(2012) 09 KAR CK 0111

In the Karnataka High Court

Case No : Writ Petition No. 23630 of 2010 (GM-RES)

H.B. Karibasamma — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:
Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 299, 300

Citation : (2013) 2 KarLJ 263 : (2013) 2 KCCR 1660

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Pramila Nesargi For M/s. Pramila Associates, for the Appellant; H. C. Sundaresh, Advocate for Respondent Nos. 1 and 2, Sri. Narendra Prasad, HCGP for Respondent Nos. 3 and 4, Sri. Kalyan Basavaraj, Asst. Solicitor General for Respondent No. 5, Sri. Clifton D'' Rozario, Advocate for Alternative Law Forum and Sri. B.V. Rama Moorthy, Advocate, for the Respondent

Judgement

Ajit J. Gunjal, J.—I propose to commence the order with a quote from Mahatma Gandhi, which would read as under:

Some days back a calf having been maimed lay in agony in the ashram... Finally in all humility but with the clearest of convictions I got in my presence a doctor kindly to administer the calf a quietus by means of a poison injection. The whole thing was over in less than two minutes...

The question may legitimately be put to me: Would I apply to human beings the principle I have enunciated in connection with the calf? Would I like it to be applied in my own case? My reply is

''Yes''; the same law holds good in both the cases...

Just as a surgeon does not commit himsa but practises the purest ahimsa when he wields his knife, one may find it necessary, under certain imperative circumstances, to go a step further and sever life from the body in the interest of

the sufferer..."

(The response of Mahatma Gandhi in the Gujarat Weekly Navjivan, in October 1928, to the anger and outrage expressed by some persons to the killing of an ailing calf in Sabarmati Ashram, at the instance of Mahatma Gandhi.)

The subject matter is referable to euthanasia which the petitioner claims that she must be administered with.

2. The factual matrix of the case can be summarised as follows:

The petitioner is aged about 70 years and a retired School Teacher. She is currently residing at an old age home. The petitioner has been suffering from severe health condition known as ''Inter-vertebral Disc Prolapse'' which is commonly known as ''Slip Disc''. The said condition is a phenomenon affecting the spine, where the outer fibrous ring of the spine tears, allowing the soft, central portion to bulge out. The tear in the disc ring may result in the release of inflammatory chemical mediators which directly causes severe pain. The petitioner has been suffering from this aliment for the last 10-11 years. The petitioner is also a diabetic. The copies of the Medical Certificate and Blood Test are to be found at Annexure-A. The petitioner has been suffering agonizing pain caused by this condition for the past decade or so. It appears, the petitioner has consulted several Doctors, both Neurological and Orthopedic, seeking some remedy to cure her of this condition, but however, all the Doctors have resorted to non-surgical, conservative methods of treatments owing to the age and health condition of the petitioner, whereas any possible improvement in the petitioner''s condition can only be brought about by invasive surgery. The fact of petitioner is being given conservative treatment is also testified by a Doctor. The petitioner for the past decade mostly has been in bed-rest as advised by the Doctors for providing comfort to the tormenting pain. Even the bed-rest has not helped the petitioner and she continues to suffer from inexplicable pain. Indeed, the petitioner gets a pension of Rs. 8,968/- per month and the said amount barely covers her medical expenses and basic necessities. The petitioner is old, infirm, constantly suffering from pain and has none to take care of her. The petitioner is not only suffering from physically excruciating pain but is also undergoing mental agony and is disadvantaged economically. It appears, the petitioner has made all the requisite attempts to eliminate the pain, but however failed in those attempts and is not willing to live a life of harrowing pain and misery. Hence, the petitioner has decided to end her life as it presented nothing but constant drudgery of racking pain and mental agony. The petitioner being a retired educated lady and a Teacher is a law-abiding citizen who does not wish to commit suicide and wants to get the permission for ending her life through euthanasia or physician assisted death. The petitioner does not want her death to be labelled as a cowardly act of suicide but a respectable death of a person who valiantly fought for life.

3. It appears, in this regard, the petitioner has been in correspondence with various Government Departments and officials, namely National Human Rights

Commission, Ministry of Parliamentary Affairs, Law Commission of Karnataka headed by Justice Malimath and a host of other Institutions including Karnataka State Human Rights Commission, which according to the petitioner would deal with a situation of this nature.

4. The petition averments disclose that the petitioner cites the similar cases with advantage, namely the case of Ms. Aruna Shanbaug, who has been in a permanent vegetative state for the last 36 years. Ms. Aruna Shanbaug was a Nurse who was sodomized and asphyxiated resulting in paralytic condition. A Journalist, by name Pinki Virani was before the Apex Court on her behalf and according to her, the Apex Court had sought report on Ms. Aruna Shanbaug''s condition.

