

(1997) 09 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 4622 of 1996

People's Union for Civil Liberties

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 5 AD 446 : AIR 1997 Delhi 395 : (1997) 68 DLT 686 : (1997) 43 DRJ 236

Hon'ble Judges : Dalveer Bhandari, J;A.P. Misra, J

Bench : Division Bench

Advocate : P. Bhushan, S. Srinivasan, M.C. Sekharan, Keshav Dayal, Meera Bhatia, Babita Verma and Adarsh Goel, for the Appellant;

Judgement

A.P. Misra, J.

(1) This Petition is filed as a public interest litigation to secure the accountability of some of the respondents, who are presently or in the past controlled the medical establishment of the Government of India and Government of Nct, Delhi for their alleged acts of willful abuse of public office. The petitioner is the Delhi State Branch of the People's Union for Civil Liberties.

(2) According to this petition, the respondents are involved in serious irregularities relating to the purchase of Iv fluids for the hospitals and for deliberately keeping vital medical and diagnostic equipment non-functional in the hospital for months and years. This petition is filed in respect of three specific cases where the respondents being fully aware of acts of fraud and abuse leading to deaths, injury, inconvenience and financial losses to the Government and to the patients, and yet they have not done anything to bring erring officials to book. The three cases are:-

(I)The purchase of Iv fluids by Safdarjung Hospital during years 1993-94 which were contaminated and purchased at exorbitant prices.

(II) The keeping of vital diagnostic and medical equipments deliberately non-functional by various Government hospitals in order to send the patients to private hospitals from whom they get a cut.

(III) The customs duty exemption for medical equipment, imported by private hospitals.

(3) So far as the third case is concerned, learned counsel for the petitioner did not press it as he stated that he would amend another petition already pending in this Court and seek this relief there.

(4) So far as the first case is concerned, the petition reveals as follows:-

(5) In 1974 several persons died in a Kanpur Hospital following the administration of contaminated Iv fluids following which the Hathi Committee was constituted. However, no person was punished even after the Hathi Committee Report.

(6) In 1986 fourteen patients died at Jj Hospital, Bombay due to contaminated Iv fluids. A Commission under Justice Lentin in was set up and it had submitted a detailed and strong report indicting several persons. However, no action was taken against any one.

(7) In 1989 four patients died at Safdarjung Hospital, Delhi , following the administration of Iv fluids. However, no post-mortem was conducted to find out the real cause.

(8) In 1991-92 the Safdarjung Hospital, New Delhi, purchased about 3.15 lakhs bottles of Iv fluids from Super Bazar at a cost of Rs. 23 to 29 per bottle, as opposed to the prevailing prices in the Government supply depot of Rs. 10 to 12 per bottle. Most of these Iv fluids were manufactured by one Sri Krishan Keshav Laboratory of Ahmedabad and one Bengal Immunity Company of Calcutta. None of these bottles were got tested in any standard Government laboratories.

(9) On 23.9.1992 various prominent newspapers of Delhi, reported about severe adverse drug reactions to 8 patients in Safdarjung Hospital following the administration of the Iv fluid. On the same day, i.e. 23.9.92, the then Director General of Health Services. In Dr. Vishwakarma asked Dr. B.P. Bansal, Officer on Special Duty, to enquire about the matter regarding the above newspaper report. Dr. Bansal immediately wrote a letter about this to Dr.P.C. Rai, the Medical Superintendent of Safdarjung Hospital, on the same day which was delivered to his residence at 6 P.M. Drug Controller of India asked Drug Controller, Delhi to depute Drug Inspector to investigate the samples.

(10) On 27.9.1992 the Hindustan Times reported, how the Safdarjung Hospital had violated various norms in the purchase of Iv fluids and had purchased them at more than double the cost. In response to this, the then Medical Superintendent of Safdarjung Hospital, Dr. P.C. Rai (Respondent No. 10), wrote to the then Additional Dghs, Dr. A.K. Mukherjee (Respondent No. 7), that he

purchased the Iv fluid bottles from the Super Bazar because the Medical Depot had never supplied Iv fluids to the Hospital.

(11) In September-December, 1992 Dr.B.P.Bansal who had been asked to enquire into this matter by the Director General of Health Services, gave four interim reports about the Iv fluids.

