primary health care services of high quality, including sexual and reproductive health care; Strengthen and reorient health services, particularly primary health care, in order to ensure universal access to health services; reduce maternal mortality by at least 50 per cent of the 1990 levels by the year 2000 and a further one half by the year 2015; make reproductive health care accessible to all no later than 2015; take specific measures for closing the gender gaps in morbidity and mortality where girls are disadvantaged, while achieving by the year 2000, the reduction of mortality rates of infants and children under five by one third of the 1990 level; by the year 2015 an infant morality rate below 35 per 1,000 live births. Ensure the availability of and universal access to safe drinking water and sanitation." - **Beijing Platform for Action, para. 106**.

81. "Human health and quality of life are at the centre of the effort to develop sustainable human settlements. We commit ourselves to the goals of universal and equal access to the highest attainable standard of physical, mental and environmental health, and the equal access of all to primary health care, making particular efforts to rectify inequalities relating to social and economic conditions, without distinction as to race, national origin, gender, age, or disability. Good health throughout the life span of every man and woman, good health for every child are fundamental to ensuring that people of all ages are able to participate fully in the social, economic and political processes of human settlements. Sustainable human settlements depend on policies to provide access to

food and nutrition, safe drinking water, sanitation, and universal access to the widest range of primary health-care services; to eradicate major diseases that take a heavy toll of human lives, particularly childhood diseases; to create safe places to work and live; and to protect the environment. Measures to prevent ill health and disease are as important as the availability of appropriate medical treatment and care. It is therefore essential to take a holistic approach to health, whereby both prevention and care are placed within the context of environmental policy." - **Habitat Agenda, paras. 36 and 128.**

82. International law apart, as discussed earlier, provisions within the Indian Constitution itself exist to give the people of India right to healthcare. Articles 41, 42 and 47 of the Directive Principles enshrined in Part IV of the Constitution provide the basis to evolve right to health and healthcare:

Article 41. Right to work, to education and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42. Provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 47. 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. Thus social security, social insurance, decent standard of living, and public health coupled with the policy statements over the years, which in a sense constitutes the interpretation of these constitutional provisions, and supported by international legal commitments, form the basis to develop right to health and healthcare in India. The only legal/constitutional principle missing is the principle of justiciability. In the case of 10 "The courts are much more aware of and attentive towards their obligation to implement socio-economic uplift programmes and to ensure decent welfare for all. The state has a duty to all citizens to adhere to that part of the Constitution, which describes the directive principles as 'fundamental' to the governance of the country. The courts have therefore been using the directives as an instrument to determine the extent of public interest in order to limit the extension of fundamental rights. In doing so they have upheld a number of statutes on the grounds of public interest, which in other circumstances may have been nullified." With regard to healthcare there is even a greater need to make such gains because often in the case of health it is a question of life and death. As stated earlier, for a small part of the working population right to healthcare through the social security/social insurance route exists. This means that such security can be made available to the general population too. That a few people enjoy this privilege is also a sign of discrimination and inequity that violates not only the non□discrimination principle of international law, but it also violates Article 14 of the Constitution, Right to Equality a Fundamental Rights.

83. With regard to the question of justiciability of international law, like Britain, India follows the principle of dualism. This means that for international law to be applicable in India, it needs to be separately legislated. Since none of the international human rights treaties have been incorporated or transformed into domestic laws in India, they have only an evocative significance and may be used by the Courts or petitioners to derive inspiration. Thus on a number of occasions many of these human right treaties ratified in India, have been used by the Indian Courts in conjunction with Fundamental Rights. International law has its importance in providing many principles but in India's case, there is substantial leeway within our own legal framework on right to health and healthcare. The emphasis needs to shift to critical principles as laid down in the directive principles. This is the only way of bringing right to health and healthcare on the national agenda, even as the support of international treaties will play a role in cementing this demand. In view of various international convention referred above health and healthcare are human rights and India as one of the signatories to conventions is under obligations to proceed adequate healthcare.

In Re Right to Health and Healthcare:

84. Health and health care are now being viewed very much within the rights perspective and this is reflected in Article 12.

85. 'The right to the highest attainable standard of health' of the International Covenant on Economic, Social and Cultural Rights. According to the General Comment of the Committee for Economic, Social and Cultural Rights states that the right to health requires availability,

accessibility, acceptability, and quality with regard to both health care and underlying preconditions of health. The Committee interprets the right to health, as defined in Article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. This understanding is detailed below: The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party

(a) ***Availability***. *Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.*

(b) ***Accessibility***. *Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:*

Non-discrimination*: Health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.*

Physical accessibility*: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.*

Economic accessibility (affordability)*: health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be*

based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households. Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

***(c) Acceptability**. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.*

***(d) Quality**. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation. (Committee on Economic, Social and Cultural Rights Twenty□second session 25 April-12 May 2000)*

86. Universal access to good quality healthcare equitably is the key element at the core of this understanding of right to health and healthcare. To make this possible the State parties are obligated to respect, protect and fulfill the above in a progressive manner: The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect protect and fulfil. In turn, the obligation to fulfill obligations to facilitate, provide and promote. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health. States parties are referred to the Alma-Ata Declaration, which proclaims that the existing gross inequality in the health status of the people, particularly between developed and developing countries, as well as within countries, is politically, socially

and economically unacceptable and is, therefore, of common concern to all countries. States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations:

> *(a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;*
>
> *(b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;*
>
> *(c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;*
>
> *(d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;*
>
> *(e) To ensure equitable distribution of all health facilities, goods and services;*
>
> *(f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.*

The Committee also confirms that the following are obligations of comparable priority:

(a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;

(b) To provide immunization against the major infectious diseases occurring in the community;

(c) To take measures to prevent, treat and control epidemic and endemic diseases;

(d) To provide education and access to information concerning the main health

problems in the community, including methods of preventing and controlling them;

(e) To provide appropriate training for health personnel, including education on health and human rights.

87. The above guidelines from General Comment 14 on Article 12 of ICESCR are critical to the development of the framework for right to health and healthcare.

88. In 1943, a committee known as "***Bhore Committee"*** under the Chairmanship of ***Joseph William Bhore*** was appointed to conduct health survey and development of public health. It laid emphasis on integration of curative and preventive medicine at all levels. It made comprehensive recommendations for remodeling of health services in India. The committee submitted its report in the year 1946 making several important recommendations both as short-term and long term measures.