5. Having regard to the importance and the far-reaching consequences which are likely to occur in respect of the present proceedings, I directed Mr. Clifton D'' Rozario, Advocate of Alternative Law Forum, to accept notice and assist the Court as Amicus Curiae. Mr. Clifton D'' Rozario representing the Alternative Law Forum has filed the intervening application. He has also filed a detailed synopsis with reference to various decisions of the Apex Court as well as the decisions rendered by the Courts worldwide. Another application is filed for impleading by the proposed respondent on the ground that since the decision to be rendered by this Court will have a far-reaching consequence, she may be impleaded as a party-respondent. Both the applications are granted. The learned counsel for the petitioner to amend the cause title.

6. I have heard Smt. Pramila Nesargi, learned Senior Counsel, appearing for the petitioner and Mr. Clifton D'' Rozario, for the Alternative Law Forum, the intervening applicant and Mr. B.V. Rama Moorthy, learned counsel for respondent No. 7.

7. Since the proceedings had received a fairly wide publicity, a communication is received from Indira Priyadarshini Girls'' High School, 6th ''A'' Main, 9th Cross, J.P. Nagar 3rd Phase, Bangalore, addressed to me, which would read as follows:

Respected Sir,

Sub: Smt. Karibasamma & Euthanasia.

I enclose herewith a cutting from the Deccan Herald of date 12th August 2010 which makes sad reading.

This is to make a humble suggestion, with your kind permission, that it may be useful if she is referred to Hosmat or for Ayurvedic treatment.

This non-profit making school will be happy to donate a part of the cost and take the initiative in raising further money.

8. This Court was also of the view that the latest health report of the petitioner was also required to adjudicate the controversy in question. Hence, the petitioner was referred to National Institute of Mental Health and Neuro Sciences (for short,

hereinafter referred to as ''NIMHANS''). A Medical Report has been filed which would read as under:

I have examined Smt. Karibasamma, W/o of Kenchappa L.K. Aged about 70 years (Hosp. No. N/555680) on 22.9.2010 at Neurosurgery OPD. She reported to me with the following complaints.

1. Acute episode of low back pain 10 years ago radiating to both lower limbs and difficulty in turning to either side without bladder disturbance. For the same complaints she had consulted orthopedic surgeon. Examination and investigation had not revealed any deficits. Hence she was treated conservatively. Patient took 6 months to become normal.

2. Since 3-4 years patient has been suffering from neurogenic claudication pain, pain worsens after walking about 1 1/2 km, partially relieves with rest. 2 years ago patient had (R) shoulder dislocation due to fall. Patient often suffering from constipation, at times she passes blood stained stool because of strain. Patient is a known diabetic, treated with homeopathy medicines.

Examination: revealed that spine is normal. SLR on (R) side is 30 may be due to hip joint arthritis. She gets up from supine position without any pain. She has no motor weakness.

MRI Scan: revealed calcified disc at L 4/5 more towards right indenting the root. However this is not reflecting on clinical examination. Old MRI Scan done on 6.6.1998 also has same findings.

During our conversation with the patient, I found that she is not confined to one problem. Therefore. I felt that she has to undergo thorough examination by Psychiatrist. She also should be examined by orthopedic surgeon for hip joint pain.

9. The petitioner was also referred to Professor and Head of the Department of Neurosurgery, NIMHANS, and a Medical Report is given by him, which would read as under:

Smt. Karibasamma W/o Kenchappa L.K. Aged about 70 years Hosp. No. N/555680 has been evaluated for her mental state in the Psychiatry OPD on 22.9.2010. The cross sectional interview revealed she had no mental disorder. We also contacted the authorities at the Ashram where she resides. The authorities reported that she was quite well and independent in her activities and daily functioning.

On detailed interview she said that she had requested for ''euthanasia'' on social grounds as she is elderly and may become disabled in future. Also she has no family supports at present. She refused any further detailed enquiry, investigations or psychological or drug treatment for her current condition.

10. A perusal of the report filed by the NIMHANS does not in any way indicate that the petitioner is suffering from any terminal disease which would warrant

administration of euthanasia. In fact, the medical report sent by the NIMHANS discloses that the petitioner is required to undergo thorough examination by a Psychiatrist, probably the problem stems from the fact that she is not being looked after by her husband and children and she is relegated to stay in a old age home.

