(2002) 04 GAU CK 0030

In the Gauhati High Court

Case No : Civil Rule No. 155 of 1993

Sishir Ranjan Saha — APPELLANT

Vs

The State of Tripura and Others — RESPONDENT

Date of Decision : 06-04-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2002 Guw 102 : (2002) 2 GLT 613

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : S. Talapatra, for the Appellant; K.N. Bhattacharjee U.B. Saha, Sr. Govt. Advocate and T.D. Majumder, for the Respondent

Judgement

B.B. Deb, J.—By this petition the petitioner, in addition to his claim for compensation, sought for a direction commanding the respondents to upgrade the standard of medical service of all the hospitals in the State in general and G. S. Hospital, Agartala in particular and for ensuring the service of Specialised Doctor in the time of needs of the patients.

2. The facts pertaining to the present petition can be summarised as below :

The petitioner''s son Ashim Saha met a vehicular accident on 9-7-1992 and succumbed to the injuries, virtually unattended medically in G. B. Hospital, Agartala in the evening of the said, day, The petitioner''s son while was coming Agartala from Udaipur riding a Scooter sustained a minor injury in a road accident occurred at Surjyamaninagar under Amtali Police Station at about 4 p.m. on 9-7-1992. He was a trained Automobile Mechanic with graduation in Commerce and was carrying on an Automobile Workship at Udalpur Town, South Tripura District. Just after the accident the relatives of Ashim, namely, Sudip Podder took injured to the chamber respondent No. 5 Dr. Promathesh Roy, (Dr. P. Roy) who was incharge of E.N.T. Department of G. B. Hospital, Government of Tripura, of course, initially, the injured was brought to the private chamber of Dr. Mahapatra, another E.N.T. Specialist who having observed the complication

advised the patient party to go the Senior Specialist Dr. P. Roy. in his chamber. Immediately, they rushed to the chamber of Dr. P. Roy. Dr. P. Roy prescribed some medicine and advised the party to proceed immediately to G. B. Hospital and further assured that he would be coming soon to the hospital to attend the patient. Having full faith; trust and confidence, the patient party rushed to the G. B. Hospital along with the patient and the Junior Medical Officers at emergency duty admitted the injured in G. B. Hospital. They also arranged for taking X-Ray of the wounds of the injured, but it was noticed that the condition of the injured had rapidly been deteriorating. Doctor of Emergency Ward contacted Dr. Roy over telephone urging upon him to come immediately as an urgent operation was needed to save the life of the patient. Awaiting sometime, perplexed nervous relatives of the injured again rushed to the chamber of Dr. P. Roy and begged him to save the life of the injured Ashim. Dr. Roy assured of coming, soon, the relatives returned to the hospital, but Dr. Roy never came. After sometime it was noticed that the injured virtually was sinking. The relatives again rushed to the chamber of Dr. Roy and requested his co-operation, but Dr. Roy, repeated the same telling that he would come soon on completion of attending his private patients. The relatives came back and urged upon the Junior Doctors to do whatever they could to same the life of the injured. The attending Doctors though juniors made an arrangement for minor operation to be conducted upon "trachea" of injured Ashim as without "tracheostomy" the life of the patient could not be saved. From 4.30 p.m. to 8 p.m. virtually no effective treatment was given to the injured who breathed his last at about 8 p.m. The said unnatural premature death of Ashim Saha undoubtedly led to a chaotic situation in the hospital and the bereaved relatives became angry, did some untoward activities. The local daily news paper came out with exciting news on the following morning which drew the attention of the Government, and the Government also constituted one man administrative enquiry committee headed by Mr. L.K. Gupta, Commissioner of Taxes, to "enquire into the circumstances leading to the death of one Ashim Saha in G. B. Hospital, Agartala on 9-7-1992. In the meantime, the father of the deceased Ashim moved this writ petition under Article 226 of the Constitution of India. Since the matter was put in subjudice, the Government did not publish the enquiry report though Mr. L.K. Gupta, having recorded the evidence of concerned individuals and on consultation with the records and documents, furnished his report on 26-8-1992. On the prayer of the petitioner, the said report was called for only for the inspection of the Court.

3. Perhaps on appreciation of the enquiry report furnished by Mr. L.K. Gupta, the State respondent has taken neutral role by not filing the counter-affidavit. The learned Senior Government Advocate at the time of hearing submits that the State Government has neither supported the contention made by the petitioner nor it opposed the same and has decided to leave the matter to the discretion of the Court to decide whatever thinks fit and proper under the circumstances of the case.

