
(2013) 03 AHC CK 0213

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10981 of 2013

Smt. Bano Begum

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 38, 39(e), 41, 43

Citation : (2013) 4 ADJ 1

Hon'ble Judges : Sunil Ambwani, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : Kalp Nath Bind and Krishna Nand Singh, for the Appellant;

Final Decision : Allowed

Judgement

1. We have heard learned counsel for the petitioner. Learned standing counsel appears for the State respondents. On 28.2.2013, we passed the following order:

By this writ petition the petitioner has prayed for directions to the respondents for providing financial help for surgical procedure in inserting Stent as advised by Dr. B.K. Singh of B.K. Heart Hospital Private Limited, Varanasi to save her life.

The petitioner approached the District Magistrate, Sonabhadra for financial help. The Chief Medical Superintendent, District Hospital, Sonabhadra, on the request made by the District Magistrate, has verified the estimate prepared by B.K. Heart Hospital, Varanasi of Rs. 2,25,000/- for surgical procedure.

The petitioner has relied upon an order passed by this Court in Civil Misc. Writ Petition No. 14851 of 2009 (Saurabh Soni (Minor) through his mother v. State of UP and others) decided on 30.3.2009, in which this Court directed considering the right of the petitioner on the facts of that case to save his life for operation free of cost from any Medical College or Hospital run by the State Government.

Learned counsel appearing for the petitioner prays for and is allowed three days time to give the names of the Medical College or Government hospital in the

State of UP in which such surgical procedure of Standing is performed. Learned Standing Counsel is also directed to provide the guidelines for giving aid in such cases from the Chief Minister's Relief Fund.

Put up on 5.3.2013 in the additional cause list. A copy of the order be given to Chief Standing Counsel by tomorrow.

2. Article 21 of the Constitution of India, guarantees that the person shall be deprived of his life and liberty except in accordance to the procedure established by law. The Supreme Court of India has in Pt. Parmanand Katara Vs. Union of India (UOI) and Others, ; State of Punjab and others Vs. Mohinder Singh Chawala, etc., ; State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., ; and Paschim Banga Khet Mazdoor Samiti v. State of W.B., (1996), held that:

The right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47. It is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, ... Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform it's obligation with top priority including by way of allocation of sufficient funds.

3. In LIC of India and Another Vs. Consumer Education and Research center and Others, , the Supreme Court held:

"the right to health, medical aid and to protect the health and the vigor of a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39(e), 41, 43 and 48-A of the Constitution of India and fundamental human right to make the life of workmen meaningful and purposeful with dignity of persons." Security against sickness and disablement is a fundamental right under Article 25 of the Universal Declaration of Human Rights and Article 7 (b) of International Convention of Economic, Social and Cultural Rights and under Articles 39(e), 38 and 21 of the Constitution of India.

4. The State has provided primary and secondary medical care at District level from Sub Centers, Primary Health Centers, Community Health Centers, District Hospitals and Specified Hospitals. The tertiary medical cases is however available in a few hospitals. The procedure to avail the financial help in these specialised hospitals is not known to general public. The State must advertise the procedure and fix responsibility of the executive officers with limitations of time period, to consider and decide such requests.

5. Learned standing has produced instructions received from the State Government, in a letter signed by Sri Shiv Kumar Shukla, Deputy Secretary, U.P. Government dated 4.3.2013.

6. In para 4 of the letter, it is stated that for treatment of serious illness, suffered

by persons living below poverty line, (BPL card holder or having income of Rs. 24,000/- per annum), "Rajya Arogya Nidhi" has been established, in which provisions are made for treatment in the specified medical institutions. Under this scheme, "Arogya Nidhi Samiti" of the district has been authorized, to sanction medical aid upto Rs. 1.5 lacs. If the demand is for higher amount, the matter is to be referred to the Director General, Medical & Health Services, U.P. Lucknow.

7. Learned standing counsel has also referred to an order, issued by the Director General, Medical & Health Services, U.P. Lucknow dated 14.9.2012, in which hospitals have been identified namely, SGPGI, Lucknow; KG.MU, Lucknow; BRD Medical College, Gorakhpur; MLB Medical College, Jhansi; SRN Medical College, Allahabad; GRVS Medical College, Kanpur; MN Medical College, Agra; IMS, BHU, Varanasi; J.L. Nehru Medical College, AMU, Aligarh, SBTP Medical College, Meerut, for treatment.

8. The instructions received from the State Government show that the State Government has provided special funds, for the purpose of tertiary treatment for the patients living below the poverty line. The amount, however, has to be assessed, and thereafter sanctioned by the "Arogya Nidhi Samiti" of the district, in case the need is upto Rs. 1.5 lacs; or by the Director General Medical & Health Services, U.P. Lucknow, in case the requirement is more than Rs. 1.5 lacs, from "Rajya Arogya Nidhi" at State level at Lucknow.

9. In view of the aforesaid instructions received by the learned standing counsel, we dispose of the writ petition with directions that if the petitioner approaches any of the Government hospitals, referred to as above, the estimate of medical expenses for surgical procedure will be provided, after investigations, and tests by the concerned department/Senior Medical Superintendent or the Head of the Hospital, within a week. The petitioner will submit the same to the district "Aryogya Nidhi Samiti." If the expenses are estimated to be more than Rs. 1.5 lacs, the district "Aryogya Nidhi Samiti" will refer the matter to the "Raja Arogya Nidhi" before Director General, Medical and Health Services U.P. The petitioner's application will be considered by the district "Arogya Nidhi Samiti", according to eligibility, ailment and recommendation made by the specialised hospital, within two weeks, considering the urgency of the medical need, and if the amount is more Rs. 1.5 lacs by the "Rajya Arogya Nidhi" within next two weeks. The amount if sanctioned will be paid to the Hospital, where such treatment/surgical procedure has to be performed positively within next two weeks. The office of the Director General Medical and Health Government of U.P., will ensure compliance of these directions.