
(2009) 10 SHI CK 0024
In the High Court Of Himachal Pradesh

Devinder Negi

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) 10 SHI CK 0024

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Surinder Singh, J.—The doctors of respondent-Association employed in Indira Gandhi Medical College (IGMC) and Hospital, Shimla gave a call to go on strike on 28th March, 2007, in protest against non-acceptance of their long standing demands. This Public Interest Litigation is filed by the petitioner, a public spirited person, seeking appropriate writ/ direction to the State Government, to resolve the demands of the doctors, so that they do not proceed on strike.

2. The Resident Doctors Association (RDA) respondent No. 2 is a registered body. It comprises of Interns, House Surgeons, Junior Residents/Post Graduate Students and Senior Residents/ Registrars posted in IGMC Shimla. They have certain long standing demands, pending with the State Government, with respect to the increase in the stipend to the Interns, regulate the working hours of the Resident Doctors, who have been performing their duties at a stretch for almost 36 hours, without any break and also to fill up the Post-graduate seats in the department of Orthopedics etc.

3. Respondent No. 3, IGMC, is a prime Institution in the field of imparting medical education and is also the State Hospital, wherein treatment is given to all the patients including poor-patients coming from remote areas of Himachal Pradesh. It provides highly specialized medical services, normally which are not available in the villages and private hospitals and if available, it is beyond their reach to afford exorbitant treatment charges.

4. Although, the State Government enhanced the rates of the stipend of P.G. students (direct candidates) w.e.f. 1st April, 2007 vide notification No. Health-B (12)-2/97-Loose dated 21st March, 2007, but RDA demanded further increase on Punjab pattern, as such issued a notice on 21st March, 2007 to the Principal of IGMC to resort to a Pen down strike on the same day w.e.f. from 9.30 a.m. to 12 O'clock and threatened to intensify the strike.

5. The petitioner alleged that the action of RDA is highly illegal and impinges upon the fundamental "right to life" of the patients who badly need their services to save their lives.

6. On 29th March, 2007, the Division Bench of this Court headed by the then Chief Justice directed that notice of the petition be served upon Dr. Rajesh Sood, President of the RDA (respondent No. 2) in this petition. Thus, keeping in view the importance of the matter, adjourned the case for his presence for 30th March, 2007. On the said date, he as well as the Principal Secretary (Health and Medical Education) put in their presence in the Court and stated that the strike of the RDA of IGMC has been called off and the doctors have resumed the work, but it did not deflect the Court from examining the basic issue as to why the strike was called at the first instance and in what manner did the State Government handle the issue. The anxiety of the Court was to know as to on what terms has any settlement been arrived at leading to the calling of the strike. The Court felt that this and other related issues in the writ petition did call for a detailed reply from the respondents as the issues are of far reaching public importance for future as well.

7. The respondents filed the replies. Precisely the RDA contended that their grievances were not redressed by the State Government, though various meetings were held by the RDA with the Hon'ble Chief Minister and also with the other authorities, but to no avail.

8. Respondents -State and IGMC, in short stated that the Medical Officers in the State are highly paid as compared to their incumbents serving in other States. Thus, it is beyond their comprehension as to what prompted them to go on strike. It was also submitted that the RDA has been resorting to strike many times, sometimes in support of anti- reservation stir, although there was no cause for them to do so as there has been no change in the reservation policy of the State Government. Further their decision to go on strike on 26th March, 2007 was wrong and the State Government issued show cause notices to all the striking doctors. Despite that the members of the RDA took mass casual leave on 28th March, 2007 and added more demands in their charter, most of which even did not pertain to them.

9. The State Government had also put a condition in the prospectus of the post-graduate Degree and Diploma courses of IGMC, Shimla for the session 2006-2008/09, in compliance to the order of this Court, passed in CWP No. 310 of 2004. A Clause 2.5 of Part-B imposing the ban, was inserted in the prospectus

by the State Government, for not holding the gate meetings, general body meetings and slogan shouting etc. in Medical College, Hospitals and Hostels attached therewith, within a distance of 500 meters from these institutions and putting the violators on caution that if they commit any breach it would be a contempt of court, inviting a suitable punitive action, but despite that the RDA observed the pen down strike, as aforesaid and proceeded on mass casual leave, thereafter submitted their mass resignation on 29.3.2007.

10. We have heard the learned Counsel for the parties and examined their rival contentions.

11. Now the question before us is, whatever may be the reason whether the members of the RDA, working in the IGMC has a right to go on strike, by putting the lives of many indoor and outdoor patients in peril, who need their services in dire need.

12. The law on this subject is very well settled and it has been repeatedly held by the Apex court that the government employees have neither fundamental nor statutory or moral right to resort to strike. The impact of such strikes by the students and medical community who are directly connected with the hospitals is totally different from the strike in a factory or trading establishment, as ailing patients cannot be left waiting or unattended. Hospital activity is not the same as the lifeless functioning of machines in a factory or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as require constant and incessant attending and care, unlike financial losses; the loss of life or limb cannot be recouped. The Junior Doctors and student community undergoing medical courses are to realize and understand the realities and their duties towards the ailing patients in particular and the society at large before resorting to any such activity. In *Pt. Parmanand Katara Vs. Union of India (UOI) and Others*, the Apex court observed:

Every doctor whether 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 status 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.