(12) On 14.12.1992 the Drug Controller, Government of India (Respondent No. 6), recorded a note in the file that he had been telephonically informed that the two samples of the Iv fluid sent to the Drug Testing Laboratory, Bangalore, had been found to be of standard quality and this information was sent to Dr. Bansal for his comments.

(13) On 22.1.1993 Dr. Bansal in his note pointed out that out of the four batches involved in the adverse reactions, only two batches have been sent for testing. The other two batches had not been sent for testing at all. When on his instance the third involved sample was sent for testing, it was found to contain suspended particles and was sub standard. He further pointed out that though two of the 15 patients who had suffered adverse reactions to the administration of Iv fluids had died, no post-mortem was done in respect of either of these persons. He also pointed out that the reaction could also have been due to contamination in the Iv sets which had also not been tested. Dr.Bansal also pointed out that there was no justification for purchasing these Iv fluids at such high costs by the Safdarjung Hospital.

(14) On 28.5.1993 Dr. Bansal recorded another detailed note pointing out that till that date the fourth sample which was involved in this adverse drug reaction was not sent for testing at all. He further said that actually residual fluid from the bottles used on the patients who suffered adverse drug reaction should have themselves been seized, sealed and sent for testing, but this was not done.

(15) On 17.5.1993 the matter was put up to the then Joint Secretary, Health, Government of India (Respondent No. 5, Mrs.Shailaja Chandra). She noted that there were two aspects in the report of Dr.Bansal, the first related to the quality of the Iv fluids and the second related to the deficiencies in the Safdarjung Hospital relating to Iv fluids. On the first part, she noted that since the Drug Testing Laboratory, Bangalore had declared the samples to be of standard quality, she had no further comments to offer. In this, however, she completely ignored the fact that one of the four involved samples was never tested at any stage, while the other when tested in a govt laboratory was found to be of sub standard quality and this report had been officially received before she wrote her note. On the other issue of deficiencies in the Hospitals, she agreed that there was no justification in the purchase from Super Bazar at such a high cost and she estimated that the loss to the Government would be at least Rs. 40 lakhs on account of this purchase from Super Bazar alone.

(16) On 18.4.1994 Shri Rai Chaudhury, the then Additional Secretary, Health, in his report concluded that the Safdarjung Hospital had deliberately manipulated in

order to justify the purchase of Iv fluids in Super Bazar at a very high price. However, no action was taken against the Medical Superintendent, Dr.P.C.Rai, who was clearly involved in this purchase scandal, but was promoted to the post of Additional Director General of Health Services. Subsequently, the matter was sent to the Cbi for investigation and the Cbi gave its report severely indicting Dr.P.C.Rai for these purchases and finding him personally guilty of fraud etc. in the matter of these purchases. The Cbi report was submitted some time in 1995, while Dr.P.C. Rai was still the Additional Director General of Health Services. However, despite the Cbi report, no action was taken against Dr.P.C. Rai and he was allowed to retire on 30th October, 1995.

(17) So far as second class of cases, namely, the matter relating to the medical and diagnostic equipments kept deliberately non-functional in Government Hospitals the case set up by the petitioner is as under:-

RECENTLY on a complaint made to it, the Cbi investigated the allegation of very expensive medical equipment such as Ct scan, Ultrasound machine etc. being kept deliberately non-functional by Government Hospitals so that they can send the patients to the private hospitals from whom they get a cut. In its report, the Cbi Found great substance in the allegation that expensive diagnostic equipment is kept deliberately non-functional in various Government hospitals so as to send the patients to private diagnostic centres from whom the officials of the Government hospitals received a cut. The Cbi also found that these equipment remained non-functional for large percentage of days in many hospitals, despite huge expenditure being made on their maintenance. For example, it was found that in G.B.Pant Hospital, Cat Scanning Unit remained non-functional for 496 days out of 609 days and remained functional only 113 days, despite maintenance charges of more than Rs. 4 lakhs being paid for this period for the maintenance of the machine.

(18) The only action taken by the Health Ministry was to write a letter to Dr.P.C.Rai, the then Additional Director General of Health Services, asking him to ensure that these machines function properly so as to avoid inconvenience to poor patients. However, nothing was done and the matter, was allowed to rest with some inter office correspondence exchanged with some of the accused persons themselves.