11. The Apex Court has dealt with the issue elaborately in Aruna Ramchandra Shanbaug Vs. Union of India (UOI) and Others, Indeed in the said case, the Apex Court has dealt with;

i) Mercy killing or euthanasia-Active euthanasia using lethal substances or forces to kill terminally ill patient - Illegal and crime u/Ss. 302, 304 - Physician assisted suicide is crime UNDER SECTION. 306.

ii) Mercy killing or euthanasia-patient in coma or permanent vegetative state - Discontinuation of life support - Consent to withdraw life support - It is experts like medical practitioners who can decide whether there is any reasonable possibility of a new medical discovery which could enable such a patient to revive in the near future.

iii) ''Brain Death'' - person incapable of any response, but is able to sustain respiration and circulation-cannot be said to be dead - mere mechanical act of breathing enables him to be ''alive''.

iv) Mercy killing or euthanasia-passive euthanasia - person in permanent vegetative state - incapable of expressing consent to termination of life - stage of passive euthanasia when made out is also stated.

12. Euthanasia is an extremely controversial subject fraught with complex moral dilemmas and ethical implications. It is also clear from the debates that surround it, that it gives rise to extremely polarised opinions. As we have it, on the one hand euthanasia, be it mercy killing, physician assisted suicide or withdrawal of life support is a merciful act, while on the other, it is plain murder. The questions around euthanasia are far more complicated today, especially due to the technological and medical advances due to which life can be extended and death postponed.

13. The word ''euthanasia'' is derived from the Greek words ''eu'' and ''thanatos'' which means ''good death'' or ''easy death'' and is commonly used to describe the act of painlessly ending the life of a person suffering from an incurable disease or when life becomes purposeless as a result of mental or physical handicap. In the present set of things, certainly, we are not attempting to understand these moral and ethical implications, which are important nevertheless, not will it seek to address the necessary issue of delineating the State and individual rights in exercising dominion over the body.

14. At the outset, it is necessary to notice that the controversy pertaining to euthanasia is set at rest by the Apex Court.

15. While euthanasia is a commonly used phrase, it finds no place in the Indian Penal Code or in any penal statute in our country. However, administration of euthanasia is criminally penalised in the Indian Penal Code. The relevant provisions are;

i) Section 299 of the IPC relating to culpable homicide;

ii) Section 300 relating to murder;

iii) Section 306 relating to abetment of suicide;

iv) Section 309 relating to attempt of suicide.

16. Indeed, the Law Commission of India, in its 196th report, has pointed out the three distinct categories as;

1. Euthanasia being an act of any person, including a doctor, of intentionally killing a person who is terminally ill by giving drugs;

2. Assisted suicide being an act of the patient who receives the assistance of a doctor and takes a drug with the intention of committing suicide;

3. Withdrawal of life-support measures being the act of withdrawing the life-support measures of a terminally ill patient competent to give his/her informed decision or the decision of the doctor in the best interests of an incompetent terminally-ill patient.

17. Indeed, in a similar if not identical case (In The Case of C.A. Thomas Master and etc. Vs. Union of India (UOI) and Others, wherein the petitioner therein had approached the High Court of Kerala for permission to end his life and to donate his organs. It was his case that he had lived a full life and that being a law-abiding citizen, he did not wish to break the law by committing suicide and that it was for this reason that he was approaching the High Court for permission to end his life. Rejecting his contentions, the Kerala High Court observed thus;

In our view, no distinction can be made between suicide committed by a person who is either frustrated, or defeated, in life. The question as to whether suicide was committed impulsively or whether it was committed after prolonged deliberation, is, in our view, wholly irrelevant. Similarly, the decision taken by persons like the petitioners to voluntarily put an end to one''s life on the footing that one has led a successful life, and the mission of his life was completed, would, in our view, amount to suicide. What the petitioners, have overlooked is the possible loss to the society, when a person who is otherwise bodily and mentally healthy, wants to exercise his right to voluntarily put an end to his life. It may be that his family members or the society at large may stand to gain by his rich experience in life. The possibility of misuse, or abuse, of such a right and exploitation on that count, cannot be ruled out.

18. The withdrawal of treatment to terminally ill patients either as per the patient''s wish or as per the judgment of medical practitioner in case the patient

is not capable of giving consent is treated as an exception by the Apex Court in the case of Smt. Gian Kaur Vs. State of Punjab, The Apex Court while dealing with the scope of Article 21 of the Constitution has observed thus:

...the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the ''right to die'' with dignity at the end of life is not to be confused or equated with the ''right to die'' an unnatural death curtailing the natural span of life.

