(2014) 11 AP CK 0070

In the Andhra Pradesh High Court

Case No : Public Interest Litigation No. 249 of 2014

B. Ravi Kiran Swamy — APPELLANT

Vs

The State of Telangana — RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:
Constitution of India, 1950 — Article 21

Citation : (2015) 2 ALD 674 : (2015) 1 ALT 344

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J;Sanjay Kumar, J

Bench : Division Bench

Advocate : Chandra Sekhar Ilapakurti, Advocate for the Appellant; L. Ravichander, Senior Counsel for N. Ashwani Kumar, Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—A practicing advocate of this Court, being the petitioner herein, approaches this Court with the above writ petition asking for a declaration that the action of the 9th respondent, being the association formed by junior doctors, in not attending duties from 27.09.2014 in the name of strike and depriving medical assistance to the poor and needy as arbitrary and illegal, and a direction to the respondents 1 to 8 to implement the stipulations given in G.O. Rt. No. 1022, dated 17.08.2013 issued by the Government of Andhra Pradesh against the 9th respondent association in the interest of justice.

2. Facts stated in the petition in order to get aforesaid relief are summarized as follows:

The 9th respondent herein is the Junior Doctors Association, Osmania Medical College, Hyderabad. The said association on 27.9.2014 issued a strike notice to the 5th respondent herein informing in substance that they would be striking work in emergencies and electives for their demands mentioned therein without mentioning any date from which they would start. However, as a matter of fact, on and from 29.9.2014 members of this association have been absenting themselves from their duties and also causing disturbance in providing medical services to the needy and diseased in the State of Telangana. It has become

their regular feature of resorting to strike for exerting if not extorting their demands. Their strike is neither reasonable nor lawful, rather it leads to total indiscipline in working atmosphere of the hospitals. In the State of Telangana, the patients have been suffering due to their blocking of emergency wards and other areas of the hospitals consequent upon the strike. In spite of repeated requests and negotiations by the competent authority, the 9th respondent is adamant in not withdrawing the strike. As per the guidelines issued under G.O. Rt. No. 1022, dated 17.8.2013, issued by the then Government of Andhra Pradesh, if any student participates in an agitation/strike, they should be dealt with by initiating disciplinary action for taking punitive measure, amongst others, by debarring them from the course for a period of six months in the Dr. N.T.R. University of Health Sciences. The respondents 1 to 8 herein are not making any effort in terms of the Government Order as above to remove the tents erected within the college and hospital premises as a part of the agitational programme and strike of the said association. Hence, the respondents 1 to 8 failed in discharging their duties in curbing the strike call given by the 9th respondent association.

3. The action of the 9th respondent association in resorting to the strike and consequently abstaining themselves from duties and causing disturbance in providing medical assistance to the poor and needy, ailing persons is highly insensible and autocratic.

4. Ninth respondent association has filed counter-affidavit in response to the writ petition. In their counter-affidavit, they have admitted the factum of strike, however they have come forward to justify the same, the summary of which is stated hereunder.

(a) On account of failure of the State Government to provide for medical infrastructure in the Government Hospitals, the highhanded imposition of compulsory government/rural service and the continued refusal to engage with the post-graduate doctors in amelioration of the health sector in the State, they are constrained to resort the strike.

(b) The junior doctors are requesting the Government time and again to provide better facilities to efficiently discharge their duties. Although it has been acknowledged by all the statutory agencies that the medical facilities and amenities provided at the Government hospitals are not commensurate with the needs of the patients for which urgent steps are required to be taken.

(c) Without taking necessary steps effectively for upgradation of the facilities in the district and rural government hospitals, and undertaking regular recruitment to the posts of Doctors, the 1st respondent is seeking highhandedly to impose compulsory government/rural service for the Junior Doctors as a treasury money saving scheme. In fact, the junior doctors had applied for the said posts in the Government Hospitals in 2013, but their applications are rejected on the ground that they are not registered with the State Medical Council. There are other

doctors, belonging to in-service quota, who passed the examinations with them, were given jobs as soon as they passed post graduation. Those doctors are not having registration in the State Medical Council, yet they were provided with job before they appeared in the examinations in April, 2013. The State Government without any legislative competence and jurisdiction in a highhanded manner is trying to impose government/rural service on unwilling post-graduate students in brazen disregard to the individual autonomy of the students.