89. Some of the important recommendations of the Bhore Committee were:

1. ***Integration of preventive and curative services at all administrative levels.***
2. ***Development of Primary Health Centres (PHC) in 2 stages:***
    1. ***Short-term measure – one Primary Health Centre was suggested for a population of 40,000. Each PHC was to be staffed by 2 doctors, one nurse, four public health nurses, four midwives, four trained dais, two sanitary inspectors, two health assistants, one pharmacist and fifteen other class IV employees. The first was established in 1952. Secondary health centres were also envisaged to provide support to PHCs, and to coordinate and supervise their functioning***
    2. ***A long-term programme (also called the 3 million plan) of setting up primary health units with 75 – bedded hospitals for each 10,000 to 20,000 population and secondary units with 650 – bedded hospital, again regionalised around district hospitals with 2500 beds.***

3. ***Major changes in medical education which included 3 months training in preventive and social medicine to prepare "social physicians".***
4. ***Abolition of the Licentiate in Medical Practice (etc) qualifications and their replacement by a single national standard Bachelor of Medicine and Bachelor of Surgery (MB BS) degree.***
5. ***Creation of a major central institute for post-graduate medical education and research: which was achieved in 1956 with the All-India Institute of Medical Sciences (AIIMS).***

90. The proposals of the committee were accepted in 1952 by the government of independent India. Though most of the recommendations of the committee were not implemented at the time, the committee was a trigger to the reforms that followed.

91. Based on Bhore committee recommendations, few States in India enacted Public health laws. In our State, the Andhra Pradesh (Andhra Area) Public Health Act, 1939 (for short “Act No.III of 1939”) was enacted specifying the measures to be taken at different levels, which is inclusive of public health, establishment of local authorities, water supply, drainage, sanitary and food control etc.

92. According to Section 9 of the Act No.III of 1939, a local authority shall, if so required by the Government, include the post of a Health Officer in its establishment schedule.

93. According to Section 17 of the Act No.III of 1939, every local authority may, and if the Government so direct shall, provide or arrange for the provision of a sufficient supply of drinking water for consumption by the inhabitants of the area within its jurisdiction. The local authority shall, so far as may be practicable, make adequate provision for securing - that the water-supply is continuous throughout the year, and that the water supplied is at all times whole-some and fit for human consumption.

A local authority may also provide or arrange for the provision of a sufficient supply of water for other domestic purposes or for non-domestic purposes.

94. Section 18 of the Act No.III of 1939 obligates the local authority to execute water work. Section 19 permit the Government to divert water from water-main belonging to a local authority.

95. According to Section 20 of the Act III of 1939, the Collector of the district, or any other officer appointed by the Government in this behalf, may cause inquiries to be made in any local area or part thereof, with a view to ascertaining-

(a) whether the source of water supply for such local area or part is contaminated from any cause against which effective means of protection can be taken, and

(b) whether the provisions of any additional source or sources of water-supply is necessary for such local area or part.

(2) The Collector or other officer aforesaid may, after taking into consideration the result of such inquires, by notice, direct that any source of water-supply be cleaned, improved repaired or otherwise protected from contamination, or that such additional source or sources of water-supply be provided, as the case may be.

Thus, it is the obligation of the Collector to monitor water supply in the entire district and issue necessary direction from time to time.

96. In the present case, one of the reasons for CKDu is finding Silicon and other chemicals in the water being consumed by the residents of Uddanam area, which consisting of '7' Mandals. So far, no steps were taken by the Collector in terms of obligation imposed upon him by Section 20 of the Act No.III of 1939. But at the Government level, certain Government Orders were passed for establishment of water purifier plants and took certain steps to establish Reverse Osmosis water plants to supply water to the residents through Kiosks. Though CKD is prevailing in Uddanam area for the last three decades, the Collector did not take any action in this regard.

97. Chapter XII – Sections 108 to 115 of the Act No.III of 1939 deals with 'Food Control'. Section 108 deals with 'prohibition of sale of unsound food'. Section 109 deals with 'punishment for contravening provisions of Section 108, through others'. Section 110 deals with 'flesh of dead animal not to be consumed.' Section 111 deals with 'importing meat into local area'. Section 112 deals with 'power of Heath officer to enter premises used for wood trade'. Section 113 obligates the health officer to deal with carriers of disease handling food'. Section 114 prescribes 'investigation of diseases caused by milk or dairy produce'. Section 115 specifies 'inspection of dairy by Health officer.'

98. As per the allegations in the counter, one of the reasons for CKD in Uddanam area is consumption of alcohol, tobacco, pain killers and dry fish. Though few reasons were traced during scientific investigation by the authorities, local authorities did not exercise its power available under Chapter XII of the Act. Thus, the District Collector and Local authorities failed to act in accordance with the provisions of the Act No.III of 1939.

99. Where does State of Andhra Pradesh stand today vis-à-vis the core principles of availability, accessibility, acceptability and quality in terms of the State's obligation to respect, protect and fulfill?

100. To sum up from the, healthcare infrastructure, except perhaps availability of doctors and drugs is grossly inadequate. Then there are the underlying conditions of health and access to factors that determine this, which are equally important in a rights perspective. Given the high level of poverty and even a lower level of public sector participation in most of these factors, the question of the State respecting, protecting and fulfilling them is quite remote.

101. Besides this environmental health conditions in both rural and urban areas are quite poor, working conditions in most work situations, including many organized sector units, which are governed by various social security provisions, are unhealthy and unsafe. In fact, most of the cases based on Article 21 of the Fundamental Rights and relating it to right to health have been cases dealing with working conditions at the workplace, workers rights to healthcare and environmental health related to pollution.

102. Other concerns in access are the question of economic accessibility. It is astounding that large□scale poverty and predominance of private sector in healthcare co-exist. This contradiction reflects the State's failure to respect, protect and fulfill its obligations by letting vast inequities in access to healthcare and vast disparities in health indicators, to continue to persist, and in many situations get worse.

103. Related to the above is another concern vis-à-vis international human rights conventions' stance on matters with regard to provision of services. All conventions talk about affordability and never mention free of charge services. In the context of poverty this notion is questionable as far as provisions for social security like health, education and housing. Access to these factors socially has unequivocal consequences for equity, even in the absence of income equity.

