

(2016) 06 AHC CK 0009
In the Allahabad High Court
Case No : Misc. Bench No. 13501 of 2016

Moti Lal Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 AILLJ 187 : (2016) 3 UPLBEC 2425

Hon'ble Judges : Sudhir Agarwal and Rakesh Srivastava, JJ.

Bench : Division Bench

Advocate : Moti Lal Yadav, In person, for the Appellant; K. Chandra, C.S.C, for the Respondent

Final Decision : Disposed Off

Judgement

1. This writ petition under Article 226 has been filed as a Public Interest Litigation and on a mention having been made regarding urgency of the matter, has been taken today.

2. Petitioner is a practicing advocate and has raised cause of poor people of State, particularly, ailing ones whose sufferings have aggravated due to strike observed by junior doctors in State Medical Colleges since 30th May, 2016 as a result whereof a number of patients have died as reported in print media and copies of some newspaper reports have been filed along with this petition.

3. We are informed that for the purpose of admission in post graduate courses State Government has launched a scheme providing for extra marks for services rendered by a doctor working in Provincial Medical Services and has served in rural areas. This matter was challenged in High Court and against an order passed by this Court it has gone to Supreme Court. However, apprehending adverse consequences due to judicial orders passed in those matters affecting junior doctors who are admitted in Post Graduate Courses, as a mark of protest they went on strike on 30th May, 2016. Newspaper reports show that several

operations have been deferred, condition of patients is miserable and in some places patients have also died due to lack of adequate medical treatment. In daily newspaper "Hindustan" published on 01.06.2016, it is said that on Monday and Tuesday, 10 patients have died due to aforesaid strike. Several patients are being refused admission in Trauma Centres and in OPD at Lucknow, about 6000 patients were returned, without being attended by the doctors.

4. We are informed that this condition is continuing for the last three days and today is forth day. It is a serious matter. We, therefore, called upon learned Additional Advocate General, Mrs. Bulbul Godiyal assisted by learned Standing Counsel Sri Sanjay Bhasin. She informed us that junior doctors in various other Medical Colleges like Allahabad, Jhansi, Kanpur, Meerut, Ambedkar Nagar etc. have already called back their strike and Government has also made arrangement for proper functioning of hospitals attached to medical colleges by deputing doctors from Provincial Medical Service. Further senior doctors in State Medical Colleges are also attending their duties beyond normal period. Regarding action taken against erring doctors she requested time for taking instructions. We, therefore, deferred the matter and reassembled at 03.45 p.m when Professor Ravi Kant, Vice Chancellor, KGMC, Lucknow as also Professor V.N. Tripathi, Director General, Medical Education were present.

5. We are informed that Resident Doctors Association, KGMU, Lucknow has given in writing to the Vice Chancellor informing that they are withdrawing their protest with immediate effect. Similarly, Professor V.N. Tripathi, Director General, Medical Education informed that as per his information, across the State, all State Medical Colleges are now running smoothly and wherever Junior Doctors had gone on strike/ protest/ abstention from work, they have withdrawn the same and returned back to work. Information at least is relieving and soothing, considering the interest of patients who have to be attended in those medical colleges, but we find that, it is not a matter which can be closed only on the basis of aforesaid statements since in our view it requires some further consideration and a course of action need be observed in future to avoid any recur of such incident.

6. Court can take judicial cognizance of the fact that in past, doctors in Medical Colleges or Government Hospitals or in Provincial Medical Services etc., have gone on strike for one or the other reason. The reason may be justified but the mode of protest adopted by doctors in declining to discharge their duties of attending patients, administering medical treatment to him/her and make effort to save lives of serious patients cannot be accepted for any reason whatsoever.

7. The paramount fundamental duty of a doctor is to administer treatment to an ailing person and make all endeavour to save his/her life and get him/ her well. If a doctor refuses to attend a patient, prima facie, it is a serious professional misconduct. We can understand that sometimes there may be just and valid causes which may not be acceptable in general to all or some of the doctors, and they may have a right to take steps for redressal of their grievance but those

steps cannot include denial or refusal on the part of a doctor to attend his medical duties or treatment of patients. Whatever terminology may be used, whether strike or protest or abstention from duty or anything else but the fact remains that a doctor is bound by his medical oath and also principle of his profession that he or she must attend a patient whenever required and make best possible efforts for his/her medical treatment.

8. Profession of a doctor is to save life of a patient and not to leave it on the mercy of his/ her destiny by refusing to administer medical treatment to him/ her.

9. Whenever doctors individually or collectively proceed to observe strike, protest, abstention from duty etc. the result is that ailing people who may include old persons, infants and other seriously injured, are denied immediate medical attendance and many times due to non availability of timely treatment, the consequences prove to be fatal. There are cases where even a few minutes delay has resulted in mortality.