(d) Though the 1st respondent had undertaken to make regular payments of stipends to the Junior Doctors, it had not kept its commitment as result whereof thousands of students have been suffering from grave financial hardships. In spite of having agreed by a bipartite agreement dated 14th February, 2012, the Government failed to pay stipend regularly. The 1st respondent, in the last meeting held on 22.8.2013, sought to release the stipend through green channel as the issue of stipends to the junior doctors is the highest priority, ultimately it failed to do so.

(e) As per the two Government Orders viz., G.O.Ms. No. 91, dated 2.3.2000, and G.O.Ms. No. 20, dated 30.1.2002, respectively there should be a 15% hike in the stipends of interns and post-graduate students. G.O.Ms. No. 287, dated 17.12.2009, directs a bi-annual hike of 15% in the stipend with effect from 1.1.2014. In spite of representation, the Director of Medical Education has not carried out above Orders to release stipend at enhanced rate.

(f) The 1st respondent failed to undertake regular recruitment for the academic posts in teaching hospitals for the past several years and there is no regular recruitment basing on open merit. The counselling process denies the option of the candidate to choose his place of posting. The candidates who have completed their PG course in MD/MS are being posted only in medical colleges and the candidates who finished their PG courses in diploma are posted in area hospitals and community health centres. Failure in recruitment in academic posts in government teaching hospitals properly is leading to the deterioration of the standards and quality of medical education in the State.

(g) On many occasions, junior doctors are left to face the ire and wrath of the public visiting the Government Hospitals due to inadequate infrastructural medical facilities and lack of medicines. In spite of repeated requests to deploy the police personnel, to avoid violent incident, no steps have been taken. In fact, the 1st respondent constituted a committee in acknowledgement of the said problem for deployment of Special Protection Force in the Government Hospitals and till date the Committee did not materialize for the same.

(h) The present writ petition is not maintainable as the petitioner fails to indicate the cause of action. The petitioner has been set up by the respondents 1 to 8.

5. Counter-affidavit has also been filed by the 1st respondent. In this counter, it is stated as follows:

(a) The Government has given top priority for providing better health care facilities to the public in general and particularly the poor, improving infrastructure facilities as per available budget. The compulsory Government service is no way connected with providing infrastructure facilities in Government Hospitals.

(b) All the candidates joining the Post Graduate Training programmes shall work as full time during the period of training, attending not less than 80% of the training during each calendar year. As part of their study, Post Graduate Medical Students have to work in Government Teaching Hospitals for which the Government is paying stipend. The Government is providing adequate facilities in Government Hospitals to the Senior Doctors as well as junior doctors and other staff to discharge the duties smoothly. The Government is also taking steps for improving the infrastructure facilities, providing latest equipment and providing free medicines to the patients.

(c) The upgradation of the facilities in District Hospitals, Area Hospitals, Community Health Centres and Primary Health Centres in rural areas is a continuing process. The Government is periodically issuing notifications for filling up of the vacancies of doctors under the control of various Heads of Departments. However, due to bifurcation of the State, recruitment for filling up the vacancies of doctors cannot be taken up until final allocation of doctors to their respective States as per the guidelines of Kamalanathan Committee is made.

(d) However, there is no relation between vacancies of doctors in Government Hospital and compulsory Government service. Even though all the posts of doctors are filled, the candidates who have completed their MBBS/BDS/PG/Super Speciality Courses shall have to undergo one year compulsory Government service as envisaged in G.O.Ms. No. 107, dated 18.7.2013. These Junior Resident Doctors/Resident Specialist Doctors are supplemental resources and additional work force in Government Hospitals to provide better health facilities to the public particularly the poor, who approach the Government Hospitals.

(e) The Government is also paying honorarium for utilizing their services. It is a mandatory rule that a candidate must be registered with the State Medical Council for appointment as a doctor either in Government service or to practice in private. It is stated that the Government is paying stipends to the junior doctors regularly. However, recently on account of bifurcation of the State, some delay has occurred in payment of stipends due to procedural formalities in setting the budget and accounts between the two successor States. However, this issue has been settled and the Government issued orders releasing the budget for an amount of Rs. 3.00 crores vide G.O.Ms. No. 192, dated 21.10.2014, towards payment of stipends to the junior doctors.

