

(2009) 01 KAR CK 0069

In the Karnataka High Court

Case No : Writ Petition No's. 14279 and 14258 of 2008

B. Krishna Bhat

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Karnataka Civil Services Rules, 1958 — Rule 106B, 106BQ

Citation : (2009) 2 KarLJ 702 : (2009) 4 KCCR 2558

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Puttige R. Ramesh, in W.P. No. 14279 of 2008, for the Appellant; S. Vasudeva, Party-in-Person in W.P. No. 14258 of 2008, Niloufer Akbar, A.G.A. for Respondent-1 in W.P. No. 14279 of 2008 and for Respondents-1 to 3 in W.P. No. 14285 of 2008, Ravi Verma Kumar Ravi Verma Kumar Associates, for Respondent-2 in W.P. No. 14279 of 2008 nad for Respondent-4 in W.P. No. 14285 of 2008 and N. Khetty, for Respondent-3 in W.P. No. 14279 of 2008 and for Respondent-5 in W.P. No. 14285 of 2008, for the Respondent

Judgement

D. Dinakaran, C.J.—Since common questions arise for consideration in both the cases, they are heard together and by consent, they are taken up for final disposal.

2. These public interest litigations are filed seeking appropriate writ or direction to the State of Karnataka to take immediate action to put an end to the strike by doctors working in the Government Hospitals and to issue a direction that the persons practicing medicine cannot go on strike affecting the general public. The prayers also include seeking direction to the State Government and the Ministry of Health and Family Planning to take appropriate disciplinary proceedings against the erring doctors who have acted against the medical ethics and public interest and to deal with them, in accordance with law; to declare that the strike called upon by the Karnataka Medical Officers' Association, Victoria Hospital, Bangalore, is illegal unconstitutional and that they have no right to abstain from medical service to which they have been appointed in Government Hospital all

over the State; and to direct the Chairman, Indian Medical Council-5th respondent, to initiate action against the members of the Karnataka Medical Officers" Association, who have acted illegally and unconstitutionally.

3. Petitioners in these PILs have only vindicated the anguish of the public at large and particularly that of the common men of the society, who are below the middle class, economically poor and downtrodden, and those who mostly need the medical facilities of the Government Hospitals. The strike called by the Karnataka Medical Officers" Association that the Government doctors propose to go on strike from 12-11-2008 necessitated the petitioners to approach this Court in the above PILs, that too two days after commencement of the strike by the doctors.

4. Normally, this Court would not proceed based on the press reports; but at the same time, it may not be proper for this Court to close the eyes to the reports published in the press and the media with regard to the Government doctors intensifying the strike throughout the State and even boycotting of emergency services like post-mortems, deliveries (labour), medico-legal services etc. from the midnight of 11th November, 2008.

5. It is brought to our notice that except in teaching hospitals, people seeking medical help and treatment across the Districts and Taluk Hospitals and primary health centres that come under the Health and Family Welfare Department, suffered. However, we also appreciate that some of the doctors were on duty taking care of the emergency labour and administrative sections and to help the poor and needy, that too with skeletal strength.

6. Of course, after ordering notice to the Karnataka Medical Officers" Association-4th respondent and also the Medical Council of India-5th respondent in W.P. No. 14285 of 2008, the strike was withdrawn on 14-11-2008. While recording the same, this Court passed the following interim direction on 14-11-2008.--

Even though it is reported that the Government has partly agreed with the demands of the Karnataka State Medical Officers" Association and, consequently, the Medical Officers" Association has withdrawn the strike, since public interest litigations have already been set in motion, this Court has taken judicial notice of the calamity caused by the impugned strike by the Doctors. But, before giving any further direction, we think it appropriate to know as to what action the Government and the MCI propose to take to prevent such strikes in future which cause irreparable damage, inconvenience, pain and suffering to the patients in all the Government Hospitals; of course, without causing disrespect to the noble medical profession.

7. Pursuant to the above direction, the matter is posted for further hearing today.

8. We heard Sri Puttige Ramesh, learned Counsel for the petitioner in W.P. No. 14279 of 2008, Sri Section Vasudeva, Party-in-person, in Writ Petition No. 14285

of 2008; Smt. Niloufer Akbar, learned Additional Government Advocate for respondents 1 to 3; Sri N. Khetty, learned Counsel for MCI and Sri Ravi Verma Kumar Associates for Karnataka Medical Officers" Association.

9. Surprisingly, a fresh strike notice is brought to our notice by the learned Counsel for petitioners by the Junior Doctors Association, published in the daily newspaper "The Hindu" dated 21-1-2009 (at page 3). Sri Ravi Verma Kumar, learned Senior Counsel appearing for the 4th respondent made it clear that the present strike call is not made on behalf of the 4th respondent-Association. We appreciate the same. However, even if it is by the Junior Doctors, we feel it appropriate to take serious note of the strike by Medical Officers particularly who are working in the Government Hospitals, and it is not a healthy sign especially when it is with regard to the medical service, which is an essential service.

10. The Karnataka Junior Doctors Association was also a party to the proceedings of this Court dated 15-4-2005 in Writ Petition No. 43362 of 1999 (GM-PIL), wherein a Division Bench of this Court in similar contingency, issued the following directions.--

1. The State authorities as far as possible should take effective steps to prevent the interns or men in medical profession from resorting to strikes. Their demands, if any, should be considered sympathetically and the Competent Authority should take a decision upto which point the demands could be accepted. The demands to that extent should be accepted immediately without loss of time to prevent an ugly situation. All unreasonable demands should be turned out with an iron hand.