13. Thus for all above reasons, we are constrained to hold that the strike by the Doctors is illegal and unethical as it infringes the fundamental right of the patients enshrined in Article 21 of the Constitution of India. The patients have also a fundamental "Right to Life" and therefore, at the same time the medical treatment, which is an integral and essential part of the fundamental right,

cannot be ignored.

14. Even in a case of strike by lawyers, in *Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another*, the Constitution Bench of the Supreme Court observed that the Lawyers have no right to go on strike or give a call for boycott and even they cannot go on token strike. The court specifically observed that for just or unjust cause, strike cannot be justified in the present day situation. Take strike in any field, it can be easily realized that the weapon does more harm than good. The sufferer is the society ---public at Large.

15. Thus there is neither any legal or statutory right of the employee to go on strike nor moral or equitable justification of the RDA to resort to strike in any manner. The public cannot be held at ransom by resorting to strike, even if there is injustice to some extent, as presumed by such employees, in a democratic welfare state.

16. In *T.K. Rangarajan Vs. Government of Tamil Nadu and Others*, , the Supreme Court also observed that Strike is a weapon mostly misused which results in chaos and total maladministration. En masse Strike affects the society as a whole; the entire administration comes to a grinding halt. In case of strike by the teachers the entire education system suffers. Many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who go on strike. In a society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings strikes cannot be justified on any equitable ground. The misconduct of the employees, by the government is required to be dealt with in accordance with law. However, considering the gravity of the situation and the fact on occasion, even if the employees are not prepared to agree with what is contended by some leaders who encourage the strike, they are forced to go on strikes for the reason beyond their control. Therefore, even if the provisions of the act and the rules are not enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion there is tendency or compulsion to blindly follow the others. The Apex court in the above case further observed that, whatever the reasons may be, it will not be proper for the government servants to resort to strike, even though they have a genuine and bonafide 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 strike.

17. We are not oblivious to the problems being faced by the medical community. They may also have genuine demands, which require to be considered sympathetically. While, on the one hand, we cannot permit the Doctors to go on strike, we also cannot allow the State to sit over the demands of the medical profession for unduly long periods.

18. Against the above background and on the strength of the above settled law, we strongly feel that to overcome the menace of strikes by the Medical Doctors, for any reason is not justified. Therefore, we are issuing the following directions in addition to whatever have been earlier issued by this Court in CWP No: 310 of 2004 , to curb the menace of strike in public interest and also to devise a forum for redressal to the aggrieved doctors or their association, till an appropriate legislation is brought by the government.

19. Thus, we hereby direct:

i) The State authorities, as far as possible, shall take effective steps to prevent the interns or men in medical profession from resorting to strikes, without making it a contentious issue. The genuine demands should be accepted immediately without loss of time to prevent any ugly situation. All unreasonable demands should be turned down with an iron-hand.

ii) We, therefore, further direct the State to formulate a well thought-out dispute redressal mechanism, whereby the demands of the Resident Doctors Association should be considered by a Committee of senior officials. Till the Government formulates such scheme, we direct that if the Resident Doctors have any demand, they shall after holding a meeting of their Association, send the demand to the Principal of the IGMC, Shimla. They may also send an advance copy of the same to the Secretary (Health). The Principal of IGMC as well as the Secretary (Health) must take a decision on the demand of the doctors within a period of six weeks. If the demands are genuine, they may be accepted, and if they cannot be accepted, the RDA should be informed of the same.

iii) In case, the interns go on strike by abandoning their duties in the hospitals, their internship should get extended 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 abandon their work. This would include the stipend payable to them.

iv) We have come across the cases where relatives of patients or some other persons/ public resort to violence against the doctors. The public also cannot be permitted to resort to violence and take the law in their hands. In case there is any incident, where the Doctors on duty or any other staff of the hospital is manhandled, abused or in any manner prevented from performing his duty in a proper atmosphere by any member of the public including relatives and attendants of the patients, the doctor shall have the right to take assistance of the security guards or the police personnel to evict such persons from the hospital premises. The doctor(s) shall however, not under any circumstance, refuse to attend to the patients.

v) If any person belong to the medical profession (doctors on duty) resort to such strikes, depriving the immediate medical attention and treatment to the persons in real need, the State authorities shall not hesitate to apply the

provisions of the Essential Services Maintenance Act, 1968 (ESMA), if necessary by treating the medical services to the person in real need to be an essential service.

vi) It is desired from the State Government to bring out legislation for the prevention of such strikes providing a penal provision therein in line with Karnataka State Civil Services (Prevention of Strikes) Act, 1966. The Government may also make a provision therein that the doctors or any government servant who attend to their duties during the strike period may be suitably compensated. The State Government may also announce award(s) to such doctor(s) or employees who worked during the relevant strike period.

20. With these directions, we close the matter. Let a copy of this judgment be sent to the Chief Secretary, the Principal Secretary (Health), to the Government of Himachal Pradesh and the Principal, IGMC, Shimla, for information and necessary action at their end.

21. With the above directions the Petition stands disposed of. All the pending applications also stand disposed of.