(1998) 07 CAL CK 0016

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 20254 of 1996

Smt. Labonya Moyee Chandra — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:
Constitution of India, 1950 — Article 21, 226, 32

Citation : (1998) 2 CALLT 494 : 1 CWN 121

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

1. The Court : The petitioner was 68 years old when the writ application was filed in 1996. She has filed this writ application against the State Government Three Hospitals namely. Seth Sukhlal Karnanl Medical College (SSKM). Burdwan Medical College Hospital (BMCH) and the Calcutta Medical Research institute (CMRI) are also party respondents. She has claimed that action be taken against the doctor and staff of the SSKM who were on duty on 11.9.96 and who refused admission to the petitioner. She has also prayed for the making of provision for implanting permanent pacemakers in the Sador District of Bankura and Birbhun Hospitals and for payment of compensation to her.

2. The case of the writ petitioner is as follows :

The petitioner is a resident of Kinnahar, a village in Birbhum. Early in the morning on 11.9.96 she felt ''a tremendous pain in her chest and difficulty in breathing". The local doctor who examined her at 11 a.m. found her frothing in the mouth, recorded a pulse of 48 and diagnosed her ailment as a complete heart block. She was advised immediate hospitallsation and an Electro Cardiogram (ECG). The ECG was taken after which the petitioner was examined at the BMCH by the house physician. She was advised to have a pacemaker implanted. As no facilities were available at the BMCH for that purpose she left BMCH at 1.45p.m. In the Ambulance of the BMCH for the SSKM Hospital. Given the distance and the traffic, she reached SSKM Hospital at about 8.30 p.m. at

11.9.96 in the Emergency Department She alleges that she lay for half an hour without medical treatment. The doctors examined her at the Emergency department and sent her to the Cardiology department for immediate admission. The Cardiology department refused to admit the petitioner stating that there was no vacant bed. At 9.30 p.m. that night, according to the petitioner she was "turned out into the night". She was then taken to CMRI which is a private institute which insisted that unless a sum of Rs. 1,25,000 was deposited in advances a pacemaker would not be installed. Ultimately CMRI agreed to threat the petitioner in view of the urgency upon deposit of Rs. 10,000 and the balance was paid by the petitioner''s sons before she was discharged 25 days later.

3. By an order dated 21.1.97. S.B. Sinha-J directed SSKM to submit a report. The report which is dated 4.4.97 reads as follows :

"Mrs. Labanyamoyee Chandra, aged 65. years Hindu Female, suffering from Chronic complete heart block, was brought to the emergency of SSKM Hospital in a relatively stable clinical condition, from where she was referred to the Deptt. of Cardiology.

She was examined by the R.M.O (Cardiology) immediately and found to be clinically stable. However, as she was suffering from complete heart block and had been referred from another Medical College (Burdwan) she was recommended admission by the R.M.O (Cardiology). As the female ward of Cardiology Deptt. was over crowded with extra-bed at that time, she was referred back to the Senior Medical Officer on duly, Emergency Room for doing the needful".

4. An affidavit-in-opposition was filed by one Dr. Bldhan Kumar Sanyal who has described himself as the respondent No. 2 although the respondent No. 2 is the SSKM Hospital. The affidavit does not record in what capacity Dr. Sanyal was employed with the SSKM nor is his authority to affirm the affidavit on behalf of SSKM disclosed. According to this affidavit the cardiology department had no vacant space at all and it was under repair and that the petitioner did not report back to the Senior Emergency Officer as advised because she chose to be treated in a private institution.

5. Written notes of argument were also submitted by the State. It is argued that the petitioner was not refused admission but could not be given a vacant bed in the Cardiology Department. It was reiterated that the petitioner chose not to go back to the emergency department but obtained relief from a private hospital of her choice. Finally it is stated that every ailing person could not be accommodated as the State did not have the economic capacity to admit all ailing persons.

6. The law on the subject has been laid down decisively by the Supreme Court in Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, . It was held that "providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a Welfare

State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the Stale to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government Hospitals run by the State medical officers employed there are duty-bound to extend medical assistance for preserving human life. Failure on the part of a Government Hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21".

