
(2008) 08 AHC CK 0233
In the Allahabad High Court
Case No : Writ Petition No. 4999 (S/S) of 2008

Shakuntala Devi	Vs	APPELLANT
State of U.P.and others		RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Citation : (2008) 08 AHC CK 0233

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Disposed Of

Judgement

Devi Prasad Singh, J.—Heard learned counsel for the petitioner Shri D.P. Dutt Tiwari and learned Standing Counsel. The facts and circumstances and the material on record giving rise to the present controversy show not only the sorry state of affairs but also show the unethical and polluted dent of mind of the staff and doctors concerned, posted in the Community Health Centre, Gosainganj, Lucknow failing in their duty to serve a poor Scheduled Caste pregnant lady who approached them for treatment and delivery of child.

2. The petitioner, who is posted as Staff Nurse at Community Health Centre, Gosainganj, Lucknow has been placed under suspension by order dated 2.7.2008. Precisely, the ground for suspension is that on 30.8.2008 at about 6.30 p.m., a pregnant poor lady Smt. Sarvesh Kumari who approached the Community Health Centre, Gosainganj, Lucknow for delivery gave birth to a child on road adjacent to Community Health Centre. Learned counsel for the petitioner submits that Smt. Sarvesh Kumari was admitted on 29.6.2008 and in the morning next day, she was relieved. However, she again contacted for her treatment. In the bed head ticket at about 2.10 p.m., it has been noted that the condition of Smt. Sarvesh Kumari was critical. Later on, she was discharged from the Community Health Centre with a reference to Dafferin Hospital, Lucknow. According to the petitioner's counsel, Smt. Sarvesh Kumari because of infirmness, pain and paucity of fund declined to approach Dafferin Hospital and give birth to a child at about 6.30 p.m. on road adjacent to the Community

Health Centre, Gosainganj. The allegation is that the petitioner, who is a Staff Nurse, had not attended Smt. Sarvesh Kumari at the time of delivery on the road, adjacent to Community Health Centre. According to the petitioner's counsel, the petitioner was not on duty; rather another Staff Nurse, namely Meena Devi was on duty.

3. It has been submitted that the petitioner has been placed under suspension by the impugned order on the ground that she did not attend the lady who delivered a child on road adjacent to the Community Health Centre. He further submits that the petitioner's duty was from 8.00 p.m. onward on 30.6.2008 to 8.00a.m. next day. It is further submitted that besides one Meena Devi, Staff Nurse, Dr. Malti Chowdhary, Gynaecologist and Dr. Prateek Nalwa were on duty. The submission of the petitioner's counsel is that with an intention to save the higher authorities, the petitioner has been placed under suspension on unfounded grounds as a scapegoat.

4. On the other hand, learned Standing Counsel has filed an affidavit of the Director General, Medical & Health Services, U.P. Swasthya Bhawan, Lucknow annexing therewith a copy of the order dated 28.8.2008, by which the order of suspension of the petitioner has been revoked on the ground that prima facie, no case is made out against the petitioner. Another order of the same date was placed before this Court yesterday, i.e. on 28.8.2008 which shows that the Director General, Medical & Health Services had taken up the matter and recommended for disciplinary action against Dr. Prateek Nalwa and Dr. Malti Chowdhary and others.

5. I have considered the submission advanced by the parties' counsel.

6. It has not been disputed that Smt. Sarvesh Kumari was referred to the Dafferin Hospital, Lucknow in afternoon hours. She was admitted on 29.6.2008 and at about 2.10 p.m. on 30.6.2008, her serious condition was noticed by the doctor by referring to the Dafferin Hospital. The bed head ticket has been filed as Annexures 3 and 4 to the writ petition. At the time when Smt. Sarvesh Kumari was referred, one other Staff Nurse Meena Devi was on duty. It has been submitted by the petitioner's counsel that Smt. Sarvesh Kumari belongs to Scheduled Caste community and her financial condition was too poor to approach the Dafferin Hospital, Lucknow and she seems to have been pressed for her treatment in the Community Health Centre itself.