4. Only Respondent No. 5, Dr. P. Roy, has vehemently contesting the case by

filing counter-affidavit, contending, inter alia, that the patient party reposed much confidence upon Dr. Mahapatra for which they initially approached him and thereafter patient party came to his private chamber. In the counter-affidavit Dr. Roy has taken the following pleas:

(a) In the ENT Ward of G. B. Hospital there were two Units, namely, Unit ''A'' and ''B''. He was attached to Unit ''B'' while Dr. Mahapatra was attached Unit ''A'' at the relevant time. As per prevailing system Monday, Tuesday and Friday admissions were made under Unit ''B'' and on the remaining days under Unit ''A''. Alternative Sundays were treated to be admission days of each of the Units. Admission days are the days calling and Doctors of the respective Units. The day of call the Doctors of the respective unit, on 9-7-92 the date of incident being Thursday was an admission day under Unit A to which Dr. Roy was never attached and as such he had no administrative liability. He disowned the administrative liability. Since the patient was taken to Dr. Mahapatra in his private chamber it was the duty of the Dr. Mahapatra to do the needful. Dr. Mahapatra having avoided his liability why did refer the patient to the Answering respondent No. 5 Dr. D. Roy, was myserious.

(b) Since in his private chamber there was no facilities for surgical management, he advised the patient party to go to G. B. emergency ward for necessary investigation and treatment. It was the duty of the Medical Officer of Emergency Ward to arrange for bringing the Specialist detailed in duty according to roster.

(c) Dr. Roy denied to have given any assurance to the patient party of his attending G. B. Hospital after sometime. Since it was not the day meant for call duty or round duty of Mr. Roy he was not supposed to go to G. B. Hospital to attend any emergent patient. One Dr. P. C. Ghosh, an E.N.T. Surgeon was detailed on call duty on that day.

(d) In the counter-affidavit Dr. Roy, made imputation against the patient party, using the wordings like patient party was "not truthful". Internal "rivalry between two Associations of Doctors". Having been "misguided" by the rival association" the petitioner came forward with the false case, after the death of patient an attack was organised in his residence.

(e) Virtually, he denied all the allegations.

5. The learned counsel Mr. S. Talapatra, for the petitioner at the outset submits that this petition has never been filed with any petition for getting any compensation, what the petitioner sought for in the writ petition is to given an appropriate direction to be followed by all the Government Medical Officers in order to render effective and duty-full service to the patients at large. The petitioner being the unfortunate father wishes to have a befitting system prevailed the Government hospitals so that recurrence of such occurrence should be avoided.

6. After hearing the learned counsel for the parties and on perusal of the

pleadings, I felt it necessary to consider the enquiry report furnished by Mr. L.K. Gupta.

7. On perusal of the report. I find much supportive and corroborative factual aspect of the writ petition. Tripura Administration in the year 1961 formulated an Administrative Policy guideline to be followed by all concerned attached with Government hospitals in the State. It is called "Hospital Manual" and was issued under the signature of the Chief Secretary, Tripura Administration. Regarding the duties of the Doctors, paragraph 47 of the Manual is very much relevant in the present case and as such it is reproduced below :

"47. Medical Officers will attend the hospital punctually at the time fixed by the Superintendent, when late or absent the fact and the reasons must be reported to the Superintendent. The following are the hours fixed for the working of the hospital at present:--

Summer from 16th March to 15th October every year.

Out-door In-door

7.30 a.m. to 10.30 a.m and until the work is finished 7.30 a.m. to 1,00 p.m. & until the work is finished

6.00 p.m. to 7.30 p.m.

-do-

Winter from 16th October to 15th March every year

8.00 a.m. to 11.00 a.m. & until work is finished 8.00 a.m. to 1.00 a.m. & until the work is finished.

5.30 p.m. to 7.00 p.m.

