(2001) 12 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Petition No. 4444 of 2001

Chander Prakash — APPELLANT

Vs

Ministry of Health, Nirman Bhawan — RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:
Constitution of India, 1950 — Article 141, 21, 226, 32

Citation : AIR 2002 Delhi 188 : (2002) 96 DLT 609 : (2002) 62 DRJ 123

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Thru. Lette, for the Appellant; V.K. Shali, for Govt. of NCT of Delhi, for the Respondent

Judgement

A.K. Sikri, J.—Dr. Chander Prakash, MBBS, MS(Surgery)(hereinafter referred to as "the petitioner") appearsto be a public spirited person belonging to medicalfraternity. Being a Surgeon himself, he has experiencedthe difficulties, obstacles and hurdles including inefficient and inadequate medical service, beingfaced by the victim of road accidents in the country.Due to non-availability of timely medical first aid andfurther treatment millions of such victims die on roadsor face permanent disability leading to loss ofvocation and hardships to family. This unhappyexperience has disturbed the petitioner who addressed letter dated 29th June, 2001 to Hon"ble the ChiefJustice pointing out the various defects in the systemand the measure which should be taken to minimise suchfatalities.

2. This letter was treated as writ petition inthe category of Public Interest Litigation and noticewas issued to the respondents. Mr. V.K. Shali appearedfor the Govt. of NCT of Delhi.

3. In this petition, the petitioner hahighlighted that even after 52 years of independenceour country has not been able to develop organizedtrauma services and disaster management medical services. The petitioner emphasises the fact that the first half hour is the crucial time and if during thisperiod proper first aid/

treatment is given, many livescan be saved. He also states that the Governmentpolicies wee designed and directed for the medicaltreatment accordingly. However, in the year 2001, 80%of health care is in private sector and 20% inGovernment sector. So there is an urgent need to haveconcrete and effective trauma services giving privatesector a pivotal role. He also highlights the factthat modern medical treatment is very expensive becausemodern diagnostic equipments, gadgets, implants andmedical treatment is very costly. It will be Herculeantask for anybody to think of providing these medicaltreatment free of cost and it is not possible by anygovernment to provide free medical treatment. hefurther states that it is the duty of the State, beinga welfare state to guarantee the health of the citizen.It cannot be denied that majority of people in roadaccident being pedestrians and cyclists are from pooreconomic strata. There is an urgent need of amechanism to provide free health care to theseunfortunate victims. Most of the time they reachhospitals as unknown persons. In view of the aforesaiddismissal state of affairs the petitioner goes on tosuggest certain measures which are required to be takenfor providing medical treatment to the road accidentvictims These suggestions are as under:

1. Certain untapped sources of revenue shouldbe utilized for free medical treatment to people in thecountry, namely, (a) amount collected by the InsuranceCompany as a third party insurance component which isapproximately Rs. 206. crores from the State of Delhionly.

25% of the above i.e. approximately 50%should be converted to corpse account every year for the treatment of road accident victims in Delhi tostart and then similarly implement it in the wholecountry.

2. Appropriate authorities should develop themechanism to provide free treatment to all the roadaccident victims and reimburse the cost to health institutions willing to provide the complete treatmentform the funds so collected:

3. In case funds collected as third partyinsurance are not enough, an additional amount can becharged from the vehicle meant only for treatment ofroad accident victims. He suggests that if suchpersons are charged at the rate of Rs.200/-per vehicleas additional amount, the sum collected would be aboutRs.70 crores in Delhi alone.

4. Mobilisation of additional sources forcorpse may be considered from the following sources:

(i) Some share of sale tax and excise on autovehicles and automobile parts.

(ii) Share from the sale of petrol/diesel.

(iii) Some share from road tax.

(iv) Share from compounding of challans ofvehicles.

5. The funds so collected be put inNational/State corpse account to be used for following:

(i) The treatment to all road accidentvictims.

(ii) State of Art ambulance/air ambulanceservices to be provided at all vulnerable places sothat these can be reached at the site of accidentwithin 5-10 minutes.

(iii) Rehabilitation of disabled road accidentvictims.

(iv) Road safety education programme for thepeople

(v) Miscellaneous services to prevent roadaccidents.

4. The petitioner further suggests the followingapproach and prays that appropriate directions be givenin this respect:

A. There can be National/Regional/Local basedManagement authority consisting of Doctors, PolicePoliticians, Judiciary, Social Workers and all thosepeople connected to the Trauma services.

B. Standard Protocol for equipment, manpowerand infrastructure to be defined by expert group.

C. Hospital fully equipped with qualifiedspeciality to be identified and trauma servicesorganized.

D. Area to be allotted to these hospitals andpolice to be directed to take casualties to thesehospitals.

E. All these hospitals should beinterconnected via suitable communication system toco-ordinate the activity may be on regional basis sothat the spare resources and manpower can properly beutilized.

F. A group of experts should be authorised todeploy funds to upgrade the identified hospitals andorganise the link services. On the basis of standard protocol decided and implemented with keeping localrequirement and need in mind.

