
(2003) 12 CAL CK 0010
In the Calcutta High Court
Case No : Writ Petition No. 9768 (W) of 2003

Adhir Ranjan Chowdhury

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 CALLT 78 : (2004) 2 CHN 40

Hon'ble Judges : Ashok Kumar Mathur, C.J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Ashis Sanyal and Pradip Kumar Chatterjee, for the Appellant; Balai Chandra Roy, Rabilal Moitra and Tulsidas Maity, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—This public interest litigation has been brought by the petitioner who is a Member of Parliament and President of the District Congress Committee of Murshidabad District within the State of West Bengal.

2. This writ petition relates to death of several children for an unknown cause mainly in the Lalgola and Jangipur Block of Murshidabad District during the period of May 14, 2003 to June 14, 2003. According to the petitioner about 95 persons died during the said period whereas respondent authorities disputed such fact. However, the respondent authorities admitted that about 19 deaths occurred for the said unknown disease during the said period in the State hospitals. The State also admitted that there might have been more deaths within the village who did not approach the Governmental Agency for treatment.

3. Initially we directed affidavits to be filed so that the State Authority could justify their conduct. Accordingly, affidavit-in-opposition was filed by the State through the Chief Medical Officer of Health, Murshidabad. The brief facts of the State version are as follows :

In the middle of May, 2003 children with history of febrile convulsion, respiratory tract infection (RTI), Broncho Pneumonia, diarrhoea were admitted to different

State hospitals in the district. The doctors immediately gave proper treatment. However, there had been deaths occurred in some cases as those patients were brought to the hospital almost in dying condition.

On June 2, 2003 the first information as to the said unknown disease was given by one female health assistant of Lalbagh Block to the Block Medical Officer. Immediately steps were taken. Medical team was sent to the affected areas. The medical team could not find out the actual cause of the disease. The blood samples, throat swab and C.S.F. were collected from various patients and were sent to the National Laboratory at Pune and Delhi as well as to the School of Tropical Medicine, Kolkata.

After investigation transpires that the cause of the said disease was due to Influenza B virus as per the report received from the New Delhi on 25th June, 2003.

The investigation caused by the medical team during period 11th June, 2003 to June 15, 2003 also revealed that the said disease was due to Influenza B virus. In the said detailed report it transpires that 45 deaths toll took place out of the said disease and the death took pick during May 28, 2003 to June 3, 2003. The said calamity subsided on or about June 14, 2003 as per the graph drawn in the said report.

4. From the study of the different medical reports annexed to the affidavit-in-opposition it transpires that the said virus was due to the strip rise of temperature during the said period. However, by 14/15th June, 2003 it evaporated in normal course as monsoon by this time must have come.

5. In course of hearing the learned advocate general in his usual fairness admitted that the State had no sufficient infrastructure to get information about the said disease immediately from the said local villages unless and until those were reported at the district level which was done by a lady doctor on June 3, 2003. According to Mr. Roy immediately on receipt of such information State sent a medical team to the affected villages and the situation was brought under control.

6. Mr. Ashis Sanyal, learned counsel appearing for the petitioners, submitted that Panchayat election which resulted in a great set back for the ruling partying the said district immediately preceded the calamity and as such the State administration did not care to rise to the occasion immediately. Mr. Sanyal further contended that the families of the diseased must be compensated properly.

7. We are unable to agree with the first submission of Mr. Sanyal. Until and unless, there is concrete proof it is difficult to belief that a State Administration can take revengeful attitude and would allow the children to die because of the result of the Panchayat Election. This submission of Mr. Sanyal is nothing but a political stunt and is hereby rejected. The second submission of Mr. Sanyal would properly, be dealt with in this judgment at the appropriate stage.

8. The unfortunate incident can be divided in two parts :

(i) the State was not vigilant enough to take emergent appropriate action in such unforeseen circumstance.

(ii) To find out the cause of disease the State took considerable time which had resulted unfortunate death of 45 children (according to the Government statistics).

9. Let us first discuss the first issue.

10. The State is to have a supposed elaborate infrastructure throughout its territory. With the advancement of science particularly in communication and telecommunication as well as communication through electronic media like internet one can reach the remotest corner of the country and/or world, as the case may be, within a second. In this millennium when science has advanced too first and many other states have taken advantage of the situation it is unknown to us why the State could plead its helplessness as recorded hereinbefore. If the female doctor could inform the appropriate authority on 3rd June, 2003 why the same was not done on 15th May, 2003 when the first case was reported to the concerned health centre nearest to the affected villages. There can be 2 answers to this query. Either the concerned health centre was not in operation in absence of doctors or the concerned doctors did not sincerely approach the problem and did not feel it necessary to inform their higher authority. In either of these cases the State machinery should have been more vigilant. If we refer to the report of the medical team it would appear that in response to a news item the team was asked to conduct enquiry. On a detailed study of the said report it would appear that the said report had consistently avoided the question which is formulated by us hereinbefore. The medical report had 2 parts the first one relates to the communication of the incident and the second one relates to steps to find out the cause of the disease. Mr. Roy in course of his argument contended that the Influenza B Virus has no direct medicine and it can only be cured by supportive treatment including extending proper care to the patient. Whether such facility was available to the concerned health centres was a question which had been avoided by the medial report annexed to the affidavit the affidavit itself as well as the argument made before us by the state.