7. It appears that in spite of the fact that Smt. Sarvesh Kumari was relieved from the Community Health Centre by the doctor, she has not left the premises and pressed the doctors for her treatment in the Community Health Centre itself. Apart from financial constraint, her physical condition, pain and ailment had pressed her to make a request for her treatment in Community Health Centre itself but the doctor and staff of the Community Health Centre by relieving Sarvesh Kumari after taking note of her serious condition thought that their duties are over resulting in delivery of child on road adjacent to Community

Health Centre. The cry and tears of poor lady and newly born child could not shake the mind and heart of doctors and staff of the Community Health Centre.

8. It was highly inhuman act on the part of officials and staff posted at the Community Health Centre, Gosainganj by not attending the lady who delivered a child adjacent to the Community Health Centre, Gosainganj on road. In any case, even if the lady has not gone to Dafferin Hospital on one or the other ground, since her condition was bad and she was suffering from pain and ailment and expected to deliver a child very soon, it was incumbent on the part of the doctor and staff posted at the relevant time at the Community Health Centre to attend her and do their best from available means to serve the lady with necessary assistance but the doctors and staff have failed to discharge their statutory constitutional, moral and ethical obligations.

9. Even if a person is relieved from the hospital because of financial constraint or physical infirmity or for any other reason whatsoever and he or she is not in a position to move out of the hospital or Community Health Centre even then, it shall always be incumbent on the part of the doctors and staff posted in the hospital to provide all necessary assistance and treatment to the patient to the best of their knowledge and ability. They may do so after seeking a letter or consent from the patient and her or his attendant. However, the employees of the hospital or doctors cannot shirk from the responsibility to provide treatment to a patient for any reason whatsoever even if no consent is accorded. Denial of consent may be recorded on the bed head ticket and other records. Thereafter, the doctors may proceed to provide necessary treatment within their resources, ability and knowledge.

10. The conduct of doctors and employees posted at the relevant time at Community Health Centre, Gosainganj by not providing necessary treatment to Smt. Sarvesh Kumari which had compelled to deliver a child adjacent to the hospital seems to be an act of dereliction in duty. It not only shows a sorry state of affairs but horrible and polluted mental state of the persons, doctors or staff who had joined the medical profession to serve the society from their skill and knowledge as savers of life.

11. However, since the impugned order of suspension has been rescinded, to that extent, the writ petition loses its efficacy but this Court cannot close its eyes to the misfortune suffered by the poor lady adjacent to the Community Health Centre, Gosainganj, Lucknow. It was after filing of the present writ petition the Director General took a decision and recommended for disciplinary action against the persons posted in the Community Health Centre. Though a belated decision has been taken after interference of this Court but that seems to be done in right direction.

12. However, it is also necessary that the State Government must take necessary steps to check recurrence of such mishappenings. Medical profession is a very pious profession, meant to serve the society. It is neither a business nor trade.

Persons who have got zeal to serve the society with humanitarian approach should be part and parcel of medical health services. The Government of U.P. should issue appropriate order or circulars keeping in view the facts and circumstances of the case to check recurrence of such incidents which is a shame for entire humanity, happened in a country which is enjoying freedom after attainment of mature age of sixty years.

13. In view of the above, the Chief Secretary, Government of U.P./Principal Secretary, Medical and Health are directed to ensure that the disciplinary action is taken against the persons at fault in not attending and providing appropriate treatment to Smt. Sarvesh Kumari and who may also be compensated by the government as far as possible.

14. The State Government should also issue appropriate Government Order and circular laying down guidelines to check recurrence of such incident so that the persons who are facing financial constraints or who are not in a position to attend the hospital for specialised treatment, they may be looked into in appropriate manner by appropriate doctors with all treatment and available facilities, knowledge and ability of the doctor and staff of the hospital concerned.

15. Let necessary action be taken against the doctor and staff accordingly. However, the observation made in the present judgment shall not affect the disciplinary proceedings and its outcome. The authorities shall proceed independently in accordance with law on the basis of evidence and material on record and service rules.

16. Subject to the aforesaid direction, the writ petition is disposed of finally. Office shall forward a copy of the present judgment to the Chief Secretary to U.P. Government/Principal Secretary, Medical & Health, U.P. Lucknow forthwith who shall submit a compliance report to this Court within two months. Learned Standing Counsel shall also forward a copy of the present judgment to the Government accordingly.

17. The writ petition is decided accordingly. No order as to costs.