(f) It is stated that the matter of enhancement of stipend to the junior doctors as per G.O.Ms. No. 28, dated 17.12.2009, is under active consideration of the Government and orders to this effect will be issued shortly. The recruitment for

filling up the posts of doctors in Medical & Health Department has been done periodically as far as possible. However, next recruitment will take place only after finalization of allocation of the employees to their respective States as per the guidelines of Kamalanathan Committee.

(g) The counselling process for posting of Resident Specialist Doctors for compulsory Government service has been done in a transparent manner in terms of the guidelines issued in G.O.Ms. No. 107, dated 18.7.2013, as per the requirement. The Government is always ready to redress their grievances as far as possible taking into consideration the budget constraints. It has already been providing security by private agencies at Government Hospitals, however in addition to that, Government will also consider the facility of Special Protection Force. The demands raised in the counter-affidavit are not at all connected with the rights of the junior doctors. They are all the policy related matters of the Government.

(h) It is stated that the junior doctors are a supportive system in Government Hospitals and the main responsibility of treating the patients is of regular doctors and the junior doctors have to work under the guidance of Senior Doctors to gain knowledge and practical experience. It is stated that the Government is taking all alternative steps when junior doctors proceeded on strike in order to avoid hardship to the patients who approach the Government Hospitals.

6. The petitioner at the time of hearing contends that the reasons for going on strike by the 9th respondent association are to be found in the strike notice dated 27.9.2014. Demand Nos. 1 & 2 mentioned therein are unjustified for resorting to strike, and they relate to the subject matter of the writ petition filed by them in this Court. As far as the Demand Nos. 3, 4 & 5 in the said notice are concerned, the same may be relatable to functioning of the junior doctors. The 9th respondent being the Junior Doctors Association has undertaken to serve the people at large in hospitals. Hence their duty is of public nature and so to say of a special and monopolistic character, as no ordinary person can discharge the same. However, in the counter-affidavit they have raised a number of demands for going on strike which do not concern the functioning and discharge of their duties qua junior doctors. The problem mentioned relates to Government functioning and it is not the concern of the 9th respondent, as their relationship with the Government is so to say Master and Servant as far as their engagement is concerned. They are bound to discharge their duties as per rules and guidelines with the infrastructure available. In any view of the matter, the Doctors cannot go on strike for any reason because of their social commitment to the public, they cannot take the law in their own hands, they ought to have approached the Court for redressal of their legitimate grievance, indeed they have done so by filing a writ petition in relation to some of the issues mentioned in their counter. Therefore, this strike should be declared to be illegal and the Government shall be asked to take appropriate disciplinary measure as permissible under law as has been provided in several Government Orders

mentioned above.

7. The learned Advocate General appearing for the Government submits, highlighting the facts in the counter-affidavit filed by the 1st respondent, that all the measures have been taken with regard to grievances made in their strike notice and even those not to be found in the strike notice but in the counter-affidavit. In any view of the matter, the junior doctors are not concerned with the alleged failure of the Government in improving infrastructural facilities, recruitment of doctors. It is for the members of the public to complain. The junior doctors, being part of the Government, cannot complain against the Government in relation to a public issue. The 9th respondent has no right, either legal or otherwise, to resort to strike.

8. However, he assures this Court that all steps have been taken and will be taken to increase the rate of stipend and regular payment of stipends and to ensure security measures in the hospitals. Infrastructural facilities and working atmosphere in the hospitals and in its functioning where junior doctors are posted, shall be taken care of within budget constraints. The policy of the Government in asking the junior doctors to serve in rural service for one year is compulsory and part of their training programme and no demand can legitimately be made or met for withdrawal of the same. On this account resorting to strike is wholly illegal. Moreover this issue is sub judice before this Court.

9. Mr. L. Ravi Chander, the learned Senior Counsel appearing for the 9th respondent, has fairly conceded that his clients have no legal right to go on strike. He submits, placing facts stated in the counter, that his clients are forced to go on strike not only for their own cause but also for cause of the public. In spite of repeated assurances by the Government, no effective steps have been taken and as a last resort, junior doctors are compelled to go on strike. According to him, the writ petition has been filed in order to sub-serve an oblique motive and to punish the junior doctors illegally. This action has been engineered by the State Government by setting up the petitioner, who is neither a patient nor a sufferer as such in any hospital because of the strike. Moreover, the patients are not dependent on the service of the junior doctors alone, other doctors are available for treatment. Therefore, the writ petition should be dismissed.

