
(1997) 09 MP CK 0084

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 534, 544, 556, 616 and 674 of 1997

K.C. Pradhan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Madhya Pradesh Civil Services (Conduct) Rules, 1965 — Rule 16, 16(4)

Citation : (1997) J LJ 407 : (1998) 1 MPLJ 130

Hon'ble Judges : Shacheendra Dwivedi, J; A.S. Tripathi, J

Bench : Division Bench

Advocate : S.B. Mishra, for the Appellant; K.B. Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

Shacheendra Dwivedi, J.

In all the above petitions, the policy decision dated 10-3-1997 of the State Government thereby withdrawing the facility of private practice from the doctors of Medical Colleges and District Hospitals, is under fire. The Government's decision now makes it obligatory on such doctors to examine and treat the patients only on duty in the Government hospitals and not to practice the profession privately.

2-3. All the petitioners claim to be public spirited citizens and have filed the above petitions in larger interest as public interest litigation. They have challenged the State decision on various grounds, but it is commonly urged that the decision is discriminatory as it restricts the private practice of the State service doctors who are in Medical Colleges and District Hospitals but on the other hand, it permits the doctors, in Government service posted in rural and tribal areas to practice privately and to charge fees from patients. The policy thus leads to discrimination in between the doctors in Government service, which is not permissible under the law and is violative of Articles 14 and 21 of the

Constitution of India.

The emphasis is also laid by the petitioners on the fact that even in a case of emergency, where the medical assistance is urgently required, by the patients, the Government doctors are not permitted to render medical assistance at the patients' respective places. Therefore, the policy is also against the welfare of the patients and is thus opposed to the public policy. It is also contended that a doctor-citizen cannot be prohibited from practising the profession as the Constitution guarantees such right. Therefore, it is prayed that the policy decision dated 10-3-1997 be quashed and the position existing before 1st of April, 1997, be restored.

The State has controverted the contentions raised by the petitioners. It is firstly submitted that it is not desirable for the Court to interfere with the decision which relates to the State policy. It is next contended that the impugned policy decision has been taken in the larger public interest, and that the restriction so imposed is reasonable. It is further submitted by the State that during the pendency of the petitions, the State Government has modified its decision in relation to the emergency cases. The provision has now been made that the above referred class of doctors with intimation to their seniors/superiors in emergency cases may examine the patients at their places, but without charging any fees from them. Therefore, it is submitted by the respondent-State that the writ petitions are motivated and frivolous and deserve to be dismissed. By the decision under challenge, the State has changed the policy. It is imperative and implicit in Article 14 of the Constitution of India that the change in policy must be made fairly and should not give the impression that it was so done arbitrarily or on any ulterior criteria. The wide sweep of Article 14 and the requirement of the every State action, qualifying for its validity on the touch stone of fairness irrespective of the field of activity of the State, has long been settled, as held by the Hon'ble Apex Court in *Col. A.S. Sangwan Vs. Union of India (UOI) and Others*, .

There is a presumption of validity of the State action and the burden is on the person, who alleges violation of Article 14 to prove the assertion. However, the exercise of the State power must be for public good, instead of it being the abuse of the power. Under Article 47 of the Constitution of India, it is the constitutional obligation of the State Governments to ensure the improvement of the public health. The Constitution envisages the establishment of a welfare State, at the federal level as well as at the State level. In a welfare State, the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligation undertaken by the Government in a welfare State. The Government discharges this obligation by running Hospitals and Health Centres, which provide medical care to the person seeking to avail those facilities.

Article 21 of the Constitution of India imposes the obligation on the State to safeguard the right to life of every person. Preservation of human life is, thus of

paramount importance. The Government hospitals run by the State Government and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of the Government hospitals to provide timely medical treatment to persons in need of such treatment, would certainly result in violation of their right to life, guaranteed under Articles 21.

As it is often said and is also factually true that India lives in villages and the fact cannot be lost sight of that in the rural areas the developed medical facilities of examination and treatment of patients at private level are not available and mostly the patients have to depend only on the Government doctors. Therefore, it appears that in order to encourage the doctors to serve the rural population, the State has taken such policy decision. It is also submitted by respondent-State in its return that the decision has been taken after the due deliberations and proper application of mind to the issue by the State cabinet.

The State is well within its powers to frame policy or change the policy for the welfare of its subjects. It is submitted by the State that a large number of posts in the cadre of Assistant Surgeon have been lying vacant, specially in rural and tribal health institutions. The tendency amongst the doctors is to remain close to the urban areas. By the policy decision, the State seeks to discourage this tendency. It is also submitted by the State that upto the District level, the non-governmental medical facilities available to public have grown in good dimensions, but such facilities are lacking in the rural and tribal areas, and, therefore, the State cabinet is said to have been taken decision on 24-12-1996 by deciding to impose ban on the private practice on the Government doctors in Medical Colleges, Hospitals/Dispensaries at the level of district headquarters. In lieu of such ban, the doctors have been allowed the non-practising allowance.

