

(1998) 04 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 4265 of 1988

Miss Pushpaleela

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Citation : AIR 1999 Kar 119 : (1999) 2 CivCC 121 : (1998) 4 KarLJ 447

Hon'ble Judges : V.V. Gopalagowda, J; R.P. Sethi, J

Bench : Division Bench

Advocate : Sri G.A. Anthony Cruze, for the Appellant; Sri A.V.S. Reddy, A.G.A., for the Respondent

Judgement

V. Gopala Gowda, J.—In this petition filed by way of public interest litigation on behalf of the victims who have lost their eye-sights consequent upon the operations conducted in the Free Eye Camp at Chintamani during the year, 1988, the petitioner has prayed for a direction to the respondents to pay adequate compensation and all other medical facilities to the victims and to suitably rehabilitate them under any of the welfare schemes.

2. The brief facts of the case are that on 28th and 29th January, 1988 a Free Eye Camp was organised at Chintamani in Kolar District under the joint auspices of Lions Clubs of Chintamani and Bangalore and Common Wealth Society for the Blind, New Delhi. 151 persons were operated for cataract problem at Vasavi Kalyana Mandira and their list has been produced as Annexure-A in the connected W.P. No. 4351 of 1988 which was dismissed for non-prosecution on 26-5-1997. Among them, 72 persons had lost one eye-sight, 4 victims had lost both the eyes on account of infection developed after the surgery with severe pains. The affected victims were shifted to Minto Regional Institute of Ophthalmology, Bangalore and S.N.R. Hospital, Kolar to provide medical assistance. On 3-3-1988 the Government constituted a one-man Commission of Enquiry headed by Padmabhushana Dr. P. Shiva Reddy to enquire into the circumstances leading to the tragedy and to suggest remedial measures and to submit a report. Such a

report was submitted on 2-11-1989, copy of which has been produced at page 26 along with the Synopsis filed by the Government Advocate. We shall later refer to the report. In the meantime, by an order dated 23-6-1988 this Court directed payment of Rs. 5,000-00 as interim compensation to the four persons who have become totally blind, in addition to the sum of Rs. 1,000-00 already paid. Vide Government Order dated 1-8-1988 such a payment had been made. Thereafter, on 6-9-1988 this Court had directed payment of Rs. 250-00 per month to each of 66 victims. By Government order dated 7-8-1990 the said amount has been paid and such payment is being made as of today. At present there are only 45 victims alive and the remaining 27 victims have died during the pendency of the writ petitions. The list of the remaining victims is produced.

3. On behalf of the respondents, common statement of objections have been filed for both the writ petitions. Whatever facts stated above have not been disputed by the respondents. The conduct of operation, the number of persons affected and all other facts have been admitted. On the other hand, what the respondents have contended is that they have provided the best treatment possible till the victims were completely cured. Respondents sought to justify the action they have taken after the tragedy had occurred. At the end it is stated that the State Government has sympathy for the victims and will do their best to rehabilitate the victims. This is the sum and substance of the objections filed on behalf of the respondents.

3-A. In the light of the aforementioned facts, it has to be tested as to whether there was negligence on the part of the doctors who had performed the operations and what is the amount of compensation payable to the victims.

4. It is to be noted that the Government by its order dated 6-10-1990 has ordered a detailed joint enquiry against the surgeons who had performed the operations to the ill-fated victims. It is not known as to what happened to that enquiry. However, the fact remains that a considerable number of persons have been affected after the operations. Much investigation is not necessary to ascertain as to whether the damage had been caused on account of negligence and carelessness in conducting the eye camp in the light of the report submitted by Padmabhushan Dr. P. Shiva Reddy. The conclusions/opinion arrived at in the said report are self-explanatory and they are reproduced hereunder in order to arrive at a conclusion. The conclusions/opinion are as under.--

"After going through the above points and in view of my personal examination of the camp site and personal examination of the persons involved, I feel that the following circumstances could have led to the tragic incident that has caused loss of sight to some of the patients got operated at Chintamani Eye Camp:--

1. The site/building selected for conducting operations was not suitable since the room in which operations were performed has got no doors and shuttered windows. In addition, the lavatories were also very close to the theatre and were not closed during surgery. Hence, there was every possibility of getting the eyes

infected.

2. The procedure adopted for sterilization was most unsatisfactory as discussed earlier and could have been a cause for infection.

3. The paramedical staff, who have worked in the camp were not experienced in handling the sterilization and assisting the surgeons in theatre. As per the statements of the individuals, the surgery was not assisted by the individuals methodically. No particular job was entrusted to each individual and no responsibility was fixed and the entire camp lacks expert supervision and guidance, which could have given way for human error.