2. In case the interns were to strike work by abandoning their duties in the hospitals, their internship should get extended automatically by a total period equal to the period for which they went on strike and the relevant rules in this regard may be amended. The interns should be deprived of all facilities to which they are entitled during the period of strike if they were to abandon work. This would include the stipend payable by them.

3.If any person of medical profession (doctors on duty) were to resort to such strikes, depriving the immediate medical attention and treatment to the persons in real need, the State authorities should not hesitate to apply the provisions of the Karnataka Essential Services Maintenance Act, 1994, if necessary by treating the medical services to the person in real need to be an essential service.

(emphasis supplied)

11. Despite the above direction 3, we are rather surprised that the Government has taken a very lenient view against the members who went on strike in November 2008. Of course, the Government had initiated action under Rule 106-B of the Karnataka Civil Services Rules, 1958 by issuing notices to the doctors who went on strike from 10-11-2008 to 13-11-2008 causing much inconvenience to the public health service which is in clear violation of Rule 106-BQ) and (2) of

the Karnataka Civil Services Rules, 1958 and also Rules 3 and 8(i) and (ii) under the Karnataka Civil Services (Conduct) Rules, 1966; but while passing the order, the Government has resorted to Rule 106-A of the Karnataka Civil Services Rules which is not applicable to the strikes. The said rule is applicable only to those Government servants who absent themselves from duty without leave; whereas Rule 106-B excludes the operation of Rule 106-A to those who abstain from duty in pursuance of a strike. We are unable to appreciate the stand taken by the Government in this regard, as it is in gross violation of the directions of the Division Bench of this Court issued in Writ Petition No. 43362 of 1999, dated 15-4-2005.

12. With the risk of repetition, we extract the same as hereunder:

...the State authorities should not hesitate to apply the provisions of the Essential Services Maintenance Act, 1994, if necessary by treating the medical services to the person in real need to be an essential service.

13. It is well-settled law that the Government servants have no right to go on strike either fundamentally, statutorily or morally. The Apex Court, time and again, have declared that the employees have no fundamental right to resort to strike. There is no statutory provision empowering the employees to go on strike. The Government employees cannot take the society at ransom by going on strike. Even if there is any injustice to some extent, in a democratic welfare State, the Government doctors have only to resort to the machinery provided under various provisions for redressal of their grievance. The strike, as a weapon, is mostly misused which result in maladministration. The strike affects the society as a whole. In a society where there is large scale unemployment and number of qualified persons who are eagerly waiting for employment in the Government Department or in the public sector undertakings, the strike cannot be justified on any equitable ground.

14. For redressing the grievance, instead of going on strike, if the Government servants do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the society (vide T.K. Rangarajan Vs. Government of Tamil Nadu and Others,). Of course, in the instant case, few Government doctors were sincerely working in the hospitals honestly and diligently not being influenced by the strike called. In our considered opinion, their services during the strike period deserves to be appreciated by the Government and we repose our confidence that the Government would announce award to such doctors who worked during the relevant strike period.

15. It is needless to bring to the notice of the Government that in Karnataka there is also a separate statute viz., Karnataka State Civil Services (Prevention of Strikes) Act, 1966 which governs the field, which also carries a penal provision.

But, we do not understand how the provisions of the said Act had not been brought to the notice of the Government by the authorities or overlooked by the Government itself. Section 3 of the Karnataka State Civil Services (Prevention of Strikes) Act, 1966 which governs the field, also declares that no State Civil Servant shall resort to strike.

16. As observed by the Apex Court in the case of T.K. Rangarajan, whatever the reason may be, it may not be proper for the Government servants to resort to strike, even though they have a genuine and bona fide grievance. That has to be redressed only by resorting to the machinery provided under the statutory powers governing the Government servants, but not resorting to a strike.

17. We do acknowledge the services of the medical profession as a noble service. Every injured citizen brought for treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. Therefore, even any isolated incident had taken place such as assault on a doctor, such an isolated incident should have been proceeded under general criminal law, but the same cannot be a ground for declaring a public strike, because it is argued by Sri Ravi Verma Kumar, learned Senior Counsel for the 4th respondent that some of the medical professionals were attacked for the lapses committed by others.

18. The social laws do not contemplate death by negligence. The doctors at the Government Hospitals positioned to meet the State obligation is, therefore, duty bound to extend medical assistance for preserving life, as observed by the Apex Court in the case of Pt. Parmanand Katara Vs. Union of India (UOI) and Others, . In the said case it is further observed that:

Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. Every doctor should be reminded of his total obligation and be assured of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him either by himself or being carried by others.

19. For all these reasons, we are bound to remind the 4th respondent-Association not to resort to strike in future and if there is any violation of the rules referred to above, we hereby direct the Government to proceed against the striking doctors strictly in accordance with law governing the situation.

20. We also repose our confidence in the Government that keeping in mind the status of the doctors, which is a noble profession, whether they are employed in Government Hospitals or elsewhere, the Government will come forward to find a solution for their reasonable grievances promptly.

With these directions, we close these writ petitions.