104. Finally there are issues pertaining to acceptability and quality. Here the Indian states like Andhra Pradesh fails totally. There is a clear rural-urban dichotomy in health policy with urban areas enjoying comprehensive healthcare services through public hospitals and dispensaries and now, preventive inputs and in contrast rural areas with poor curative services. This violates the principle of non-discrimination and equity and hence is a major ethical concern to be addressed.

105. In view of the catena of perspective pronouncements of Apex Court and various High Courts, healthcare or right to life is not only guaranteed under Article 21 of the Constitution of India, but also obligation of the State to provide health under Chapter-IV of the Directive Principles of State Policy, besides protection of Human Rights. The State is under obligation to protect the life of a citizen, both under Constitution and under International Covenants, being a party to several international covenants on human rights. Any amount of failure to provide adequate health facilities or failure to provide proper healthcare to the citizens of the State would amount, not only negation of fundamental right but also human rights. Therefore, the State is under obligation to monitor the grim

situation in Uddanam constantly area and take every step to prevent spread of CKD in Uddanam area.

106. Keeping in view the law laid down by various Courts and Rights of Citizen, we would like to examine the issue based on the material produced.

107. To substantiate the contention that the State and its instrumentalities failed to take necessary care, more particularly, to prevent further spread of disease and treatment of patients suffering from CKD, petitioners placed on record Bulletin issued by World Health Organization on 03.10.2017. Word Health Organization in its report observed that an unknown number of people living in this area have a chronic kidney disease of unknown etiology, a disease that mostly affects farmers and agricultural workers. This condition was discussed and named “Uddanam nephropathy” at the 2013 International Congress of Nephrology held in Hong Kong, China. Unpublished cross-sectional estimates from Uddanam suggest that the prevalence of chronic kidney disease of unknown etiology is between 40% and 60% (T.Raviraju, Dr, NTR University of health sciences, personal communication, August 2017). This range is nearly three times higher than the national prevalence of 17.2%. As of 2015, it was estimated that more than 4500 people had died due to chronic kidney disease in the last ten years and around 34,000 people had kidney diseases in Uddanam Area.

108. Another Bulletin of World Health Organization also lending support to the case of the petitioners that causative factors were not detected by the Government till date.

109. Dr.T.Raviraju, Dr.NTR University of Health Sciences along with other team of Doctors submitted a report about high prevalence of CKD in Uddanam area specifying the test conducted etc, which are narrated in the petition. Similarly, other documents annexed to the petition clinchingly established that several tests were conducted by different institutions Like ICMR, WHO, Harvard University, but could not detect the actual cause for CKD in Uddanam area, but few reasons were mentioned in the counter, which we extracted in the earlier paragraphs. Though, research institute was established, as on date, no causative factor was detected finally. Therefore, unless the investigation process is continued till the cause is detected for CKD in Uddanam area, it is difficult to manage the situation and provide health care to the residents of Uddanam area for effective control and treatment to cure the disease, so also palliative treatment. Therefore, the State has to make every endeavour to continue the investigation to detect the causative factors for prevalence of CKD in Uddanam.

110. The respondents to substantiate their contention that they have taken necessary care and continuously monitoring the situation, placed on record certain material along with their counter and additional affidavit of respondent Nos.5 to 17 and 19 to 23 and 18. The respondents explained the steps taken at every stage, the respondents placed on record G.O.Ms.No.102 Health, Medical and Family Welfare (D1) Department dated 03.09.2019, whereby the State accorded administrative sanction in principle for establishment of 200 bedded Super Speciality Hospital with Kidney Research Centre and Dialysis Unit at Palasa in Srikakulam District with an estimated expenditure of Rs.50.00 Crores

(Non-recurring expenditure) and Rs.8.93 Crores per annum (Recurring expenditure) and sanctioned regular posts of Medical Superintendent (Addl. Director)-1, CSRMO-1, Administrative Officer-1, Senior Assistant-2. The State also sanctioned contractual services of Nephrologist-2, Urologist-2, Vascular Surgeon-1, Specialist Doctors (Gen.Physician-4, Gen.Surgeon-2, Anesthetist-4, Radiologist-1, Pathologist- 1, Micro Biologist-1, Biochemist-1), Gen. Duty Medical Officers-12, Nutritionist-1, Staff Nurses-60, Project Manager (Research Lab)-2, Research Scientist-2, Senior Research fellow-2, Junior Research fellow-2. The State also sanctioned certain posts on outsourcing basis viz. Junior Assistant-cum-DEO-4, Reception-cum-Registration Clerk-4, OT Assistant-4, Dialysis Technician-10, Laboratory Technician-4, C arm Technician-4, Social Worker-2, Supporting Staff (Class-IV)-20, Security Guards-6, Ambulance Driver-2.

111. This is a step forward to treat the patients, who are suffering from CKD, but not a preventive measure taken by the State. It is only a curative measure. The respondents placed on record report emphasizing the need to provide Reverse Osmosis water plants etc. and G.O.Ms.No.240 Panchayat Raj and Rural Development (RWS-1) Department dated 16.01.2020 is placed on record in support of it. State accorded permission to the Andhra Pradesh Drinking Water Supply Corporation to take up Drinking Water Supply projects covering all 13 districts of State of Andhra Pradesh to ensure supply of potable drinking water in rural and urban areas by obtaining funds by way of loans from various sources viz., Public Sector Scheduled Banks / NABARD / Government contribution / External Aiding Agencies / Public Private Partnership mode / Hybrid

Annuity Mode etc., duly identifying fully sustainable sources in consultation with Water Resources Department with estimated cost of Rs.12,308 crores. For Uddanam, an amount of Rs.700 crores were sanctioned, whereas for East Godavari, West Godavari, Guntur, Prakasam, YSR Kadapa an amount of Rs.3960, Rs.3670, Rs.2665, Rs.833 and Rs.480 crores were sanctioned respectively.

112. The way forward to supply potable water, State issued G.O.Ms.No.624 Panchayat Raj and Rural Development (RWS-1) Department dated 29.04.2020 to take up drinking water supply projects at various places and issued e-procurement tender notice No.02/2020-21 dated 18.06.2020 calling tenders for "providing Drinking water supply scheme to Uddanam area of Srikakulam District". In response to the tender, a bid was received and finalized in favour of Megha Engineering and Infrastructures Limited. At best, the entire documentary evidence produced by the respondents would show that the department is making every endeavour to provide potable water to the habitants of Uddanam area besides other areas. Similarly, G.O.Ms.No.194 Panchayat Raj and Rural Development (RWS.II) Department dated 23.03.2017 was issued sanctioning Rs.1730.30 Lakhs under SDP grant for providing safe drinking water through Reverse Osmosis Plant to Uddanam area and to ST habitations in ITDA area of Seethampeta Mandal of Srikakulam District.