19. In GIAN KAUR''S case, the Apex Court has quoted the following from a decision of the HOUSE OF LORDS in AIREDALE''S case;

But, it is not lawful for a Doctor to administer a drug to his patient to bring about his death, even though that course is prompted by a humanitarian desire to end his suffering however great that suffering may be (See R vs. Cox (18.9.1992, unreported per Ognall J. in the Crown Court at Winchester). So to act is to cross the Rubicon which runs between on the one hand the care of the living patient and, on the other hand, euthanasia-actively causing his death to avoid or to end his suffering. Euthanasia is not lawful at Common-law. It is of course well known that there are many responsible members of our society - who believe that euthanasia should be made lawful, but that result could, I believe, only be achieved by legislation which expresses the democratic will that so fundamental a change should be made in our law, and can, if enacted, ensure that such legalized killing can only be carried out subject to appropriate supervision and control.

20. The Apex Court has also observed that the desirability of bringing about such a change was considered to be a function of the Legislature by enacting a suitable law providing therein adequate safeguards to prevent any possible abuse.

21. The Apex Court in ARUNA SHANBAUG''S case, while dealing with withdrawal of life support to a patient in a permanent vegetative state (PVS) has observed thus:

126. There is no statutory provision in our country as to the legal procedure for withdrawing life support to a person in PVS or who is otherwise incompetent to take a decision in this connection. We agree with Mr. Andhyarujina that passive euthanasia should be permitted in our country in certain situations, and we disagree with the learned Attorney General that it should never be permitted. Hence, following the technique used in Vishakha''s case (supra), we are laying down the law in this connection which will continue to be the law until Parliament makes a law on the subject.

(i) A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a

decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient. In the present case, we have already noted that Aruna Shanbaug''s parents are dead and other close relatives are not interested in her ever since she had the unfortunate assault on her. As already noted above, it is the KEM hospital staff, who have been amazingly caring for her day and night for so many long years, who really are her next friends, and not Ms. Pinky Virani who has only visited her on few occasions and written a book on her. Hence it is for the KEM hospital staff to take that decision. The KEM hospital staff have clearly expressed their wish that Aruna Shanbaug should be allowed to live. Mr. Pallav Shisodia, learned senior'' counsel, appearing for the Dean, KEM Hospital, Mumbai, submitted that Ms. Pinky Virani has no locus standi in this case. In our opinion it is not necessary for us to go into this question since we are of the opinion that it is the KEM Hospital staff who is really the next friend of Aruna Shanbaug. We do not mean to decry or disparage what Ms. Pinky Virani has done. Rather, we wish to express our appreciation of the splendid social spirit she has shown. We have seen on the internet that she has been espousing many social causes, and we hold her in high esteem. All that we wish to say is that however much her interest in Aruna Shanbaug may be it cannot match the involvement of the KEM hospital staff who have been taking care of Aruna day and night for 38 years. However, assuming that the KEM hospital staff at some future time changes its mind, in our opinion in such a situation the KEM hospital would have to apply to the Bombay High Court for approval of the decision to withdraw life support.

(ii) Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in Airedale''s case (supra). In our opinion, this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.

22. The Apex Court in ARUNA SHANBAUG''S case has summed up as to the procedure to be adopted by the High Court when such an application or a petition is filed. The Apex Court has also laid down the guidelines which are to be found at paras-138 to 142.

PROCEDURE TO BE ADOPTED B Y THE HIGH COURT WHEN SUCH AN APPLICATION IS FILED

138. When such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist, one should be a psychiatrist, and the third a physician. For this purpose a panel of doctors in

every city may be prepared by the High Court in consultation with the State Government/Union Territory and their fees for this purpose may be fixed.

139. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench.

140. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor''s committee to them as soon as it is available. After hearing them, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.

141. The High Court should give its decision speedily at the earliest, since delay in the matter may result in causing great mental agony to the relatives and persons close to the patient.

142. The High Court should give its decision assigning specific reasons in accordance with the principle of ''best interest of the patient'' laid down by the House of Lords in Airedale''s case (supra). The views of the near relatives and committee of doctors should be given due weight by the High Court before pronouncing a final verdict which shall not be summary in nature.

23. In the case on hand, I am of the view that the petitioner cannot be termed as a person who is terminally ill or is in a permanent vegetative state, inasmuch as she does not require administration of euthanasia.

24. With the above direction, the writ petition stands disposed of. Before parting with the case, I would like to express my gratitude to Mr. Clifton D'' Rozario of Alternative Law Forum who has ably assisted the Court in dealing with the subject matter, so also Mrs. Pramila Nesargi, learned Senior Counsel, appearing for the petitioner. The Court also places on record its appreciation to the assistance rendered by Mr. B.V. Rama Moorthy, learned counsel appearing for respondent No. 7. I also place on record the assistance rendered by Dr. P. Satish Chandra, Director/Vice Chancellor, NIMHANS, and Dr. Mathew Varghese, Professor of Psychiatry, in sending their valuable output by examining the petitioner and filing the medical report. The fee of the Amicus Curiae is fixed at Rs. 10,000/-.

