
(2014) 02 DEL CK 0238
In the Delhi High Court
Case No : W.P. (C) 7279 of 2013

Mohd. Ahmed (Minor)	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Companies Act, 2013 — Section 135
Constitution of India, 1950 — Article 21

Citation : (2014) 208 DLT 199

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Ashok Agarwal, Ms. Aarushi Agarwal and Mr. Khagesh Jha, Advocate for the Appellant; Shyel Trehan, Amicus Curiae, Ms. Tejaswi Shetty, Ms. H. Hnunpoi, Advocates for UOI, Ms. Zubeda Begum, Standing Counsel, Ms. Sana Ansari, Advocate for Respondent-2/GNCT of Delhi, Mr. Deepak Aggarwal, Advocate for Respondent-3/AIIMS, Ms. Maneesha Dhir, Ms. Geeta Sharma, Ms. Sadhvi Shahi and Ms. Mithu Jain, Advocates for Respondent-4/MCA, Advocate for the Respondent

Judgement

Manmohan, J.—Ms. Shyel Trehan, learned Amicus Curiae states that Gaucher disease from which the petitioner-minor child suffers, is a rare chronic disease which worldwide is known as an Orphan disease. She states that, according to her research, only about 200 known cases of this disease have been diagnosed in India so far. She states that the monthly expenditure to be incurred on the treatment of this disease is in excess of Rs. 6,00,000/-. Ms. Trehan also points out that in United States there is a specific legislation known as Orphan Drug Act which provides incentive to pharmaceutical companies to undertake research and development work in the field of rare orphan diseases. She, however, states that there is no such act, or even a policy, in India.

2. Ms. Maneesha Dhir, learned Counsel for respondent No. 4-Ministry of Corporate Affairs states that Section 135 of the Companies Act, 2013 which deals with corporate social responsibility has not been notified till date. She also states

that comments to the draft rules under the said Provisions are still awaited.

3. Having heard the parties this Court is of the opinion that the Right to Life as enumerated in Article 21 of the Constitution of India has to be interpreted in its widest amplitude. The Apex Court in various decisions has given a liberal and multi-dimensional meaning to the expression "life and personal liberty". The Supreme Court in *Pt. Parmanand Katara Vs. Union of India (UOI) and Others*, , has held as under:

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.....

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.....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.....

4. In *Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another*, , the Supreme Court has held as under:

16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See: *Khatri and Others Vs. State of Bihar and Others*, .] The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the memorandum of the Government of West Bengal dated 22.8.1995 and the further directions given herein. In the present case the right to life of a small child must be given utmost priority irrespective of the rarity of the disease, especially when a known treatment is available for the same. Cost of the treatment should not be an

impediment as far as the life of a child is concerned. Being a welfare state, it is the constitutional obligation of state machinery to do whatever is necessary to preserve human life in a time bound manner.

5. In view of aforesaid, Secretary to Ministry of Health, Union of India and Secretary, Ministry of Health, Government of NCT of Delhi are directed to hold a meeting as expeditiously as possible, preferably within a week to see if a policy can be devised to treat patients like the petitioner. Learned Counsel appearing for respondent No. 1-Union of India as well as respondent No. 2-Government of NCT of Delhi are directed to forward not only a copy of this order but also a copy of the paper book to the concerned Secretaries.

List on 28th February, 2014.

Order dasti under signature of Court Master.