113. These documents established that the Panchayat Raj Department has taken steps to provide potable water, but the project is not yet completed as per the material produced by the respondents.

114. The State issued G.O.Rt.No.417 Health, Medical and Family Welfare (D) Department dated 20.07.2017 for setting up as dedicated Kidney Disease Research Institute at Srikakulam in partnership and 50% financial support of ICMR with an expected amount of Rs.5 Crores per annum for three consecutive years. The pleadings further disclosed that the research centre was established for conducting research on Kidney disease in Uddanam area, but it is only for three years, which is already expired by 20.07.2020, it is not known whether the research centre is continuously conducting scientific investigation and research to find out the reasons for Kidney disease in Uddanam area. Therefore, the action taken by the State is for the limited period of three years. During this period, nothing is worked out to find out the causative factor for kidney infection to the residents of Uddanam area as per the material on record. Therefore, mere establishment of research institute for three years did serve no purpose, but the State has to continuously conduct scientific investigations establishing necessary research institute and taking help of NGOs including Indian Council of Medical Research, Word Health Organization, Department of Nephrology, AIIMS, New Delhi, but no such attempt is being made by the respondents as on date and failed to detect the cause for CKD in Uddanam area.

115. One of the contentions of the respondents is that the State is providing pension to the Kidney affected patients at the rate of Rs.10,000/- per month by G.O.Ms.No.103 Panchayat Raj and Rural Development (RD.I) Department dated 30.05.2019 and also providing pension to the Chronic Kidney disease patients, who are not on dialysis vide G.O.Ms.No.551 Health, Medical and Family Welfare (D2) Department

dated 26.10.2019. Thus, the respondents are providing financial aid to the victims of CKD for extension of their lifetime for some more time without starvation. However, the amount being provided by the respondents is not sufficient to treat the Kidney patients at the advanced stage. Instead of providing such pension, it is appropriate to provide super speciality treatment to the Kidney patients at their door step. But the State did take no such step till date.

116. G.O.Rt.No.111 Health, Medical and Family Welfare (D2) Department dated 12.02.2019 was issued for shifting of Research Centre at VIMS, Visakhapatnam to Palasa, Srikakulam District along with the existing Lab and equipment, but that would not serve any purpose.

117. In any view of the matter, details of tests conducted in the Uddanam area disclose high prevalence of Kidney disease in the Uddanam area. The documents produced by the respondents are sufficient to conclude that the State intend to provide potable water in Uddanam area to improve their health avoiding silicon deposits in the water and the measures taken by the Medical and Health department, at best, establishes the minimum steps taken by the Medical and Health department to treat the patients, who are suffering from CKD in Uddanam area and extending financial aid to the patients, who are at the advanced stage of kidney problem. But these measures are not sufficient to prevent CKD in Uddanam area. Even according to the allegations made in the counter, the reasons are numerous. One such reason is occupational heat stress. But the State did not take any steps to shift Cashew processing units and brick kilns to the distant places so as to prevent the heat generation from those units and such steps are required immediately to

protect the workers working in the cashew process units and brick kilns while directing the owners of those units to modernize their industries so as to prevent heat generation, which seriously affect the health of the workers in the Industry with the assistance of Pollution control board and other concerned department.

118. The other cause shown by the respondents is that consumption of chewing tobacco, dry fish, alcohol, pain killers and adulterated tea powder mixed with cashew nut subsidiaries, but so far Government did not take any steps to prevent or at least to control the sale of chewing tobacco, dry fish and alcohol as a preventive measure for spread of CKD among the residents of Uddanam area, as such it is imperative to take steps to control sale of above items with the aid of different Government departments including Food Safety Authority to prevent further spread of CKD among the residents of Uddanam area.

119. Another major reason disclosed in the counter is the presence of Nitrogen Nitrate, Silica, Fluoride, phthalates contamination in ground water. Till date, no scientific investigation was done to prevent such deposit of excessive Nitrogen Nitrate, Silica, Fluoride and increased percentage of chromium in drinking water. Therefore, as a measure to prevent further spread of CKD, the State has to make every endeavour to conduct scientific investigation to find out reasons for such deposits, till then it is difficult to control the spread of CKD in Uddanam area.

120. Thus, the State failed to take adequate measures to prevent spread of CKD among residents of Uddanam area, which is health hazard and on account of such sufferance, their capacity to work is drastically reduced

and it has its own impact on the productivity in those areas and on economy of State.

121. Therefore, in view of the law declared by the various Courts as discussed in the earlier paragraphs, it is the duty of the State to provide adequate medical care and failure to provide such adequate medical care amounts to violation of fundamental right to life guaranteed under Article 21 of the Constitution of India, so also human right recognized by various Courts and several international covenants as discussed in the earlier paragraphs. Apart from that, it is the obligation of the State under Article 47 of the Constitution of India to provide adequate medical care to the citizens of the State. But the State failed to take necessary preventive measure to prevent the spread of CKD and this condition was discussed and named "Uddanam Nephropathy" at the 2013 International Congress of Nephrology held in Hong Kong, China. This medical condition prevalent in Uddanam is one of the 7 such instances around the world where no specific reason has been identified for the cause of the disease. When such serious disease causing deaths in the Uddanam area, the State has to make every endeavour to prevent such spread of CKD, but as seen from the material produced by the respondents, the State miserably failed to take steps to provide adequate medical care to the residents of Uddanam area besides failure to take preventive measures in Uddanam area.

122. The State did not dispute prevalence of CKD (CKDu) in Uddanam area as narrated in the counter affidavit extracted above. But, it is difficult for this Court to decide whether those steps are adequate to prevent spread of CKD among the residents of Uddanam area and

whether those steps are sufficient to palliate the pang of CKD patients and as a measure for cure.

123. It is evident from the undisputed facts of the case based on the pleadings that the State could not detect the causative factors for CKD in Uddanam area consisting of seven mandals.