(19) On 26.7.1996 the Death Review Meeting took place in G.B.Pant Hospital. The deaths of three patients were reported due to massive upper gastrointestinal haemorrhage. The Doctors of the Gastro-enterology Department pointed out that this was due to non-availability of Endoscopes and as well as non-availability of Laboratory tests like Pronto test in the Hospital during nights. This is a Hospital which had purchased Rs. 80 crores worth of equipment in the years 1988-90 which included more than 27 Endoscopes, much more than those purchased in any hospitals in the country.

(20) This Court during the pendency of this petition directed respondents 1 & 2,

namely, Union of India and Delhi Government to file status reports. The extracts from the status report filed by the Union of India are reproduced below:-

(21) SUBJECT: Enquiry regarding reactions of Intravenous (IV) Fluids in Safdarjung Hospital, New Delhi.

(22) A news-item appeared in Delhi edition of the Times of India/Statesman/The Hindu of 23rd September, 1992 regarding allergic reactions on the administration of Iv Fluid to patients admitted in Safdarjung Hospital (SJ). It was further reported that Iv Fluid given to patients were:

i) 5% Dextrose Batch No. 0712 manufactured by M/s Bengal Immunity Co.Ltd, Calcutta. ii) Dextrose normal saline injection Batch No. A2H 043 manufactured by M/s Shri Krishna Keshav Lab., Ahmedabad. iii) Ringer Lactate Injection Batch No. A2D 103A manufactured by M/s Shri Krishna Keshav Lab., Ahmedabad.

(23) It was also pointed out that in the surgical ward, patients complained of vomiting, fever, pain in the body, shivering soon after they were given the particular glucose solution. The solutions were promptly changed but the next lot too produce same effect. When after repeated change of bottles, the same reactions were produced, the patients refused to take Iv Fluid.

(24) 9. The report of Dr.V.P.Bansal was examined in the Ministry and it was found that the report had indicated that all was not well with regard to the system of procurement of Iv Fluids. It was noted that Sjh had expressed reservation about Blow Fill Seal Technology which was generally accepted by others. It was felt that a clear opinion on this matter should be obtained from leading experts. It was felt that it was necessary to study the whole system in depth. System of selection of testing laboratories was also found to be a relevant factor and which required to be studied to check whether appropriate procedures had been prescribed in this regard. Secretary (H) directed the then AS(H) to hold a detailed enquiry to examine all the matters in depth and come up with a well considered report vide his minute dated 22nd May, 1993. It was felt that such an enquiry would be useful not only for streamlining the functioning of Medical Stores Organisation and the Safdarjung Hospital but also the procurement in other hospitals as well and also help in identifying lapses. It was in pursuance of his directions that the AS(H) investigated into the matter and submitted his report dated 18th April, 1994 to Secretary (H). Dghs was directed by Secretary (Health) to take further necessary action on the report including fixing the responsibility of officer(s) in the matter of purchases etc. The report was removed by Drugs Controller (India) on 4th July, 1994 for further necessary action. 10. The Cbi requisitioned copies of the report of Dr. V.P.Bansal, Addl. Dg and Shri I.Chaudhary, AS(H). 12. The Cbi observed that the suspect officer - Dr.P.C.Rai, abused his official powers and caused huge pecuniary loss to the extent of Rs. 50 lakhs approximately by resorting to purchase from Super Bazar at almost double the normal rates prevailing in the market on the plea of emergency situation which, in fact, did not exist. These purchases at exorbitantly

high rates were, in fact, made from M/s Krishna Keshav through Super Bazar. The purchases were made in utter disregard and violation of the Government instructions/guidelines relating to the subject. The Cbi recommended that such action as deemed proper by the Ministry may please be taken against Dr.P.C.Rai.

(25) The file was referred to Cvc on 19th February, 1996 and they returned the file on 25th June, 1996 with the following observations:-

(A) It has been pointed out by the Ministry that the irregularity having occurred in 1990 is time-barred as Dr.P.C.Rai retired from service in October, 1995. However, it is quite evident that the said purchase was made during the period extending from 1990 to 1992 and the four year limitation period will expire at the end of 1996. (b) The plea taken by Dr.Rai that the purchase had to be made through Super Bazar as the item was emergently required, is not sustainable in as much as purchase worth Rs. 77 lakhs was made over a period of three years and that too, in respect of an item which is consistently in demand in a Hospital. (c) Even if it were a case of a local purchase, it cannot be held that the Hospital was bound under Dept instructions to purchase the material through Super Bazar only. 21. The Cvc vide their advice dated 18th December, 1996 reiterated their observations made earlier and advised initiation of Major Penalty Proceedings against Dr.P.C.Rai. The same day, the Cbi was requested to furnish a draft chargesheet to be served on Dr.P.C.Rai under Rule 9 of the Ccs (Pension) Rules, 1972 by 23rd December, 1996 positively. The Cbi vide their letter dated 23rd December, 1996 informed that no formal case was registered. As such it may not be possible to furnish a draft chargesheet. 22. Presidential Sanction for initiating disciplinary proceedings against Dr.P.C.Rai was conveyed to him on 26th December, 1996. Dr.P.C.Rai was chargesheeted on 31st December, 1996 on the basis of material furnished by the Sjh on 27th December, 1996.