-do-

8. From the afore quoted guidelines of the manual it appears that all the Doctors attached to a hospitals are/were duty bound to attend the hospital from 7.30 a.m. to 10.30 a.m. and again at 3.30 a.m. to 1 p.m. The outdoor patient from 7.30 a.m. to 10.30 a.m. and the indoor patient from 7.30 a.m. to 1 p.m. and again attend the indoor patients from 6. p.m. to 7.30 p.m. during the period from 16th March to 15th October. But Mr. Roy was not available in the hospital at that time when the patient party went there. Rather he was found available in his chamber attending private patients. The learned counsel for the contesting respondent Mr. K. N. Bhattacharjee, submits that pursuant to the afore quoted guideline, the Superintendent of G. B. Hospital re-arranged the programme which is available in order bearing No. F.1(50)MED/ESTT dated 19-6-1997 (Annexure A). From the said annexure it appears that Dr. P. Roy, Respondent No. 5, Grade III of Tripura Health Service, has been put as incharge of ENT department, in addition he was attached to Unit ''B'' and Dr. P. C. Ghosh a Grade IV of Tripura Health Service will act as Incharge of Unit ''A'' and Dr. Basak, a

Grade IV of T.H.S. will act as Incharge of Unit ''B''. It goes without saying that Dr. P. Roy is a Grade III of T.H.S. and according to the Tripura Health Service Rules at the relevant time he was a notified Specialist in the ENT Department and, as such he was made incharge of the department consisting of two units. Dr. P. C. Ghosh, a Grade IV, and Dr. P. Basak another Grade IV officer of Tripura Health Services never were notified Specialist, though they were made incharge of Units A and B respectively, but overall responsibility was reposed upon Dr. P. Roy. a Specialist as incharge of the department as a whole, and thus Dr. Roy cannot escape his liability pointing out the fault to other officers. In the present case, it is not available that at any point of time, even before or after the fateful incident Dr. Roy being incharge reported against any of the Doctors of the said department for negligent duty and as such he cannot be absolved from his over all responsibility. From Annexure A dated 8-6-1992 it appears that the Medical Superintendent of G. B. Hospital never put Dr. Mahapatra as incharge of either of the unit.

9. The contention of the petitioner is that having been advised by Dr. Mahapatra, the patient party approached Dr. Roy in his private chamber, and Dr. Roy and examination of the patient, in writing prescribed medicine and advised them to go to Emergency Ward of the G. B. Hospital. Dr. Roy in his counter affidavit did not make any specific reply as to whether he prescribed medicine or not. But Mr. Gupta, in his enquiry report appended the copy of the prescription of Dr. P. Roy where from it appears that Dr. Roy attended the deceased Ashim Saha at his chamber on 9-7-1992 and prescribed the following medicine :

"1. Injection Ampicilin 250 mg. 1 m. 6 hrsly.

2. Nil by mouth.

3. Inj. Decadron 2 cc 1 m stat.

Adv. (1) X ray Soft tissue neck lateral view.

(2) Film.

Ref. to G, B. Emergency."

10. From the aforesaid prescription in printed pad it appears that Dr. P. Roy used to attend the patient in his chamber from 4.30 p.m. to 7.30 p.m. And on Sunday 9 a.m. to 12 noon and evening closed. Mr. Gupta, in his enquiry report also pointed out the same. From his own printed pad it reveals that Dr. P. Roy never visited Indoor patient of G. B. Hospital from 4.30 p.m. to 7.30 p.m. though according to the Hospital Manual he was duty bound to attend indoor patients every day during the period from 6th March to 15th October from 6 p.m. to 7.30 p.m. also. The Superintendent of G. B. Hospital did not alter or modify the said timings. In course of enquiry conducted by Mr. L.K. Gupta, the Medical Superintendent of G. B. Hospital, also acknowledged the aforesaid time table. Learned senior counsel Mr. K. N. Bhattacharjee, appearing for the respondent No. 5, vehemently submits that in view of Annexure-A dated 8-6-92 the time table