124. Independent medical research institute like George Institute for Global Health, India, also took up research in Uddanam and this phenomenon was discussed and termed ***"Uddanam Nephropathy"*** at the 2013 International Congress of Nephrology held in Hong Kong, but could not suggest the ways and means to prevent CKD in Uddanam area and it was noted as one of the diseases for which causes could not be detected and thereby, named as ***"Uddanam Nephropathy"*** at the 2013 International Congress of Nephrology held in Hong Kong.

125. From the pleadings of both parties, it is clear that, the attempts made by the State Government to detect the causative factors for such sufferance proved futile, but they could detect few reasons as enumerated in the counter affidavit filed by the respondents, based on epidemiological and statistical evidence, the suspected causative factors for CKD Uddanam (CKDu) are as follows:

1. ***Tobacco usage and regular alcohol consumption***
2. ***Extensive use of pain killers/ analgesic medications***
3. ***Family history of CKD.***
4. ***Heat stress due to occupational exposure***
5. ***Silica and Fluoride, phthalates contamination in ground water***

126. It is also an undisputed fact that the State did not take steps to provide treatment in emergency cases, though provision for treatment in emergency cases is an obligation of the State. Therefore, the State has to take appropriate steps to provide medical facilities for treatment in emergency cases, besides providing necessary budget and medical infrastructure to the residents of Uddanam area.

127. The Apex Court in ***Paschim Banga Khet Mazdoor Samiti v. State of West Bengal***[31] highlighted the obligation of the State to provide emergency medical healthcare. The issue before the Supreme Court was the legal obligation of the Government to provide facilities in government hospitals for treatment of persons who had sustained serious injuries and required immediate medical attention. Upon consideration of entire gamut of law, an enquiry commission was appointed for providing emergency medical care and the enquiry committee made certain recommendations that were adopted by the West Bengal State Government to health centres/Emergency Departments of hospitals in dealing with patients and they are as follows:

> *1. Proper medical aid within the scope of the equipments and facilities available at the Health Centres and hospitals should be provided to such patients and proper records of the treatment given should be maintained and preserved. The guiding principle should be to ensure that no emergency case is denied medical care. All possibilities should be explored to accommodate emergency patients in serious condition. To avoid confusion Admission/Emergency Attendance Registers shall contain a clear recording of the following information:*
>
> *a) name, age, sex, address, disease of the patient by the attending MO;*
>
> *b) date and time of attendance/examination/ admission of the patient; and*
>
> *c) whether and where the patient has been admitted, transferred, referred; Further, there should be periodical inspection of the arrangement by the Superintendent and responsibility fixed for*

[31] (1996) 4 SCC 37

maintenance and safe custody of the registers.

3. *Emergency Medical Officers will get in touch with Superintendent/Deputy Superintendent/ Specialist Medical Officer for taking beds on loan from cold wards for accommodating such patients as extra-temporary measures.*
4. *Superintendents of hospitals will issue regulatory guidelines for admitting such patients on internal adjustments amongst various wards and different kinds of beds including cold beds and will hold regular weekly meetings for monitoring and reviewing the situation.*
5. *If feasible, such patients should be accommodated in trolley-beds and, even, on the floor when it is absolutely necessary during the exercise towards internal adjustments as referred to above.*

The Enquiry Committee made certain other suggestions which were also accepted by the state government:

- *A central Bed Bureau should be set up which should be equipped with wireless or other communication facilities to find out where a particular emergency patient can be accommodated when a particular hospital finds itself absolutely helpless to admit a patient because of physical limitations. In such cases the hospital concerned should contact immediately the Central Bed Bureau which will communicate with other hospitals and decide in which hospital an emergency serious patient is to be admitted.*
- *Some casualty hospitals or trauma units should be set up at some points on area basis.*
- *The intermediate group of hospitals, viz., the district, sub-division and the State general hospitals should be upgraded so that a patient in a serious condition may get treatment locally.*

128. Apart from directions of the government of West Bengal and the recommendations of the Enquiry Committee, the Supreme Court made some additional recommendations:

1. *Adequate facilities should be available at the PHCs where the patient can be given basic treatment and his condition stabilized.*
2. *Hospitals at the district and sub-divisional level should be upgraded so that serious cases can be treated there.*
3. *Facilities for giving specialist treatment are to be increased and having regard to the growing need, it must be made available at the district and sub-divisional level hospitals.*
4. *In order to ensure availability of bed in an emergency at state level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment which is required.*
5. *Proper arrangement of ambulance should be made for transport of a patient from the primary health centre to the district hospital or sub□divisional hospital to the state hospital.*
6. *Ambulance should be adequately provided with the necessary equipment and medical personnel.*

129. The Supreme Court observed that while financial resources would be required for the implementation of the above directions, the constitutional obligation of State to provide adequate medical services to the people cannot be ignored. The Court also observed that, "In the context of the constitutional obligation to provide free legal aid to a poor accused the Apex Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. These observations will apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view." The Court held that it was necessary that a time□bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The Court also observed: Providing adequate medical facilities is an essential part of the obligation undertaken by the State in a welfare state. The Government discharges this obligation by running hospitals and health centres. Article 21 imposes an obligation on the State to safeguard right to life of every person. Preservation of human life is thus of paramount importance. Government hospitals run by the state and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article

21' (para 9) This case arose out of an incident in West Bengal. Other states were not parties to the case. Also, the Committee was concerned with West Bengal and the directions were also given by the West Bengal Government. However, the Supreme Court observed that other states, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the Memorandum of the Government of West Bengal dated August 22, 1995 and the further directions given in the Judgment. Thus all the directions referred to above, would be equally applicable to other states in the country. Besides, the Union of India was a party to these proceedings. The Court observed that since it was the joint obligation of the Centre as well as the States to provide medical services it is expected that the Union of India would render the necessary assistance in the improvement of the medical services in the country on these lines. The Court also ordered that the Petitioner be paid Rs. 25,000 as compensation.

130. Similar, recommendations are required to be followed by the State Government in Uddanam area to provide emergency medical healthcare to the residents of Uddanam area to avoid death due to CKD, otherwise, it is difficult for them to travel for more than 200 kms to reach Visakhapatnam for medical treatment and there is no possibility of getting treatment after travelling for such a long distance in emergency cases.