10. The doctors, therefore, have no business and we have no hesitation in observing that they have no legal or otherwise right to proceed on strike or any of its different terminology like protest, abstention etc. having effect of denying medical treatment/ administration of medicines, care to ailing people. The doctors if aggrieved by any reason or for any cause, are always within their right to avail such lawful methods as are available for redressal of their grievance but cannot refuse to attend their duties as a doctor. More so when such doctor is employed or working or engaged in any capacity, in an institution directly related with public at large and is under the control of State Government since in such institutions mostly poor and weaker people go to avail medical facilities. Doctors in State Medical Colleges, Government Hospitals and similar other institutions funded by State from public exchequer have no legal or other right to deny to discharge their duties as doctor i.e. administration of medical treatment etc. to the patients. Any such action on their part would be patently illegal and would justify a serious action against them as permissible in law which would include denial of salary or allowance or honorarium etc. as the case may be. Further such activities of abstention, protest, strike etc. amounts to a serious misconduct justifying major penalty and also criminal and tortuous liability if any patient suffer on account of such action of such a doctor.

11. In the past whenever doctors had gone on strike or protest etc. Except oral threats administered by Government, we are informed no serious action has ever been taken. Sometimes even Essential Services Maintenance Act's provisions have been invoked but as a matter of fact no adverse action actually has ever been taken against erring doctors.

12. We also take judicial notice of the fact and put on record our concern that medical services in Government hospitals etc. are normally not attended/ availed by resourceful, powerful, well-connected people including senior officials whether in Administration or Judiciary, Politicians etc. They have facility of getting

treatment in hi-fi private hospitals, nursing homes and sometimes even avail remedies abroad. Normally they do not feel pinch of absence of service caused by non attending doctors to their duty and therefore, no strict timely action has ever been taken to prevent recurrence of such incident in future. Medical services in the State are already under bad conditions. Huge budget is provided but there is no effective supervision and execution as a result whereof poor do not get free medicines, various tests meant to be conducted free of costs are not easily available to them and in various other ways also they are exploited by medical staff. Senior Government Officials, except mere paper work, do not show effective supervision and execution on the field. As we have already said, one of the reason is, whenever any occasion comes, those in power, have the facility of availing medical treatment in private ventures and thereafter reimbursement from State Exchequer. That is how the actual deficiency also do not come to notice of those, responsible for maintenance of medical services in the State. The miseries of ailing poor people get aggravated and virtually become fatal many a times when even minimum facility of attendance of doctors disappear, when such doctors go on strike/protest/abstention from duty etc. Therefore, a time has now come where Government must be directed to take out a policy with strict provision so that such incidents may not occur in future and if anybody still dares, stringent actions/ measures are taken which may be a lesson to others not to follow such conduct thereafter.

13. We, therefore, direct as under:

(a) State Government shall constitute a High Powered Committee headed by a Judicial Officer not below the rank of Additional Legal Remembrancer from Legal Remembrancer Department, to conduct an inquiry and submit its report positively within two months of its constitution finding out whether any patient in State Medical Colleges/ Hospitals have died since 30th May, 2016 till today i.e. 2nd June, 2016 on account of protest/ abstention from duty/ strike etc. of doctors working therein. The aforesaid committee shall be constituted within a week from today. If any death has occurred Government shall provide compensation to legal heirs of victims, by paying a sum of Rs. 25,00,000/- (Twenty Five Lacs).

(b) The amount of compensation, paid above, shall be recovered from the salaries/allowances etc., as the case may be, of doctors going on protest/ abstention from duty/ strike etc.

(c) The Principals of State Medical Colleges, as well as Vice Chancellor, King Gorge Medical University, Lucknow shall identify doctors who have gone on strike protest/abstention from duty etc. and they shall be administered a serious recordable warning besides denial of salary/ allowances/ honorarium, as the case may be, and their period of training etc., shall be extended by the aforesaid period of non-working.

(d) In future, if any doctor of State Medical Colleges or Government hospitals or

Government Medical Services, whatever name or title it is called, proceed to observe strike/protest/ agitation/abstention from duty etc., he/she shall immediately be identified and a permanent appraisal record of such doctors shall be created by placing on record his/ her such conduct and admonition thereto. If, such conduct has also resulted in any mortality the same shall also be noted therein. The said record of doctor shall also be placed on a website constituted for the purpose, for knowledge of people at large. It shall also be communicated to Medical Council of India for considering cancellation/ revocation or suspension of license to practise.

(e) Besides above, criminal and tortious action by appropriate authority/victim would/may be open to be taken against such erring doctors.

(f) Government shall also take disciplinary action by treating the aforesaid conduct as serious misconduct justifying major penalty.

(g) This policy decision and guideline shall be formulated and communicated to all the doctors at the time of entering the service and those who are already in service shall be communicated within three months from today.

(h) A report of compliance of this order shall be submitted to the court under personal affidavit of Principal Secretary, Medical Health and Family Welfare as well as Secretary, Medical Education, by 10th September, 2016.

14. With the aforesaid observations, the writ petition is disposed of.

15. The Registrar is directed to forward a copy of this judgment forthwith to Chief Secretary, U.P., Lucknow, Principal Secretary, Medical Health and Family Welfare and Secretary, Medical Education for information and compliance.