prescribed earlier In the Hospital Manual stood modified/altered by implication. In the order dated 8-6-1992 under Annexure-A the Medical Superintendent of G. B. Hospital never dealt with the time table afresh. He only put Dr. P. Roy, the respondent No. 5 as the In-charge of E. N. T. Department of the G. B. Hospital and as such it could easily be Inferred that the respondent No. 5 Dr. R Roy was the overall incharge of both the units A&B of the E. N. T. Department at the relevant time, though Dr. P. C. Ghosh, a Grade-IV Doctor was put as incharge of A Unit and Dr. P. Basak a Grade IV medical officer was put as incharge of Unit B but they were supposed to work under the Head of the Unit of ENT, namely, Dr. P. Roy, a grade-Ill Specialist Doctor. Tripura Health Service rules never recognised a grade IV officer as a Specialist. Only the Doctors of Grade-Ill onwards, have been acknowledged by the statutory rule as Specialist. From the report of Mr. Gupta, it appears that the patient party came from southern side of the city and as such, they knocked the chamber of Dr. Mahapatra situated at Ronaldsay road, Battala and Dr. Mahapatra on clinical examination found some bleeding in the mouth and the ear of the patient and without delay he advised to go to Specialist. Dr. P. Roy respondent No. 5. The patient party immediately rushed/ moved towards North from Battala and went to the chamber of Dr. P. Roy and Dr. P. Roy only advised some medicine and referred them to G. B. Hospital in northern direction. Being over all in-charge of ENT Department Mr. Roy ought to have rushed to G. B. Hospital without delay as blood was oozing out from the ear and mouth of the patient but he did not. From the enquiry report it reveals that Doctor at Emergency Ward at G. B. Hospital made contact with Doctor P. Roy over telephone urging his presence as ''tracheostomy'' operation seems to be required but unfortunately Dr. Roy did not respond as a result injured Ashim Saha breathed his last at about 8 p.m. at G. B. Hospital. Though the Junior Doctor attending emergency duty with the help of Radiologist took X-ray at about 6 p.m. at G. B. Hospital. From the pleadings in general and enquiry in particular, it appears that the injured Ashim being accompanied by his relatives arrived at G. B. Hospital Emergency Ward at about 5.30 p.m. and the Junior Doctors available there could successfully arranged for X-ray by 6 p.m. but on repeated request over telephone Dr. P. Roy cared little to attend the patient at G. B, Hospital as he appeared to have been very much Interested in his private practice. From X-ray report "fractured was detected and laryngoscopy with bleeding could only be checked by tracheostomy" by major surgical operation which could not be expected from the Junior Doctor attending at Emergency Ward. From the aforesaid briefed discussion of the happenings, I am of the considered opinion that had Dr. P. Roy attended the patient in G. B. Hospital he could have done the aforementioned complicated surgical operation in order to save the life of the injured. Survival of a patient depends upon so many factors, fortune is above all. Yet for consolation of the kith and kin proper treatment must have been adhered to but that was also denied to the injured only due to the negligent in-action on the part of the Doctor P. Roy who was the In charge of ENT Department as a whole. Instead of expressing any repentance vehemently he contested the case even he did not spare the father of the deceased in telling that the averments

made in the writ petition are untrue, This type of defence appears to be unexpected from the Specialist like Dr. P. Roy. I am told from the Bar that barring a few none of the specialist Doctors have been residing in around hospital compound. The reason among others, may be for better convenience in their private practice, that must be stopped forthwith.

11. Under the aforesaid circumstances, I am inclined to Issue the following directions to be followed by all concerned.

a) The Head/In-charge of and the Second Senior Medical Officers of the following departments must be provided with rent free residential accommodation in or around the G. B. Hospital/I. G. M. Hospital/District Hospitals. Each of them shall be provided with non S. T. D. telephone facilities at Government cost. They are also to be allowed to do their private practice if otherwise permissible in their residential accommodation. that should be done in order to prompt utilisation of their service for the interest of indoor patients.

(1) Medicine Department.

(2) Surgical Department.

(3) Pathology Department.

(4) Anesthesia Department.

(5) Radiology Department.

(6) E. N. T. Department.

(7) Orthopaedic Department.

(8) Gynaecology Department.

(9) Paediatric Department.

(10) Any other department as the Government deems fit and proper.

b) The Government is directed to prescribe suitable time table to be followed by the Grade III and Grade II Doctors both for out-door and In-door patients. It should be ensured that the Grade III/Grade II doctors must perform "round visit" duties of the Indoor patients thrice a day with reasonable interval.

c) One vehicle in good condition must be provided round the clock with the Emergency Ward for prompt transportation of Doctors mentioned in Clause ''a'' above from their respective residence on call from the Emergency Doctor. That vehicle cannot be allowed to be used for any other purpose except for bringing the specified doctors on call.

12. Apart from the aforesaid general directions. I am constrained to pass an order directing Dr. P. Roy, respondent No. 5 to pay a compensation of Rs. 1,25,000/-. Out of the said amount Rs. 1,00,000/- (one lakh) be remitted to the Chief Minister''s Relief Fund of Tripura and the rest amount of Rs. 25,000/-

(Twentyfive thousand) be paid to the petitioner being the expenses of the present litigation. The direction to deposit Rs. 1,00,000/- (Rupees one lakh) only to the Chief Minister''s Relief Fund is given as the petitioner is not eagerly interested in monetary benefit, rather he urged for up standardization of medical facilities in Govt. hospitals. The entire order should be Implemented within a period of 60 (sixty) days.

