

(2012) 09 RAJ CK 0090

In the Rajasthan High Court

Case No : DB PIL Petition No. 5287/12 and DB Civil Writ Petition (PIL) No. 15445/10

Humanrights Association of India

APPELLANT

Vs

State and Others
 Rajesh Chhikara Vs State of Raj.
and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 47

Citation : (2013) 4 RLW 2904 : (2012) 4 WLN 334

Hon'ble Judges : Narendra Kumar Jain, J;Arun Mishra, J

Bench : Division Bench

Advocate : Dileep Sinsinwar and Mr. Anoop Agarwal, for the Appellant;
Shashikant Saini, for the Respondent

Judgement

1. The question involved in the petitions is about the strike of Doctors. Petitioners have prayed to declare strike of the Doctors as illegal as Doctors cannot resort to the strike and stringent action be directed against the Doctors who have indulged in the strike. Prayer has also been made to direct payment of compensation to the heirs of deceased who passed away due to said strike or "Bandh" called by respondent No. 3 in PIL Petition No. 5287/12. In addition, it has been prayed in PIL Petition No. 15445/10 that respondents be directed to rule out the recurrence of such incidences in future. PIL Petition No. 13233/11 has been registered on the basis of a letter of Rajesh Kumar Sharma dated 14.9.2011. It is submitted in the petition that Doctors have no right to go on strike as they are meant to protect life of ailing persons. Since hospitals are meant for treating the patients, job of the Doctors is to protect their lives. Obviously, Doctors have no right to go on strike. In Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, , it has been observed by the Supreme Court that the government discharges this obligation by running hospitals and health centres which provide medical care to persons seeking to avail of those facilities. Article 21 imposes an obligation on the State to

safeguard the right to life of every person. Preservation of human life is thus of paramount importance. In the government hospitals run by the State, the medical officers employed therein are duty bound to extend medical assistance for preserving human life and timely treatment, otherwise, it would be violative of right to life enshrined under Article 21 of the Constitution of India.

2. Same is the situation for lawyers, considering it as a noble profession. The Apex Court in Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, held that Lawyers have no right to go on strike or even token strike or to give a call for boycott nor can they, while holding vakalat on behalf of clients, abstain from courts in pursuance of a call for strike or boycott.

3. In Surjit Singh Vs. State of Punjab and Others, the Apex Court has observed that self preservation of one's life is the necessary concomitant of right to life enshrined in Article 21 of the Constitution of India. The Apex Court has made the following observations:-

11. It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine :

17 Vinaa dehena kasyaapi canpurushartho na vidyate Tasmaaddeham dhanam rakshetpunyakarmaani saadhayet

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18 Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamatishthejje vanbhaadraani pashyati

One should protect his body which is responsible for every thing. He who protects himself by all efforts, will see many auspicious occasions in life.

20 Sharirarakshanopaayaah kriyante sarvadaa budhaih Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22 Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

4. In *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , the Apex Court has emphasised the State obligation towards health under Article 21 read with Article 47 of the Constitution.

5. In *A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others*, the Apex Court has observed that there should not be incident of strike and disruption of the patient care services etc. In *Pt. Parmanand Katara Vs. Union of India (UOI) and Others*, the Apex Court has observed thus:-

7. There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.

8. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to extend medical assistance for preserving life. 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. On this basis, we have not issued, notices to the States and Union Territories for affording them an opportunity of being heard before we accepted the statement made in the affidavit of the Union of India that there is no impediment in the law. The matter is extremely urgent and in our view, brooks no delay to remind every doctor of his total obligation and assure him 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. We must make it clear that zonal regulations and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of the fact whether under instructions or rules, the victim has to be sent elsewhere or how the police shall be contacted, the guideline indicated in the 1985 decision of the Committee, as extracted above, is to become operative. We order accordingly.

6. In PIL Petition No. 13233/11, various texts of Kalidas, Charak and Chanakya regarding Doctors and their profession have been relied on as under:-

Mahakavi Kalidas had composed thus:

Sariramadyam khalu dharmasadhanam.

The body is the ultimate means for performing religious duties.

Prescribing the capacity of a "Doctor", Charak had stated thus:

daksah tirtharthasastrarthah drstakarma sucirbhisak, (carakah)

A doctor is he; who is efficient (an expert in the field), who has studied, assimilated all the scriptures on medicine, who has seen other seniors doing surgeries and treating the patients and who is pure or honest.

The great principle giver and a man with multifaceted wisdom, Chanakaya, while speaking about the role of a Doctor's, has pronounced thus:

Ayurbedakrtabhyasah sarbesam priyadarsanah Aryyasilagunopetah esa baidyo bidhiyate.

A doctor is he; who has mastered and practised all the scriptures on health, who is well-behaved to all and who is endowed with the noble qualities of honesty, simplicity and purity.

7. It goes without saying that strike by Doctors involves violation of Article 21 of the Constitution of India. It is such a noble profession and considering the fact that they are life saver and considering importance of their services which may be required at any moment, they cannot be expected to proceed on strike.

8. In view of aforesaid pronouncements, it is apparent that even employees have no right to go on strike. The professionals like Doctors and lawyers have also no right to go on strike. Their responsibility is manifold. There is no legal/statutory right to go on strike. There is no equitable justification to go on strike. We expect from the Doctors and lawyers that they should not resort to strike.

9. Code of Ethics for Doctors prescribed in Regulations of 2002 also provide the duties and responsibilities of the Physician in general and to their patients; the patient must not be neglected; duties of physician to the public and to the paramedical profession; unethical acts; human rights; misconduct; etc. reading of ethics also makes it clear that strike can not be resorted to by members of such noble profession like Doctors; same is true for lawyers. Law is well settled in this regard. In the present matters, strike is already over. We expect that in future no strike is resorted. State is also duty bound that such situation is avoided as it is obligatory for State to ensure uninterrupted treatment facilities.

10. Coming to the question of compensation to the heirs of the persons who have died during the said strike, we cannot generalize the issue. In case any individual claim is made, that has to be examined on its own merit on the basis of facts in their individual case. In our opinion, general prayer made for directing payment of compensation to the heirs of all the deceased persons who died during the course of strike without disclosing the details, reasons etc. cannot be said to be appropriate. Thus, we reject the prayer for directing payment of

compensation.

11. Coming to another prayer in regard to disciplinary action against erring Doctors, we cannot fix responsibility here in writ petition on any single person, this is not the function of the court. The appropriate bodies have to look into all these aspects. Thus, the prayer for directing disciplinary action is also rejected. The State Government has to ensure that in future there should not be any occasion for such strikes and medical facilities/treatment is provided without interruption. The petitions are, accordingly, disposed of. No costs.