131. One of the reasons highlighted by the State for spread of the CKD in Uddanam area is environment i.e. polluted drinking water on account of presence of Nitrogen Nitrate, Silica, Fluoride, phthalates contamination in ground water. It appears that, as per the material on record, the

Government has given administrative sanction for the work "providing drinking water supply to Uddanam area of Srikakulam District" vide G.O.Rt.No. 624 dated 29-04-2020 with an estimated cost of Rs. 700 crores. Under the scheme raw water sourced from the Hiramandalam Reservoir will be treated in plants and clear water will be supplied to 807 habitations in the Uddanam Area, but construction of Hiramandalam Reservoir takes two years. Moreover, the State Government also provided water kios for drinking water to the residents of Uddanam area. It is the step taken by the State Government to prevent such spread of CKD among the residents. Though, Uddanam area is a lush green area, the reason for presence of Nitrogen Nitrate, Silica, Fluoride, phthalates contamination in ground water is not detected and necessary scientific investigation is to be undertaken by the State, since one of the causative factor is the environmental condition as healthy environment is human right.

132. The Apex Court in ***Municipal Council, Ratlam vs. Vardhichand & Ors*** (referred supra) held that, Healthy Environment is also a Human Right and the Supreme Court issued the following directions:

1. *We direct the Ratlam Municipal Council (R1) to take immediate action, within its statutory powers, to stop the effluents from the Alcohol Plant flowing into the street. The State Government also shall take action to stop the pollution. The sub-Divisional Magistrate will also use his power under Section 133 CrPC, to abate the nuisance so caused. Industries cannot make profit at the expense of public health. Why has the magistrate not pursued this aspect?*
2. *The Municipal Council shall, within six months from today, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The Health Officer of the Municipality will furnish a report, at the end of the six-monthly term, that the work has been completed. We need hardly say that the local people will be trained in using and keeping these toilets in clean condition. Conscious cooperation of the consumers is too important to be neglected by representative bodies.*
3. *The State Government will give special instructions to the Malaria Eradication Wing to stop mosquito breeding in Ward 12. The sub□Divisional*

Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.

4. *The municipality will not merely construct the drains but also fill up cesspools and other pits of filth and use its sanitary staff to keep the place free from accumulations of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.*
5. *We have no hesitation in holding that if these directions are not complied with the sub□Divisional Magistrate will prosecute the officers responsible. Indeed, this Court will also consider to punish for contempt in case of report by the sub-Divisional Magistrate of willful breach by any officer*

133. The Court also held that the State should be guided by the paramount principle of Art. 47 of the Constitution of India which states that, improvement of public health should be one of the primary duties of the state.

134. The Bombay High Court in ***Citizens Action Committee, Nagpur vs. Civil Surgeon, Mayo (General) Hospital, Nagpur and Ors***[32], put in detail the responsibilities of the Municipal Corporation, in marinating the civic hospital and the other basic amenities in the city. The high court in its order stated that,

> *"We cannot but emphasise that the hospitals have their own role to play. Hospitals are the necessities of modern life and they have to respond to the needs of any growing city. Hardly any option can be speedy out or any excuse permissible so as to afford an alibi when the matters concern the authorities would bestow urgent attention on every facet of the problem of public health and effectively".*
>
> *(emphasis supplied)*

135. The Citizens Action Committee approached the Nagpur bench of the Bombay High Court requesting the court to intervene as the overall condition of the civic amenities such as roads, sanitation and public health was deteriorating considerably. The court issued notice to all the concerned authorities and asked them to file their say. Two fact finding reports of the citizens were also given to the court. The court largely

[32] AIR 1986 Bom 136

based its finding on the reports and the affidavits filed by the citizens. There were three hospitals that were being run by the state. Overcrowding in all these hospitals had reached dangerous levels. Trespassers and visitors also burdened the hospitals. Even the staff of the hospitals was housed in poor conditions and they were living in unhygienic conditions. The court held that as per Article 47 of the Constitution of India it is the duty of the state to provide proper facilities for public health. The court set up an Investigative and Remedial Measures Suggestive Committee (I. R. M. S. C.) to look into the matter.

136. The High Court of Madhya Pradesh in ***Hamid vs. State of M.P***[33] held that the citizens have right to clean and safe drinking water. The court stated, Under Article 47 of the Constitution of India, it is the responsibility of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It is incumbent on State to improve the health of public providing unpolluted drinking water. State in present case has failed to discharge its primary responsibility. It is also covered by Article 21 of the Constitution of India and it is the right of the citizens of India to have protection of life, to have pollution free air and pure water. The court also held that the state was liable to pay for the damages caused by the consumption of the polluted water. Hamid Khan a lawyer filed a petition before the High Court of Madhya Pradesh, regarding the quality of water supplied through the hand pumps in the district of Mandla. The water being supplied contained high amount of fluoride causing damages such as skeletal flurosis and dental flurosis to a number of people. The High Court held

[33] AIR 1997 M.P 191

Under Article 47 of the Constitution of India, it is the responsibility of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It is incumbent on State to improve the health of public providing unpolluted drinking water. State in present case has failed to discharge its primary responsibility. It is also covered by Article 21 of the Constitution of India and it is the right of the citizens of India to have protection of life, to have pollution free air and pure water... The court also held that the people affected due to the contaminated water should be treated at the expense of the State. It also added that the State should bear the expenses of any surgery might be required. The State was also directed to closing of hand pumps where the water had excessive amount of fluoride and that a proper and safe drinking water facility should be put in place.

137. The Allahabad High Court in ***Kamlavati vs. Kotwal and Ors***[34], ordered the brick klin owners to follow the norms laid down by the government very strictly and also ordered the government to set up a fund for the modernization of the brick kilns as the traditional brick klins were causing a lot of air pollution.

138. The Supreme Court in ***Murli S Deora vs. Union of India and Ors***[35] , recognized the harmful effects of smoking in public and also the effect on passive smokers, and in the absence of statutory provisons at that time, prohibited smoking in public places such as,1.auditoriums, 2. hospital buildings, 3. health institutions, 4. educational institutions, 5.libraries, 6. Court buildings 7. public office, 8. public conveyances,

[34] (2000) 3 UPLBEC 1969
[35] AIR 2002 SC 40

including the railways.

139. In State of Andhra Pradesh, the local government in Uddanam area including municipalities and panchayat are unable to take such steps to maintain ecological balance and to prevent presence of deposits of Nitrogen Nitrate, Silica, Fluoride, phthalates contamination in ground water, failed to control brick kilns, cashew process units and plastic units, which are main causes for heat stress and contamination of ground water. Therefore, we recommend the State to undertake necessary scientific investigation to prevent elimination of excessive deposits of Nitrogen Nitrate, Silica, Fluoride, phthalates contamination in ground water in drinking water in Uddanam area, as expeditiously as possible, since it is one of the causative factors, and take steps for prevention of heat generated from cashew process units, brick kilns to reduce heat stress as admitted by the respondents.