4. Though the result of the bacteriological examination of saline used for washing sharp instruments and irrigation of Anterior chamber during surgery shows presence of no pathological organisms, it could have been a source of infection since it was exposed continuously.

5. I find that the Surgeons of the Mobile Ophthalmic Unit, Dr. H.N. Thimma Setty and the Staff Nurse, Smt. Nancy D'Souza are to be held responsible for the tragedy that has taken place, as I feel that it is their responsibility to look after the pre-operative, operative and post-operative care of the patients. I find that the greatest lapse is the procedure adopted for sterilization of the instruments, equipment and the appliances etc., in the operation theatre".

In order to arrive at the above conclusions, it was observed that:--

"A single nurse preparing theatre, sterilizing the instruments, doing 150 syringing and assisting the Surgeon during operations with limited sets and writing operation notes was unbelievable.

Lady Health Visitors, who have got no theatre experience, assisting the surgeons in theatre was unimaginable.

Handling of sterilization of instruments was done by the deputed staff on whom the surgeon has got no confidence. In addition, no particular individual was supervised for the sterilization.

The same staff was also made to carry the trays of instruments, used and unused, and to assist the Surgeons during operations.

Linen was sterilized in a single drum, autoclaved and later transferred to a big dressing drum that was previously sterilized by flaming with surgical spirit. Repeatedly the drum was opened to remove the contents of the small autoclaved drum. Thus making it unsterile.

Immersion of sharp instruments in Ethicon fluid one day before operations and transferring to index next day was not sufficient.

Only six sets of instruments were used, which are not sufficient for four tables.

The procedure adopted in washing the used instruments is also not satisfactory.

The non-pressure water sterilizer was placed in the operation room itself, making the place hot and uncomfortable for the operating surgeon as well as the other staff.

The saline which was used for irrigation of A/c during the surgery was made at Victoria Hospital, Bangalore and further exposed continuously could have been a source of infection".

5. The Government of India has fixed guidelines for organising Eye Camps. The report says that the said guidelines were not followed properly. It is also held that the procedure adopted for sterilization was not upto the mark. Thus, it becomes clear that as a result of non-precautionary measures taken and on account of not following the guidelines prescribed by the Government of India, the tragedy had occurred. The carelessness and negligence are evident from this. While performing operations on important vital organs like eyes, special care and attention should have been taken. That has not been done in the instant case. Consequently, the poor, illiterate and aged villagers have become the victims and sufferers.

6. Now, coming to the quantum of compensation payable to the victims, it is no doubt true that small amount has, already been paid towards compensation and a sum of Rs. 250-00 is being paid every month to the victims. What has been paid and is paying will not be sufficient for the poor victims who have lost their vision for no fault of theirs. For such persons, justice must not only be done but must be seen to be done. We bear in mind that the poor victims have lost their vision and had suffered a lot on account of severe pains. They have been deprived of their normal functioning on the one hand and were made a burden to the family. Some of them are no more now. But the sufferings they had undergone cannot be forgotten. At the same time, we also take note of the steps taken by the State and other organisations in the matter of providing post-operation treatments, the rehabilitative measures undertaken and the compensation amount paid and is being paid every month. Taking into consideration the over-all circumstances of the case and the situation in which the ill-fated victims were placed, we are of the opinion that ends of justice would be met if lumpsum compensation is awarded to the victims in the following manner:--

(a) Amount payable to the legal representatives of the victims who have lost vision of one or both eyes and who have died :-

(i) Within two years of the incident Rs. 40,000-00 (ii) After two years upto now Rs. 50,000-00

(b) For those who have lost sight of one eye and alive now Rs. 75,000-00 (c) For those who have lost vision of both eyes Rs. 1,50,000-00

7. Accordingly, the writ petition is allowed and we direct the respondents for payment of compensation as above within two months from today. Until the

payment of the compensation awarded as above, the payment of interim compensation that is being paid now shall continue.

8. We make it clear that the compensation ordered above is excluding whatever compensation already paid having regard to the peculiar facts and circumstances of the case treating this as a special case. The quantum of compensation awarded herein shall not be a precedent or guiding factor for any other case. The compensation awarded is restricted to this case only.

9. Before parting with the case, we feel it necessary to observe that even though the connected Writ Petition No. 4351 of 1988 was also filed in public interest, namely in the interest of the present victims, the petitioners in that writ petition have not prosecuted the same and allowed the same to be dismissed for non-prosecution. However, the petitioner has in the present petition has prosecuted it properly and was successful in securing justice to the ill-fated victims. While appreciating her social work, we feel that it is necessary to award costs to her for the interest she has shown in the public cause, the pains she has taken as also the money and time spent for the prosecution of this case. Accordingly, we direct payment of costs of Rs. 5,000-00 by the first respondent to the petitioner within four weeks from today.