The object of the State in framing the policy and in taking the decision is laudable. The doctors teaching in Medical Colleges, which produce the future doctors for the country, are required to possess and be acquainted with the latest medical researches and the works done in surgery and other medical fields. This can only be achieved when they have sufficient time to devote to the studies and thereby acquire knowledge to make their students professionally confident with upto date knowledge.

The ban imposed by the State Government shall certainly provide occasions and opportunities to the teachers in Medical Colleges to make themselves perfect. The class of intelligentsia, to which doctors belong, constitute the national wealth. The petty interests have to be sacrificed for the interest of the State/Nation.

There is yet another aspect of the matter. The Government doctors likewise the other Government servants directly or indirectly cannot as of right be permitted to practice nor can claim right to practice the profession privately. It was the facility provided by the Government and was liable to be withdrawn in the

interest of public good. No government servant either himself or through someone can claim that there is right in him to do his private profession or business. Therefore, the argument is itself misconceived that the ban is violative of Article 14 of the Constitution of India or that under the Constitution, a citizen, though in Government service has the fundamental right to practice any profession or to do any business. The exercise of fundamental rights is subject to the reasonable restrictions which may be imposed by the State. A candidate even after having completed his medical education, is not entitled to practice the medical profession unless he is registered and granted the permission by Medical Council. The Government doctors, are Government employees. They are governed by M. P. (Civil Services Conduct) Rules. Under Rule 16 of the Rules, the Government employees are prohibited from engaging themselves in any trade or business. Under Rule 16(4) of the said Rules, the Government servants, this expression includes the doctors, are prohibited from carrying any trade or business or to do profession privately by accepting the fees. The private practice was the privilege allowed by the Government to the doctors, which has been withdrawn by the policy decision under challenge.

Under the order, challenged in these petitions, the State has sought to classify the doctors of Medical colleges and of Hospitals/Dispensaries at District headquarters as one class, in view of the availability of private medical facilities in those areas and, of the doctors of rural and tribal areas as another class, due to the scarcity of such facilities in those areas after the hospital hours. The classification, therefore, cannot be said to be unreasonable, as it has the rational, the nexus with the larger public good. For the present, the State decision can be accepted to subserve the public interest at large.

It is well established that the policy decisions of the State are normally not open to judicial review unless those are whimsical, arbitrary, unreasonable or capricious. The private parties may be concerned only with their personal interests, whereas, the State while exercising its powers and discharging its functions act indubitably as is expected of it, for public good and in public interest. When the State action is found to be for public good, on the touch stone of reasonableness, the Court would be reluctant in interfering with the State action.

Now, when the State has changed the policy and the same is not being subjected to judicial review, for the bona fides of the State, those must reflect and would be gathered only through the subsequent State actions. The policy adopted by the State Government can serve the solemn object only when the medical service is made more efficient by providing the necessary facilities. The Government cannot get away nor can claim to discharge its constitutional obligations by mere changing of the policy.

On the experience gained by the State Government, it was found, as expressed in the return, that the facilities provided in the hospital by the Government were not reaching to the needy. The learned Government Advocate submitted that due

to the facility of private practice allowed to Government doctors, the hospital equipments were made inserviceable, so that for investigations, the patients may go to the private clinics, run by them in the vicinity of such hospitals. Thus, the poor patients were being exploited. An impression was also created in the minds of the people that proper diagnose of the ailment would only be possible, when the patients approach the private clinics of those doctors. Thereafter hospital facilities were also made available to those patients who had consulted the Government doctors in their private clinics.

This dual system was thus resulting in the neglect of poor patients. Since maximum time was devoted by Government doctors in their respective private clinics, they had no spare time to study and to know the latest development in the field of medicine, surgery and other fields, or to do the research work. Under the circumstances, in view of the solemn duty cast on the Government to take care of the larger public interest, the decision was taken.

Still the policy adopted by the Government, would only be able to serve the solemn object when its hospitals are properly equipped and the State creates the necessary infrastructure for providing the adequate medical services, which would include the filling up of the vacant posts of doctors of all cadres and also of the staff and when the provision is made of medicines and implements. Some reserve fund would also be required to be placed under the control of the Superintendents/Incharge hospitals, to meet the emergency situations.

It is no doubt true that financial resources would be needed for providing the above described and other miscellaneous facilities. But at the same time, the State cannot ignore its Constitutional obligation of providing adequate and efficient medical service to its people, particularly now when the State has taken a considered step in that direction.