11. We again reiterate that the State machinery should have been equipped with proper infrastructure to fight out any unforeseen incident be it natural calamity, be it epidemic, be it otherwise. The concerned report also stated that altogether 719 cases had been reported during the period May 15, 2003 to June 14, 2003 out of such 45 deaths took place within a short span of 30 days out of the said so called unknown disease. It also appears that the report by the said female doctor on June 3, 2003 was also not taken into account seriously by the higher authority. It is only after a news item published in the Statesman on June 6, 2003 the Government rose to the occasion and sent medical team. This appears from the report itself. It also appears from the said report that on June 10, 2003

the District Authorities reported the incident to the State Authorities. We are unable to understand that when press could publish the news in the paper how it could take another 4 days time for the District Authority to inform the State Authority. It is significant to note that all these happened on June 10, 2003 whereas the death took a sharp rise during the period May 28, 2003 to June 3, 2003.

12. On analysis of the aforesaid facts we are prima facie of the opinion that the District Administration was not properly equipped to face such unforeseen incident. The district authority was also not sincere to approach the problem with their earnest.

13. We strongly deprecate the lackadaisical approach of the district administration, the Director of Medical Health and the State did not pay proper attention to such tragedy of death of 45 children. The malady is still deeper; the entire health care system in the State of West Bengal is the greatest casualty. The incident can be multiplied by referring to a few incidents, like an old man died in the hospital ward out of burning under the nose of the doctor and nursing staff attending him, a child was bitten by mouse and cat in the hospital, saline is infected with fungus. These are few illustrations that would go to show that all is not well as far as medical health department of the State of West Bengal is concerned. There is total lack of sensitivity in the medical health department that speaks volume about the thorough negligence. It is high time that the State should gear up the medical health department right from the top and make it more sensitive to public health. These are symptomatic; there is serious malady in the medical and health care of the State. They are not responsive to the need of the public. Action has to be initiated from the top, those who are responsible for dereliction of their duty should be seriously hauled up and strong action should be taken against them, so that message goes to the Doctors and other nursing staff that the Government means business.

14. Let us now discuss the second issue.

15. It might not be possible for the District Health Officials to find out the cause of the said disease in absence of proper infrastructure at the district level. But at the same time they could take emergent step to have the pathological test done at Calcutta at the proper time. The School of Tropical Medicine, Kolkata collected samples during their visit on 7/8th June, 2003. The District Administration was absolutely careless on this issue. Even after filing of affidavits containing various medical reports it is not clear to us as to what treatment was actually given to the ailing patients during the said period specially between May 14, 2003 to June 3, 2003. We are not sure whether the State Administration at the highest level is also equipped with such information as of date. This shows how sincere the State Administration is.

16. Death is an unfortunate incident. The person who believes in destiny, to him this is unavoidable. The unfortunate part of it is that 45 flowers were nipped in

the bud without proper treatment.

17. It is an admitted fact that 45 children died and they could have got a better medical treatment. We don't know whether all the 45 children died in the hospital or outside. Be that as it may, fact remains that these 45 children died. Therefore, the families of these children should be compensated with a sum of Rs. 10,000/- to be paid to the parents of each of these children.

It was a total failure on the part of the State. Therefore, the families of these children should be compensated. This will give a message to the department that on account of dereliction of their duty compensation is awarded. So in future the State has to bear the burden of compensation for those who are responsible for not being sensitive to the need of the people. The State is free to recover such compensation from the salaries of those who are found to be responsible and insensitive to the need of the people.

18. This writ petition is thus disposed of with the following directions :

(1) State Government must appoint a High Power Committee to examine the State Medical Infrastructure available within the State.

(2) While giving such report the said High Power Committee must suggest the measures to be taken by the Government.

(3) On receipt of the said report the State Government must review infrastructure facility for medical treatment and adopt the measures to be suggested by the High Power Committee.

(4) The district administration should ascertain the particulars of the parents of all these 45 children and after proper identification each one of them should be paid a sum of Rs. 10,000.00 as compensation.

(5) The entire process must be taken up by the State within a period of two weeks from date and be concluded within 6 months thereafter.

19. We dispose of this writ application with the hope that such unfortunate incident would never happen within the State and the State would be able to face any kind of calamity whether it is epidemic or otherwise.

20. The writ petition is thus disposed of without any order as to costs.

21. Urgent xerox certified copy will be given to the parties, if applied for.

22. Later on : Prayer for stay of operation of the judgment made on behalf of the respondent is refused.

Ashok Kumar Mathur, C.J.

23. I agree.