7. In that case also a patient with serious head injuries and brain haemhorrage was first taken to the Primary Health Centre at Mathurapur. Because of the absence of facilities there he was referred to a State Hospital. The patient was taken to NRS Medical College Hospital. The Emergency Medical Officer recommended immediate admission. The patient was not admitted as no vacant bed was available. The patient was taken to the Calcutta Medical College Hospital. He was not admitted there either because no bed was available. He was refused admission by the Sambhu Nath Pandit Hospital, Calcutta, National Medical College Hospital, Bangur institute of Neurology and ultimately by SSKM Hospital. In some cases the hospital did not have the necessary technical equipment to treat the patient and in others there was no vacancy. The patient was ultimately admitted by CMRI where he received treatment and incurred expenses of Rs. 17.000/-. A writ petition was filed by an organisation of agricultural labourers of which the patient was a member. In disposing of the matter, the Supreme Court noted that the State Government had itself appointed an Enquiry Committee under Shri Lilamoy Ghose, a retired Judge of the Calcutta High Court which found that the patient had been wrongly refused admission by NRS Medical College Hospital. The Committee also reported inter alia that SSKM hospital maintained no records as to the condition of a patient and the steps taken with regard to his return and that even though no sanctioned beds were available, arrangements could be made and should not have been refused when the condition of the patient was so grave.

8. The Lilamoy Ghose Committee made the following recommendations:

i) The Primary Health Centres should attend the patient and give proper medical aid, if equipped.

ii) At the hospital the Emergency Medical Officer, in consultation with the Specialist concerned on duty in the Emergency Department, should admit a patient whose condition is moribund/serious. If necessary the patient concerned be kept on the floor or on the trolley-beds and then loan can be taken from the cold ward. Subsequently necessary adjustment should be made by the hospital authorities by way of transfer/discharge.

iii) A Central Bed Bureau should be set up which should be equipped with wireless or other communication facilities to find out where a particular

emergency patient can be accommodated when a particular hospital finds itself absolutely helpless to admit a patient because of physical limitations. In such cases the hospital concerned should contact immediately the Central Bed Bureau which will communicate with the other hospitals and decide in which hospital an emergency moribund/serious patient is to be admitted.

iv) Some consultancy hospitals or traumatology units should be set up at some points on regional basis.

v) The intermediate group of hospitals, viz. the district, the subdivision and the State general hospitals should be upgraded so that a patient in a serious condition may get treatment locally."

9. The recommendations of the Lilamoy Ghose Committee were accepted by the State Government which issued a directive to all health centres/ OPD/Emergency department of hospitals a follows:

"1) Proper medical aid within the scope of the equipments and facilities available at Health Centres and hospitals should be provided to such patient and proper record of such aid provided should be preserved it office. The guiding principles should be to see that no emergency patient is dented medical care. All possibilities should be explored to accommodate emergency patients in serious condition.

2) Emergency Medical Officers will get touch with Superintendant/Deputy Superintendent/Specialist Medical Officer for talking beds on loan from cold wards for accommodating such patients as extra-temporary measures.

3) Superintendent of hospitals will issue regulatory guidelines for admitting such patients on adjustment amongst various ward and different kinds of beds including cot beds and will hold regular weekly meeting for monitoring and reviewing the situation. A model of such guideline is enclosed with this memorandum which may be suitably amended before issue according to local arrangements prevailing in various establishments.

4) if feasible, such patients should be accommodated in trolley beds and, even, on the floor when it is absolutely necessary during the exercise towards internal adjustments prevailing in various establishments."

10. Regarding Admission/Emergency Attendance Registers, it was directed :

"a) Clear recording of the name, age, sex, address, disease of the patient by the attending Medical Officers :

b) Clear recording of date and time of attendance/examination/ admission of the patient;

c) Clear indication whether and where the patient has been admitted, transferred, referred ;

d) Safe custody of the registers :

e) Periodical inspection of the arrangement by the Superintendent:

f) Fixing of responsibility of maintenance and safe custody of the registers."

11. The other directives are not necessary for the purpose of this Judgment. The Supreme Court, in addition to affirming the recommendations of the Ltlamoy Ghosh Committee and the directives of the State Government, laid down that the State Government should ensure that :

"1. Adequate facilities are available at the Primary Health Centres where the patient can be given immediate primary treatment so as to stablise his condition.