(26) So far as the second case, namely, the matter relating to medical and diagnostic equipments kept deliberately non-functional in Government Hospitals, the extracts from the status report is reproduced below:- Ubpara = "4. The Central Bureau of Investigation conducted a study on the non-functioning of Ultra Sound and Cat Scan machine in Aiims, Dr.R.M.L.Hospital, G.B.Pant Hospital and Safdarjung Hospital from the period January 1992 to August, 1993 and forwarded its findings to the Chief Vigilance Officer of this Ministry on 2nd June, 1995. In the letter, it has been stated that on an allegation that ultra-sound machine in a number of hospitals and Cat Scan machines were deliberately kept out of order so as to give business to private diagnostic centres with whom doctors of Government hospitals have arrangements for getting commission, the study was got conducted by Cbi for the period from January, 1992 to August, 1993. A comparative chart prepared in this regard was enclosed with the letter which indicated that there was no uniformity in the rates of service contracts of ultra-sound and Cat Scan machines.

(27) Similarly, a status report was also filed by the respondent 2, namely, Delhi

Government. The extract of the status report pertaining to the non-functional diagnostic and medical equipment and Iv fluids is reproduced below.

The cat Scan was purchased for G.B.Pant Hospital in the year 1984 and it worked very well till 1991. Thereafter, it required frequent repairs and functioned off and on. All efforts have been made by the Department and the administration to keep it functional Status Report by the Head of the Department of Radiology, Dr. Suvira Gupta is enclosed (Annexure-I) which shows the non-functional period and also states that no maintenance charges were paid for this period.

(28) To this report is attached a letter dated 13.12.1996 by Dr.Suvira Gupta, Director-Professor & Head of Department of Radiology, to the Director, G.B.Pant Hospital. The extract of the said letter is also reproduced below:-

".....It is a fact that the C.T. scan did not function for 496 days from January-1992 to 7th May, 1993. However, during that period no annual maintenance contract could be executed as the machine was non functional for want of spare parts. Hence the payment of Rs. 4 lacs as mentioned in the Enquiry for the A.M.C. was never made.

THE spare parts had been recommended by the Company in November 1990 and despite efforts, all the 34 spare parts were not obtained till August 1992. After the procurement of only 5 parts in August 1992 the machine functioned for 3 days. Later another vital component was found to be defective. It took another 8 months to procure this part and the machine started functioning from 7th May, 1993. It worked normally till 2nd November 1993. However, the remaining 29 spare parts were obtained only in September 1995. The machine was made functional in October 1995. It worked normally till 15th November, 1996 and one component has now gone defective. The repair/replacement of this component is now in progress."

(29) From the various events disclosed in the petition and the various enquiries held it cannot be doubted that the things were and are not very happy in the various hospitals at Delhi. The reports revealed adversely against purchase of Iv fluid and also possibility of its contamination and also the vital diagnostic and medical equipments were made non-functional by various Government hospitals. The accusation is that these were only in aid of sending patients to private hospitals and clinics.

(30) After hearing learned counsel for the parties at length and going through the petition and the pleadings in this case, we feel that in order to ascertain the correct position and to fix responsibility and liability on persons concerned, it would not be possible in a proceeding under Article 226 of the Constitution on the basis of affidavits or contentions raised by the learned counsel for the parties. The matter requires thorough and in-depth enquiry, scrutiny at various levels on the basis of relevant records existing or evidence to be collected by recording the statements of the concerned persons including the involved persons. We strongly feel that in the aforesaid two types of cases two separate

enquiry committees ought to be set up to enquire into the said cases within the terms of reference which we are laying down.