140. The other causes pleaded in the counter affidavit by the respondents are Tobacco usage and regular alcohol consumption; Extensive use of pain killers/ analgesic medications; Family history of CKD.

141. In view of the reasons explained in the Courts, it is the duty of the State to sensitize the residents of Uddanam area about the ill-effects of consumption of Tobacco and regular alcohol consumption; extensive use of pain killers/ analgesic medication; Heat stress due to occupational exposure and Silica and Fluoride, phthalates contamination in ground water, by conducting necessary programmes and also conduct in-depth study to take effective steps to save valuable lives of the residents of Uddanam area and submit a report to the State Legal Services Authority

to monitor the same in an interval of two months for a period of three years initially.

142. National Human Rights Commissioner recommended National Action Plan to operationalise the Right to Health Care. State Public Health Services Act is enacted, detailing and operationalising the National Public Health Services Act, recognizing and delineating the Health rights of citizens, duties of the Public health system and private health care providers and specifying broad legal and organizational mechanisms to operationalise these rights. This would include delineation of lists of essential health services at all levels: village/ community, sub-centre, PHC, CHC, Sub□divisional and District hospital to be made available as a right to all citizens. This would take as a base minimum the National Lists of essential services mentioned above, but would be modified in keeping with the specific health situation in each state.

143. A set of public health sector reform/measures to ensure health rights through strengthening public health systems, and by making private care more accountable and equitable. The minimum aspects of a health sector reform framework that would strengthen public health systems must be laid down as an essential precondition to securing health rights. An illustrative list of such measures are as follows:

1. State Governments should take steps to decentralise the health services by giving control to the respective Panchayati Raj Institutions (PRIs) from the Gram Sabha up to the district level in accordance with the XI Schedule of the 73rd and 74th Constitutional Amendment 52 of 1993. Enough funds from the plan and non plan allocation should be devolved to the PRIs at various levels. The local bodies should be given the responsibility to formulate and

implement health projects as per the local requirements within the local overall framework of the health policy of the state. The elected representatives of the PRIs and the officers should be given adequate training in local level health planning. Integration between the health department and local bodies should be ensured in formulating and implementing the health projects at local levels.

2. The adoption of a state essential drug policy that ensures full availability of essential drugs in the public health system. This would be through adoption of a graded essential drug list, transparent drug procurement and efficient drug distribution mechanisms and adequate budgetary outlay. The drug policy should also promote rational drug use in the private sector.

3. The health department should prepare a State Drug Formulary based on the health status of the people of the state. The drug formulary should be supplied at free of cost to all government hospitals and at subsidized rate to the private hospitals. Regular updating of the formulary should be ensured. Treatment protocols for common disease states should be prepared and made available to the members of the medical profession.

4. The adoption of an integrated community health worker programme with adequate provisioning and support, so as to reach out to the weakest rural and urban sections, providing basic primary care and strengthening community level mechanisms for preventive, promotive and curative care.

5. The adoption of a detailed plan with milestones, demonstrating how essential secondary care services, including emergency care services, which constitute a basic right but are not available today, would be made universally available.

6. The public notification of medically underserved areas combined with special packages administered by the local elected bodies of PRI to close these gaps in a time bound manner.

7. The adoption of an integrated human resource development plan to ensure adequate availability of appropriate health human power at all levels.

8. The adoption of transparent non discriminatory workforce management policies, especially on transfers and postings, so that medical personnel are available for working in rural areas and so that specialists are prioritised for serving in secondary care facilities according to public interest.
9. The adoption of improved vigilance mechanisms to respond to and limit corruption, negligence and different forms of harassment within both the public and private health system.
10. All health personnel upto the district PRI level must be administratively and financially accountable to the PRI at each level from the Gram Panchayat to the District level. Adequate financial resources must be made available at each level to ensure all basic requirements of health and medical care for all citizens

144. Summing up law laid down by various Courts; Constitutional provisions and International Covenants on Human Rights and various recommendations made by Hon'ble Supreme Court, we dispose of both the writ petitions by issuing following directions to the State and Central Governments:

1. We direct the State and Local governments of Uddanam area to take immediate action, within its statutory powers, to stop the effluents from the nearby cashew processing units and brick kilns into the water bodies, as industries cannot make profit at the expense of public health.
2. Proper medical aid and adequate health care be provided at the Health Centres and hospitals irrespective of financial constraints to CKD patients and proper records of the treatment given, should be maintained and preserved. The guiding principle should be to ensure that no emergency case is denied medical care. All possibilities should be explored to accommodate emergency patients in serious condition. To avoid confusion Admission/Emergency Attendance Registers shall contain a clear recording of the following information:

d) name, age, sex, address, disease of the patient by the attending Medical Officer;

e) date and time of attendance/examination/ admission of the patient; and

f) whether and where the patient has been admitted, transferred, referred; Further, there should be periodical inspection of the arrangement by the Superintendent and responsibility be fixed for maintenance and safe custody of the registers.

3. Emergency Medical Officers will get in touch with Superintendent/Deputy Superintendent/ Specialist Medical Officer for taking beds on loan from cold wards for accommodating such patients as extra-temporary measures.

4. Superintendents of hospitals will issue regulatory guidelines for admitting such patients on internal adjustments amongst various wards and different kinds of beds and will hold regular fortnightly meetings for monitoring and reviewing the situation. If feasible, such patients should be accommodated on trolley-beds.

5. Adequate facilities should be made available at the PHCs where the patient can be given basic treatment till condition is stabilized. Hospitals in the villages of Uddanam area should be upgraded so that serious cases of CKD can be treated there.

6. Facilities for giving specialist treatment are to be increased having regard to the growing need, it must be made available in all the villages of Uddanam area.

7. In order to ensure availability of bed in an emergency at state level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where bed is available for the treatment required.

8. Proper arrangement of ambulance should be made for transport of a patient from the primary health centre to the district hospital or sub-divisional hospital to the state hospital. Ambulance should be

adequately provided with the necessary equipment and medical personnel.