2. Hospitals at the district level and Sub-Division level are upgraded so that serious cases can be treated there.

3. Facilities for giving specialist treatment are increased and are available at the hospitals at district level and Sub-Division level having regard to the growing needs.

4. In order to ensure availability of bed in emergency at State level hospitals there is a centralised communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment which is required.

5. Proper arrangement of ambulance is made for transport of a patient from the Primary Health Centre to the District Hospital or Sub division hospital and from the District Hospital or Sub-Division hospital to the State hospital.

6. The ambulance is adequately provided with necessarily equipment and medical personal.

7. The Health Centres and the hospitals and the medical personnel attached to these centres and hospitals are geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain season."

12. In the case before me. a dispute is sought to be raised by the State Government on two factual points. The first relates to the condition of the patient when she was brought to SSKM hospital. According to the petitioner she was critically III and in a moribund condition. According to the report of the SSKM hospital, the patient was "Clinically stable". The second point of dispute relates to the events which occurred after the cardiology department said that there was no bed available. According to the petitioner she was refused to be admitted and was "turned out into the night". According to the SSKM, she was asked to report to the Senior Emergency Officer, which the petitioner chose not to do.

13. As far as the condition of the patient is concerned several documents have been relied on by the petitioner: (1) The prescription of the local doctor recording that the patient was unconscious and suffering from convulsions and frothing at the mouth. It was also stated that it had been diagnosed that she had

complete heart block (Stockes-Adams). Stockes-Adams is a medical term to designate occasional transient cessation of the pulse and loss of consciousness, especially caused by heart block (See : New Oxford Shorter Dictionary, 1993 Edn.). The condition of such a patient cannot but be described as critical. Accordingly the local doctor advised urgent hospitalisation oxygen inhalation, atropine, decadron and other injections, tablets to be taken orally and that the patient should be transferred to any teaching hospital. This was at 11 a.m. on 11.9.96.

(ii) The discharge certificate shows that the petitioner was taken to BMCH at 12.20 where she was stated to be suffering from complete heart block. She was referred by BMCH to the cardiology department of SSKM hospital or any hospital possessing cardiology department and advised further injection of atropine, Alupent and Ampfcilln.

(iii) The out door Emergency department ticket of the SSKM hospital reads as follows :

"Refd. to RMO (C)"

This is the endorsement, of the Emergency Department The Cardiology RMO in his turn wrote

"Complete Heart Block with S.A. attack.

Rec. Admission.

No. bed vacant in Cardiology at present.

Refd, back to the Sr. O.D. for needful."

The endorsement of "Complete Heart Block S.A." by the RMO (Cardiology) militates against the report that she was in a clinically stable condition.

(iv) The discharge certificate of CMR1 shows that the petitioner was admitted with "sudden syncopal attack". The word "Syncopal" has been defined as "fainting ; temporary loss of consciousness caused by insufficient flow of blood to the brain" (ibid). The diagnosis was complete heart block. A permanent pace maker was implanted at the CMRI on 16.9.96. The so called "clinical stability- is further disproved by the CMRI record that the petitioner was admitted with "Syncopal attack".

14. That the petitioner was in a critical condition needing immediate hospitalisation when she was brought to the BCMH and subsequently to SSKM cannot be doubted. The urgency or her being immediately hospitalised should have been realised by the doctors attending her at SSKM particularly when such a critically III patient had travelled such a long distance and because of the time of night. It was the duty of the doctor who was in charge in the Cardiology Department and who examined her, to have ensured that a bed was made available to the petitioner in whichever department so that she could be

accommodated in the cardiology department as and when vacancy arose.

15. No one has in fact denied that the petitioner weeded immediate hospitalisation and treatment. The outdoor ticket and the Medical Report both show that the petitioner was referred from the emergency department of SSKM to the RMO, Cardiology Department and the RMO Cardiology Department referred the petitioner back to the Emergency department because there was no vacancy. The doctors cannot indulge in such a game of "passing the patient".

16. It appears that almost every directive of the Supreme Court in the Khet Mozdoor''s case noted earlier, have been violated.