We now advert to the next question, posed and vehemently argued by Shri S. B. Mishra and Shri Arun Mishra, counsel for petitioner and intervenor respectively in W. P. No. 543/97, that if the facility of private practice was to be allowed to doctors posted in rural areas i.e. at places other than the District Headquarters and in the towns where medical colleges were situated, the decision would still be discriminatory as many of the Pargana and Tahsil places have such developed medical facilities, which are not available even at District Headquarters. The contention advanced is fallacious.

In a policy decision, which concerns the public at large, the general conditions are to be considered, not the exceptional situations. It can reasonably be taken that the benefits of modern medicine and surgery and facilities of investigation of diseases have reached upto the level of District Headquarters. But below that level, if some Pargana places have also developed, those can only be taken as exceptions. Therefore, the ban imposed on private practice of Government doctors upto the District Headquarters is a reasonable classification for the determination of urban and rural areas. However, there may be developed places

below the District Headquarters, where such facilities are also available. Those may still be identified by the respondent State for the further extension of ban to such particular places. But on that count, the policy decision of the Government would not be quashed by this Court, as it cannot be said that behind such classification, there is no reasoning. With the establishment of the headquarters of District Administration at a particular town, that town became the important leading city of the area. The modern living facilities grew at such places, including the private medical facilities. The ban has been imposed on the doctors posted in Medical colleges or in Medical Institutions situated at District headquarter. The Government has taken the areas beyond District Headquarter as undeveloped areas for private medical facilities i.e. where the proper medical facilities are generally not available after the working hours of Government hospitals.

Therefore, the doctors posted in Government hospitals/health centres of those areas have been allowed private practices in those places as the Government employee in normal situation is not permitted to leave his head-quarter/place of posting. As such, there is no discrimination in between the Government doctors. The decision under challenge is neither arbitrary nor capricious or whimsical.

The petitioners have further submitted that in the past also, a similar decision was taken by the Government, but when it was worked out, it had failed. The decision had to be ultimately changed by the Government. Therefore, it is contended that it is unreasonable for the Government to again take such a decision. It must be remembered that a policy decision cannot be good forever. With the changing needs of the society and the circumstances, the decision may be changed, rechanged or suitably amended or adjusted by the State.

A policy decision is to be taken for achieving certain objectives. The object in not imposing the total ban on private practice by government doctors appears to be to provide the medical facility after the hospital hours, to the public of such areas where developed private medical facilities are not available. It will also provide incentive to the doctors, posted in such areas. If doctors of such areas were also to be paid non-practising allowance after imposing such ban, may be that the public might have suffered badly due to non-availability of doctors after their duty hours.

The National Policy Studies, published in the year 1990, by Government of India, observed that:-

"It is desirable for the States to take steps to phase out the system of private practice by medical personnel in government service, providing at the same time for payment of appropriate compensatory non-practising allowance. The States would require to carefully review the existing situation, with special reference to the availability and disposal of private practitioners, and take timely decisions in regard to this vital issue."

The nature of doctors profession is such that it definitely demands a spirit of

service and sacrifice. Earning with dignity should be the motto. After all what lends dignity to any person, is his attitude to work and not the earnings that he makes.

Shri R. K. Shrivastava, Shri R. D. Jain and Shri K. K. Lahoti, Advocates, appearing for the petitioners of W.P. No. 544/97, W.P. No. 556/97 and W.P. No. 616/97 and 674/97 respectively have further submitted that there are no bona fides in the State decision as the State even did not carry out the directions issued by this Court in W. P. No. 468/86 on 18th November, 1991, wherein it was directed that it shall provide E.E.G., Echo Cardiogram, Halter Monitor and Computerised Trade Mill Machines to J. A. Group of Hospitals, Gwalior, within a period of six months. A copy of the order has also been annexed with the petition.

We appreciate the contention advanced, but at the same time, we also feel sorry. It is really unfortunate that the petitioners, who claim themselves to be cautious and public spirited citizens, also took no action in that regard. They only appear to be reminded of the deficiencies of the hospital after six years, when the State proceeded to pass the order under challenge. However, for the non-compliance of the order of this Court, passed in M. P. No. 468/86, the separate proceedings under the Contempt of Courts Act shall be registered against Collector, Gwalior; Director, Medical Education; Director, Health Services; Secretary, Health M. P. Government and the Superintendent of J. A. Group of Hospitals, Gwalior.

From the arguments advanced by the counsel for the petitioners, the contention which deserved consideration that there was no clear provision in the policy decision originally taken for the examination of emergency cases, is also no longer available since the State has revised its decision in that regard under the amended policy.

Before parting with the order, it may be noted that a similar public interest petition was preferred before the Main Seat at Jabalpur bearing No. W.P. 1370/97 and the said petition was dismissed.

For the foregoing reasons, no interference with the policy decision of the Government is at all warranted. In view of the above discussion, we have found no merit in the petitions at hand. The petitions are, therefore, dismissed. Copies of the order shall be placed on record of each of the petitions. However, in the peculiar facts and circumstances, there shall be no order as to the costs.