9. Union and State shall ensure that drugs for management of Uddanam CKD (C.K.D) and its complications including the drugs be made available at free of cost and do not go out of stock at all Primary Health Centers (PHCs) or as the case may be public health facilities in Uddanam area;

10. Union and the State must organize seminars at all levels which serve as platforms to hear the views and experiences directly from the former patients and their families as well as doctors, social workers experts NGOs and Governments officials;

11. Union and State Government must ensure that both private and public schools do not discriminate against children hailing from CKD (C.K.D) affected families such children should not be turned away and attempt should be made to provide them free education;

12. Union and State Government shall appoint food inspectors for the villages in Uddanam to prohibit food adulteration. They must pay adequate attention to ensure that the persons affected with CKD (C.K.D) are issued Household supply cards so that they can avail the benefits under schemes subject to their eligibility which would enable them to secure their right to food;

13. Direct the Union and State Governments should construct Super Specialty Hospitals with adequate number of beds within the limits of Uddanam area with the adequate dialysis Units and testing laboratory; immediately to meet the present and future needs.

14. State together with the Union Of India should consider formulating and implementing a scheme for providing at least a minimum assistance preferably on a monthly basis to all CKD (C.K.D) affected persons for rehabilitations;

15. Union and the State Governments must proactively plan and formulate a comprehensive community based rehabilitation scheme which shall cater the basic facilities and needs of the CKD (C.K.D) affected persons and their families The scheme shall be aimed at eliminating the stigma that is associated with persons affected with

C.K.D patients;

16. State and Central Government should provide the mobile dialysis units to the CKD patients in Uddanam area who are the suffering with severe CKD (C.K.D);
17. Take steps to prevent heat stress generating from cashew processing units and brick kilns, with the assistance of experts from Pollution Control Board and take steps for modernization of cashew units; brick kilns to prevent heat generation.
18. Take steps to reduce excessive Nitrogen Nitrate, Silica, Fluoride, chromium deposits, phthalates contamination in ground water by scientific methods; and ensure providing potable water to residents of Uddanam area free from silicon and fluoride;
19. Sensitize the residents about ill-effects of chewing tobacco, consumption of alcohol, dry fish by conducting necessary awareness programmes and by distributing pamphlets

145. As seen from the material placed on record by the petitioners, to substantiate the contentions of the respondents that they have taken adequate steps to provide adequate healthcare to CKD patients, we find that it is not adequate. When the Government is not acting swiftly to protect the rights of a citizen guaranteed under Article 21 of the Constitution of India, indirectly violated such right without providing adequate healthcare to the residents of Uddanam area in discharge of their obligation under Article 47 of the Constitution of India, we find it appropriate to issue certain directions. As such, we framed a scheme for conducting outreach programmes and one such programme is to monitor the steps taken by the Government from time to time in Uddanam area both preventive, curative and palliative measures being provided by the State to CKD patients and to sensitize them by conducting awareness

programmes with the help of concerned authorities about the ill-effects of chewing tobacco, consumption of alcohol, dry fish so also to monitor the steps being taken by the State for modernization of cashew processing units, brick kilns to prevent generation of heat, which seriously affect the health of workers working in those industries and to monitor the scientific investigation being done by the State to prevent Nitrogen Nitrate, Silica, Fluoride, phthalates contamination in ground water.

146. In order to monitor the steps being taken by the State to prevent and control Chronic Kidney Disease in Uddanam, as a part of National Legal Services Authority (NALSA) Resolution on 17th & 18th of march, 2018, to elaborate the activities of NALSA, there is a need to involve hospitals with Legal Services Authority, as such, the Chairman, DLSA Srikakulam shall constitute the following committees at District Level and at Mandal Level Legal Services.

1. <u>Advisory Committee</u>

a. Chairman DLSA, Srikakulam
b. District Collector
c. Chairman, District Medical Board / Superintendent, Government General Hospital
d. An NGO connected to the medical field
e. Environmental Engineer, Andhra Pradesh Pollution Control Board Regional Office
f. Commissioner of Labour
g. Psychiatrist

The members of the Advisory Committee shall meet once in a month to guide the members of the other committees for effective implementation of Uddanam Nephropathy Scheme and implement the directions issued by the Committee.

2. Awareness Committee

a. A Nephrologist
b. General Physician
c. 2 or 3 Advocates
d. A social worker
e. AASHA worker

To identify the families of the victims of kidney disease and to explain the medical treatment and facilities available to them and to enlighten them about the causes for kidney disease due to consumption of various types of food, alcohol, smoking and to create better environment by themselves such as sanitation, fresh drinking water and to conduct medical camp in the villages where people are affected, once in a fortnight and also create awareness by going door-to-door by ASHA workers.

3. Legal Aid Committee

a. Advocates
b. Chairman, DSLA, Srikakulam
c. Secretary, DLSA, Srikakulam

To create legal awareness of right to live in hygienic and healthy atmosphere and related laws to enforce their rights and also to give proper legal advice to get compensation and medical care by victims of Uddanam Nephropathy.

4. Coordination Committee

a. Chairman, DLSA
b. Secretary, DLSA
c. Chairman, MLSA
d. Legal practitioner

To coordinate all the departments by sitting once in a month for implementation of the Uddanam Nephropathy Scheme.

5. Monitoring Committee

a. Executive Chairman, SLSA
b. Secretary, Finance
c. Secretary, Medical and Health Department,
d. Secretary, Revenue Department
e. Chairman, SPCB

It shall monitor the work done by the Committee by holding meeting once in two months and give appropriate guidance for effective implementation of the Scheme.

147. In addition to the above, the State authorities are directed to handover the reports relating to measures taken to prevent and cure CKD in Uddanam area every month/two months to the State Legal Services Authority to suggest necessary measures from time to time, in view of the directions of, National Legal services Authority to all the State Legal Services Authorities to conduct outreach programmes to find out core issues in the area and to attend those issues within their limitations, which is inclusive of providing medical care with the help of Doctors.

148. Member Secretary, State Legal Services is hereby directed to get necessary funds from the State by taking appropriate steps and report to Patron-in-Chief from time-to-time. The State may take help from NGOs and industrialist and assist as part of corporate social responsibility, to ensure, protect right to life and adequate health care and to protect human rights of the residents of Uddanam area.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

PRASHANT KUMAR MISHRA, CJ **M. SATYANARAYANA MURTHY, J**

Sp/Ksp