G. Hastle free mechanism to reimburse thecost of treatment.

5. It may be mentioned at this stage that it is not the first time that the problem of providing timelyemergency medical treatment to the victims of roadaccident has come before the court. The Apex Court hadthe occasion to deal with such a situation twice beforeand detailed instructions were issued by the court atthat time. The first time it happened in the case Pt. Parmanand Katara Vs. Union of India (UOI) and Others, The court emphasised theneed for immediate medical aid to injured persons andexhorted the medical professionals to extend medicalaid to injured immediately by reminding theprofessional obligations of all Doctors, of Governmenthospitals and private hospitals. The court remindedthe State of its obligations on the touchstone ofArticle 21 of the Constitution of India observing asunder:

"Article 21 of the Constitution casts theobligation on the State to preserve

life.The patient whether he be an innocentperson or be a criminal liable topunishment under the laws of the society,it is the obligation of those who are in charge of the health of the community topreserve life so that the innocent may beprotected and the guilty may be punished.Social laws do not contemplate death bynegligence to tantamount to legalpunishment. Every doctor whether at a Government hospital or otherwise has theprofessional obligation to extend hisservices with due expertise forprotecting life. The obligation beingtotal, absolute and paramount, laws ofprocedure whether in statutes orotherwise which would interfere with thedischarge of this obligation cannot besustained and must, Therefore, give way.The matter is extremely urgent and brooksno delay to remind every doctor of histotal obligation and assure him of theposition that he does not contravene thelaw of the land by proceeding to treatthe injured victim on his appearancebefore him either by himself or beingcarried by others."

6. The second time it happened in the case of Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, The court emphasised in this case as under:

"That the Constitution envisages theestablishment of a welfare State at thefederal level as well as at the Statelevel. In a welfare State the primaryduty of the Government is to secure thewelfare of the people. Providingadequate medical facilities for thepeople is an essential part of theobligations undertaken by the Governmentin a welfare State. The Government discharges this obligation by runninghospitals and health centres whichprovide medical care to the personseeking to avail those facilities.Article 21 imposes an obligation on theState to safeguard the right to life ofevery person. Preservation of human lifeis thus of paramount importance. The Government hospitals run by the State andthe medical officers employed therein areduty bound to extend medical assistancefor preserving human life. Failure onthe part of a Government hospital toprovide timely medical treatment to aperson in need of such treatment resultsin violation of his right to lifeguaranteed under Article 21. In theinstant case there was breach of the saidright of a person injured in accidentwhen he was denied treatment at thevarious Government hospitals which wereapproached even though his condition wasvery serious at that time and he was inneed of immediately medical attention.Since the said denial of the right ofinjured person guaranteed under Article21 was by officers of the State inhospitals run by the State the Statecannot avoid its responsibility for suchdenial of the constitutional right. in respect of deprivation of theconstitutional rights guaranteed underPart III of the Constitution the positionis well settled that adequatecompensation can be awarded by the courtfor such violation by way of redress inproceedings under Article 32 and 226 ofthe Constitution."

7. Thereafter, the Apex Court issued thefollowing directions to ensure that proper medicalfacilities are available for dealing with emergencycases:

1. Adequate facilities are available at thePrimary Health Centres where the patent can be givenimmediately primary treatment so as to stabilize hiscondition;

II. Hospitals at the district level andSub-Division level are upgraded so that serious casescan be treated there;

III. Facilities for giving specialist treatmentare increased and are available at the hospital atDistrict level and Sub-Division level having regard tothe growing needs;

IV. In order to ensure availability of bed inan emergency at State level hospitals there is centralised communication system so that the patientcan be sent immediately to the hospital where bed isavailable in respect of the treatment which is required.

V. Proper arrangement of ambulance is madefor transport of a patient from the Primary healthCentre to the District Hospital or Sub-Divisionhospital and form the District Hospital or Sub-Divisionhospital to the State hospital.

VI. The ambulance is adequately provided withnecessary equipment and medical personnel.

VII. The Health Centres and the hospitals andthe medical personnel attached to these Centres andhospitals are geared to deal with larger number ofpatients needing emergency treatment on account ofhigher risk of accidents on certain occasions and incertain seasons.

8. The court was also conscious of the fact thatfinancial resources are needed for providing theaforesaid facilities. However it observed that:

".....At the same time it cannot beignored that it is the constitutional obligation of the State to provideadequate medical services to the people.Whatever is necessary for this purposehas to be done. In the context of theconstitutional obligation to provide freelegal aid to a poor accused this courthas held that the State cannot avoid itsconstitutional obligation in that regardon account of financial constraints."

9. In view of the detailed guide-lines laid downand directions given in the aforesaid judgments, it isnot necessary to issue any further directions to therespondents. It is trite that the law laid down in theaforesaid two judgments is the law of the land andevery court and authority is bound to comply with thesame having regard to the provisions of Article 141 ofthe Constitution of India. We were informed by learnedcounsel for the respondent that in view of theauthoritative pronouncement of Apex Court in theaforesaid two judgments, this court had disposed of CWPNo. 5409/97 filed on earlier occasion without issuingany directions.

10. However, one cannot lose sight of the factthat inspire of directions contained in the aforesaidtwo judgments of the Apex Court, there is not muchimprovement in the situation and the casualties due toroad accidents, because of not providing adequatemedical treatment in time, are of alarming magnitude.However, we may mentioned that some of the suggestionsgiven by the petitioner are worthy of appropriateconsideration. While we do not comment upon thesuggestions

regarding tapping the sources of revenuefor free medical treatment as that may requireappropriate legislative action, the feasibility of theapproach suggested by the petitioner and recorded inparas A to G needs to be examined.

11. Therefore, this writ petition is disposed ofwith the following directions:

1. The copies of the two judgment of theApex Court be circulated to all concerned Governmentand private hospitals, dispensaries and medical unitsetc. once again and it may be ensured that they complywith the directions contained in the aforesaidjudgments.

2. The functionaries of the respondents at avery high/appropriate level may examine the feasibilityand desirability of adopting the suggestions given bythe petitioner in this writ petition and recorded inparas A to G above and proper policy decision be takenin this respect preferably within a period of four months from today.