10. After hearing the learned counsel for the parties and on reading the averments, it appears to us that the issue is whether the junior doctors are justified in resorting to strike either in the law or on fact.

11. Mr. L. Ravi Chander fairly concedes as noted above that the junior doctors do not enjoy legal, much less constitutional right, to strike work. We also find his concession is legally sound, for junior doctors are neither labour nor Government servants right now. They are bound by engagement with the Government basically to render medical services, as trainees in training programme, hence

they are obliged to maintain discipline for their own interest and for public as well. As part of their training programme, as appropriately pointed out by the learned Advocate General, they are to attend the patients in the hospital for their treatment. Engagement of any chosen person in medical treatment by the Government is aimed to discharge public duty. The Apex Court in Paschim Banga Khet Mazdoor Samity v. State of West Bengal has settled the right to get medical treatment in Government hospital is one of the facets of right to live as guaranteed in Article 21 of Constitution of India. In our view, the junior doctors, being engaged in Government hospitals, cannot deny peoples right under Constitution. In other words, they owe a constitutional duty to discharge for protection of lives of the people at large against suffering from diseases for which they are paid stipend. It will not be inappropriate to state that they are, in one sense, trustees of taking health care of the people under Constitution, and refusal and negligence in any manner, including strike, in doing so, amounts to breach of constitutional trust and/or constitutional tort. Remedy of any person against constitutional tort is also recognized by the Apex Court [See. Saheli, A Women''s Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, and The State of Rajasthan Vs. Mst. Vidhyawati and Another, .

12. Now, the question is whether they can resort to strike on facts as of their alleged natural right to protest with justification in their counter. We think, as rightly contended by the petitioner and the learned Advocate General, that they have no justification on facts either. Almost all the justifications in the counter affidavit are an afterthought, as it will appear from the Strike notice dated 27th September, 2014 wherein they do not find place. Their complaint with regard to infrastructural facilities, recruitment of the doctors in the hospitals are not their concern qua Doctors. It could be a public problem for which a remedy is available at the instance of the public. They are duty bound to work with the infrastructure available. They may point out these problems to the Government for which they cannot adopt obstructive measure for remedy, let alone, resort to strike. In case of failure on the part of the Government, they may approach, in a fit case, the appropriate court as law abiding citizens. It appears that in the said strike notice, the Demand Nos. 3, 4 & 5 are justified as they are relatable to their engagement. It appears from the counter-affidavit filed by the Government and the assurance by the learned Advocate General, orally in Court, that appropriate measures have been taken to meet these demands. In fact, a sum of Rs. 3.00 Crores has been released by a Government Order which would be spent to solve their problems as indicated in the counter-affidavit of the 9th respondent. Therefore, we are of the view that the junior doctors, in particular, members of the 9th respondent, factually at present do not have any justification to resort to strike. It appears, as rightly pointed out by the petitioner and the learned Advocate General, that the Government Orders have been issued prohibiting strikes by junior doctors and, as a matter of fact on 17.9.2014, the services of the junior doctors was declared to be essential and as such resorting to dharna/

strike within the college and hospital premises is not legally permissible.

13. We thus declare that the 9th respondent association has no right under any circumstances to resort to strike for getting their own demands met by the 1st respondent. We also declare that save and except the demands made in Item Nos. 3, 4 & 5 in the strike notice, dated 27.9.2014, which are stated hereunder, the other alleged demands in the strike notice or in the counter-affidavit are neither lawful nor justified as they are unrelated to their engagement. Three demands are set out hereunder, as spoken above.

(1)

(2)

(3) Honorarium should be increased, equal to the Civil Assistant Surgeon.

(4) Special Protection Force to be implemented.

(5) Honorarium should be paid from June 20th to till the date of counselling.

14. We are also of the view that the Government ought to have been more vigilant in averting this problem arising out of the strike by taking all lawful measures promptly, if not pre-emptively.

15. Therefore, we direct the Government in the event junior doctors, including the members of the 9th respondent, resume their duties within forty-eight (48) hours from the date of receipt of a copy of this order, the aforesaid demands should be considered sympathetically and no penal measure shall be taken against them. Should they fail to do so, all lawful measures shall be taken, including disciplinary, to curb the said strike. We also direct the Government to take all steps to remove the tents and blockades, if any, in the medical college and hospital premises forthwith.

16. Writ Petition is accordingly allowed. There will be no order as to costs.

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