(31) The committees, as aforesaid, will thoroughly probe the matter in detail within the terms of reference or if they find during the course of enquiry any matter ancillary to the same or such other matters which are necessary to be brought out in the report, they may do so in the wider public interest. The committee will also suggest remedial measures to be adopted in future so that such incidents do not recur, and make the concerned persons more accountable for their wrongs or omissions leading to the suffering of public at large.

(32) We constitute the following committee consisting of three members to enquire into the cases of non-functional medical equipment in Government hospitals at Delhi:-

1.Mr. M.Chandrasekharan, Former Additional Solicitor General of India and Senior Advocate : Chairman 2. Dr. D.B. Bisht, Director General of Health Services (Retd) : Member

(33) The third member to be co-opted by the Chairman, whom he feels will usefully assist the committee in this regard.

(34) We also lay down the following terms of reference:-

1.What are the reasons for the non-functioning of medical equipment in Government hospitals in Delhi. An assessment/study would be carried out. 2. To identify gaps and deficiencies in existing procedures/systems. 3. To examine whether equipment purchased by the Hospitals remains uninstalled for long periods of time and to identify the reasons for the same. 4. To examine whether, and if so why, the medical equipment in Government hospitals is not put to full use. 5. To study any ancillary matter. Whether there was any nexus between Government Hospital and Private Clinics in terms of referrals from Govt.Hospitals to Private Clinics for diagnostic tests ? 6. To suggest remedial measures which should be adopted by the Government hospitals to ensure that medical equipment remains functional with the minimum possible down time.

WE constitute the second committee, also with three members, to enquire into the purchase of Iv fluids by Safdarjung Hospitals during the years 1993 and 1994 which were allegedly contaminated and purchased at exorbitant prices:- 1. Hon"ble Mr. Justice N.C. Kochhar, (Retired) : Chairman 2. Dr. B. Chakravarthy, Former Medical Supdt. of Safdarjung Hospital : Member

(35) The third member to be co-opted by the Chairman whom he feels will usefully assist the Committee in this regard.

(36) We lay down the following terms of reference for the second committee:-

1.The Committee shall ascertain the authenticity of allegations of purchase of Iv fluids by Safdarjung Hospital during the aforesaid years about their being contaminated and purchased at exorbitant prices.

2. Ascertain and fix responsibility on the persons concerned including the inaction of the officials responsible for the same.

3. To determine what actions were taken by the officials in the Safdarjung Hospital Ministry of Health, Directorate General of Health Services, and the Drug Controller, after the adverse reactions to the administration of Iv fluids at Safdarjung Hospital.

4. To study any ancillary matter.

5. To suggest remedial measures to be adopted in the Government hospitals so that no such incidents recur in future.

(37) The said two committees after finalising the reports will submit the same to the Union of India through the Secretary (Health), respondent No. 1 and the Government of N.C.T. of Delhi through the Principal Secretary (Health), who shall take all necessary actions as suggested in the reports, including initiating disciplinary proceedings or prosecution against persons or authorities and take the remedial measures through their various concerned officers or authorities.

(38) All assistance to the committees will be rendered by respondents and their officers.

(39) The Chairmen of the committees shall draw Rs. 30,000.00 p.m. as honorarium, and each member shall draw Rs. 20,000.00 p.m. as honorarium. They shall also be provided with infrastructure facilities, namely, a stenographer and a peon for each committee, including transport facilities as and when required for rendering services. They shall also be provided with space for office. While the honorarium shall be borne equally i.e. 50% each by the Union of India and the Delhi Administration, the infrastructure facilities, office space and transport facilities shall be provided by the Delhi Administration.

(40) The working of the committees will start from 20.9.1997 by which date all the infrastructure including office space shall be provided by the Delhi Administration, and from that the committee members shall be entitled for honorarium. The honorarium shall be payable on the 10th day of the next month.

(41) The Chief Secretary of the Delhi Administration may issue instructions in this regard for compliance.

(42) With the aforesaid observations, the present writ petition is finally disposed of. This is without prejudice to the right of the committee to approach the Court in case they want any direction to the authorities for compliance of any directions issued by us if not being followed or any other such direction which they need for the purpose of executing the terms of reference.

(43) The Committees shall submit the reports within 4 months of the commencement of their work.

(44) A copy of this order be sent to the respondent No. 1, respondent No. 2, the

Chief Secretary of the Delhi Administration, and to the Chairman of each committee through a special messenger. Dasti.