17. The petitioner is a villager. She was denied treatment by the BCMH on the ground of lack of proper facilities. This despite the specific direction on the State Government by the Supreme Court to upgrade the facilities in the District Hospitals and to set up specialist treatment in the District level hospitals. Clearly the State Government has not taken any follow up action to see whether the recommendations of the Lilamoy Ghosh Committee, the directives of the State Government and the requirements of the Supreme Court have been and are in fact being implemented.

18. The Supreme Court had directed the setting up of a centralised communication system so that the patient could be sent immediately to the hospital where the bed is available in respect of the treatment required. BMCH should have at least ensured this before sending off the petitioner on a long Journey on the off chance of a possible admission. Apart from this, the least that the SSKM, RMO (Cardiology) could have done was to have rung up the RMO (Emergency) and have the petitioner admitted.

19. Significantly, the report submitted by the SSKM hospital to court states that the female ward of the cardiology department was overcrowded. It is not stated that no extra bed was not available in the male ward. It is also not stated in the report that the cardiology department was undergoing repairs and therefore no beds were available as has been sought to be made out in the affidavit. In any event, there is nothing to show that there was no vacant bed elsewhere in the hospital. According to the petitioner''s son who had accompanied his mother on that date, the petitioner was not in a condition to walk to the emergency room as directed by the RMO (Cardiology) and when the petitioner''s son himself went to the emergency department he was informed that there was no vacancy.

20. The admission register which was produced by the SSKM hospital has not at all been maintained in terms of the directions/guidelines noted above. The entries are haphazard and irresponsibly made. There is no indication as to the nature or condition of the admitted patient although a column has been provided for the appropriate entry. The entries in the Admission Register show that on 11.9.98 from 8.30 p.m.. at least 10 other patients were admitted in the SSKM hospital of which about four were ladles. According to SSKM the doctor who was then in charge of the emergency was one Dr. G. Mondal.

21. The doctors of SSKM ignored the recommendation of the Lilamoy Ghosh Committee as approved by the Supreme Court directive viz that even if a bed is not available a critically 111 patient must be given admission whether on trolley bed or even on the floor. The laches on the part of SSKM officers is doubly reprehensible because it was the SSKM hospital''s conduct which had come up for scrutiny before the Supreme Court in Paschtm Banga Khet Mazdoor Samity &. Ore. v. State of West Bengal (supra) and also because the admission register shows that beds were in fact available at the SSKM.

22. It was because of the failure of the State Government to provide necessary medical facility even in a major town of the State such as Burdwan that the petitioner had to undergo the arduous journey from Burdwan to Calcutta. The failure of BCMH to give the requisite information of a vacant bed in any hospital with a Cardiology Department led to the fruitless effort in SSKM. The failure of RMO (Cardiology) SSKM to ensure the petitioners admission meant another Journey.--Hours were thus wasted where every moment was critical.

23. It would be apposite to quote again from the decision of the Supreme Court in Paschim Banga Khet Mazdoor Samlty''s case substituting the petitioner in place of the patients name in that case :

"In the present case there was breach of the said right of Hakim Seikli guaranteed under Article 21 when he was denied treatment at the various Government Hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of Hakim Seikh guaranteed under Article 21 was by officers of the State, in hospitals run by the State, the State cannot avoid its responsibility for such denial of the constitutional rights guaranteed under Part III of the Constitution. The position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Article 32 and 226 of the Constitution (See : Rudul Sah v. State of Bihar; Nilabatl Behera v. State of Orissa; Consumer Education and Research Centre v. Union of India Hakim Selkh should, therefore, be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution."

24. In the circumstances of the case there can be no doubt that the State Government must pay the petitioner compensation. In assessing the compensation the court has not taken into consideration the cost of the pace-maker which the petitioner had to pay for. The court assesses the compensation at Rs. 25.000/-. The State Government will also pay the cost of this application assessed at 100 Cms. together with the compensation to the petitioner within a period of two weeks from the date of service of the copy of this Judgment upon the respondents. The Slate Government shall also take follow up action on its own instructions, the Lflamoy Ghosh Committee recommendations as also the directives of the Supreme Court in the Khet Majdoor Samtty''s case forthwith.

25. Order Accordingly

