
(2011) 05 PAT CK 0114
In the Patna High Court
Case No : CWJC No. 8886 of 2011

Juhi Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 17, 21, 39, 41

Citation : (2011) 59 BLJR 2662 : (2011) 2 PLJR 1041

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State.

2. This matter was mentioned at 1:30 p.m. before rising of the Court for the lunch recess as an extremely urgent matter relating to a fundamental right to life and to medical treatment. The Court directed it to be placed for admission immediately in the post lunch possession.

3. The Petitioner is stated to be the sister of one Raj Kumar Singh who is an H.I.V. positive patient. He is critically ill and is admitted in the Patna Medical College Hospital (P.M.C.H.), Patna, B.A. Guzari Ward and is unable to sign the papers of the case. His sister therefore pursues the writ application on his behalf.

4. Learned Counsel for the Petitioner invites the attention of the Court to a noting dated 7.5.2011 addressed to the Nephrologist one Prof. (Dr.) V.K. Singh that the patient was P.L.H.A. which, it is submitted, is an abbreviation for an H.I.V. positive patient having a very high serum Creatinine level of 8.1 requiring Homo dialysis immediately, it is submitted that because he is an H.I.V. positive patient, he is being denied Homo dialysis creating a life threatening situation for him.

5. Learned Counsel for the State finds it difficult to oppose the writ application and submits that directions may be given to the Respondent No. 4 in the

P.M.C.H. to attend to the patient immediately and that the State shall render all possible necessary assistance for the treatment.

6. It stands to reason that if a patient is critically ill. his relatives shall be more interested in ensuring and pursuing prompt medical treatment to him in the hospital rather than pursuing litigation in a Court of Law through a writ petition to demand treatment. The Institution of the writ application and the manner in which it has been pursued on behalf of the Petitioner ipso facto is more than sufficiently indicative of the feeling of helplessness and desperation in the family of the patient coming to the Court in the expectant hope as his last refuge.

7. The Indian Constitution provides that the State shall not deny to any person equality before the law. There can be a classification under Article 14, but there can be no classification between human beings critically ill who are at a stage requiring immediate attention creating a life threatening situation because he was an H.I.V. positive patient a class by himself not entitled to protection under the Indian Constitution. The denial of treatment to him is not only a violation of his constitutional right, but also a refusal by those concerned to obey and perform their obligations to the Constitution of the country which is supreme. Those who refuse the treatment to him survive by the Constitution themselves. If they do not respect the Constitution, the Constitution is omni-powerful to take care of them.

8. The Petitioner has rightly relied upon Article 17 of the Constitution to submit that the patient cannot be treated as an untouchable only because of his ailment.

9. It has further been rightly contended that the right to life under Article 21 includes the right to proper and good medical treatment. No person can be denied access to medical treatment much less by an organ of the State. If the patient in question is to suffer any casualty by reason of denial of adequate medical attention, those who denied him the attention may fall severely foul of the law inviting appropriate action under the laws of the land.

10. Under Article 39(e) of the Directive Principles of the State Policy, it is the duty of the State to look after the health of men and women. Likewise, Article 41 provides for the State to take effective provisions for public assistance in case of sickness, and undeserved want. Article 47 of the Directive Principles of the State Policy imposes an obligation on the State to provide public health as one of its primary duties. The Directive Principles of the State Policy have now been held to be not only enforceable at the behest of a citizen, but a constitutional obligation of the State to be performed on its own, without waiting for a citizen to demand it.

11. The Court therefore directs the Director-in-Chief, Health Services, Government of Bihar and the Superintendent of P.M.C.H. to ensure immediate Homo dialysis to the Petitioner apart from such other medical treatment that he may require. In the event that the Superintendent of P.M.C.H. is not available in the hospital premises when the Petitioner reaches there with the present order,

whosoever be the doctor on duty is bound to comply the orders of the Court. Any other doctor before whom this order is placed as a consequence or as a defence that it was not his duty, but that of the other doctor who is not available at the moment shall all and also be answerable to this Court.

12. The Court parts with the case in the hope and trust that the doctors who have taken the solemn oath to serve humanity shall not act in breach thereof. There shall be no further occasion for the Court to look into this aspect of the denial of treatment.

13. Let a copy of this order be handed over to the counsel for the Petitioner for the needful during the course of the day.

14. The application is disposed.